

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

313

RFA-519-2019(O&M)
Date of decision: 02.08.2022

PHOOLWATI

..Appellant

Versus

STATE OF HARYANA AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhinav Sood, Advocate
for Mr. Vikram Singh, Advocate
for the appellant.

Ms. Vibha Tewari, AAG, Haryana.

ANIL KSHETARPAL, J(Oral)

The landowner assails the correctness of award passed by the Reference Court (hereinafter referred to as 'the RC') on 18.10.2018. The application filed by the appellant under Section 28-A(3) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act'), has been dismissed.

Some peculiar facts are required to be dismissed.

In order to utilize the land, the Haryana Government issued notification under Section 4 of the 1894 Act on 04.01.2002, which was followed by the declaration under Section 6 of the 1894 Act on 31.12.2002. The Land Acquisition Collector (hereinafter referred to as 'the LAC') announced the award on 29.12.2004. The appellant did not file an application under Section 18 of the 1894 Act for referring the matter to the RC for redetermination of the market value, whereas, the applications filed by the various other landowners were referred to the RC. The RC vide award dated 29.12.2004, enhanced the market value of the acquired land as

compared to the assessment of LAC. The appellant filed an application under Section 28-A of the 1894 Act on 25.02.2011, claiming parity with other landowners. The same was allowed by the LAC on 19.08.2013. The appellant did not apply under Section 28-A(3) of the 1894 Act for reference to the Court.

The various Regular First Appeals were filed challenging the judgment passed by the RC on 24.12.2010, which came to be allowed on 01.09.2014. The appellant filed an application under Section 28-A(3) before the LAC on 30.10.2014, which was forwarded to the Court. The RC has dismissed the same by impugned order.

This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

The learned counsel representing the appellant contends that the LAC was required to keep the matter pending once the various Regular First Appeals were pending. He further submits that once an application under Section 28-A(3) has been filed, the RC on the question of parity should have awarded the same market value as assessed by the High Court vide judgment dated 01.09.2014.

The 1894 Act grants two opportunities to the landowners who are not satisfied with the assessment made by the LAC for redetermination. The first opportunity is provided under Section 18 of the 1894 Act, whereas, the second opportunity is given under Section 28-A of the 1894 Act. The second opportunity under Section 28-A is for those landowners who did not avail the opportunity under Section 18 of the 1894 Act.

After the assessment made by the LAC under Section 28-A(1) and (2), the aggrieved landowner is entitled to apply to the LAC for

reference to the Court.

Section 28 of the 1894 Act is extracted as under:-

“28. Collector may be directed to pay interest on excess compensation. - If the sum, which the Collector did award as compensation, the award of the Court may direct that the collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court:

[Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date or expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.]

[28A. Re-determination of the amount of compensation on the basis of the award of the Court. - (1) where in an award under this part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, required that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference

under section 18.]”

Sub-Section 3 of Section 28-A provides that the provisions of Section 18 to 28 shall apply to the application under Section 28-A(3). Proviso to Sub-Section 18 provides that the application is required to be submitted, at the most, within a period of 6 months from the date of Collector's (LAC) award. Thus, the application under Section 28-A(3) would be filed within a period of six months from 19.08.2013, the date, the LAC allowed the application under Section 28-A. It is well settled that no second application under Section 28-A is maintainable.

The learned counsel representing the appellant relies upon the judgment passed in **Bharatsing and others Vs. State of Maharashtra and others, (2018) 11 SCC 92**. In this case, the Supreme Court directed the LAC to redecide the application under Section 28-A.

This Court in **Civil Writ Petition No.14924 of 2022, titled as “Harikesh and others Vs. State of Haryana and others”, decided on 20.07.2022**, had an occasion to examine the aforesaid matter with reference to **Bharatsing's case (supra)**.

For the reasons noted in the aforesaid judgment, finding no merit, the appeal is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

August 02nd, 2022

Ay

**(ANIL KSHETARPAL)
JUDGE**

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>