

LPA No.689 of 2022 (O&M) and other connected cases

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 29th August, 2022

(1) LPA NO.689 OF 2022 (O&M)

M/S BRIJBASI PROJECT PVT. LTD. AND ORS.

....APPELLANT

VERSUS

HARYANA SHEHRI VIKAS PRADHIKARAN AND ORS.

....RESPONDENTS

(2) LPA NO.548 OF 2022

M/S SPARSH PROMOTERS PVT. LTD. AND ORS.

....APPELLANTS

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY
(NOW HSVP) AND ORS.

....RESPONDENTS

(3) LPA NO.549 OF 2022

M/S PROSPEROUS BUILDCON PVT. LTD. AND ANR.

....APPELLANTS

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY (NOW HSVP) AND
ORS.

....RESPONDENTS

(4) LPA NO.550 OF 2022

M/S LOGICAL DEVELOPMENT PVT. LTD.

....APPELLANT

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY
(NOW HSVP) AND ORS.

....RESPONDENTS

(5) **LPA NO.551 OF 2022**

M/S BRIJBASI PROJECT PVT. LTD. AND ANR.APPELLANTS

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY
(NOW HSVP) AND ORS.
.....RESPONDENTS

(6) **LPA NO.552 OF 2022**

M/S PROSPEROUS BUILDCON PVT. LTD.APPELLANT

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY
(NOW HSVP) AND ORS.
.....RESPONDENTS

(7) **LPA NO.553 OF 2022**

M/S GLOSS PROPBUILD PVT. LTD. AND ANR.APPELLANTS

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY
(NOW HSVP) AND ORS.
.....RESPONDENTS

(8) **LPA NO.554 OF 2022**

M/S JAMB PROPBUILD PVT. LTD. AND ORS.APPELLANTS

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY
(NOW HSVP) AND ORS.
.....RESPONDENTS

(9) **LPA NO.1088 OF 2021**

DEVI SINGH CHAUHANAPPELLANT

VERSUS

HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED (HSIIDC) .
.....RESPONDENTS

(10) LPA NO.229 OF 2022

PARTAP SINGH AND ANOTHERAPPELLANTS

VERSUS

HSIIDC AND ANOTHER
....RESPONDENTS

(11) LPA NO.328 OF 2022 (O&M)

DEEP KISHOR AND ORSAPPELLANTS

VERSUS

HARYANA STATE INDUSTRIAL AND
INFRASTRUCTURAL DEVELOPMENT CORPORATION
LTD AND ANRRESPONDENTS

(12) LPA NO.329 OF 2022 (O&M)

HARPALPETITIONER

VERSUS

HARYANA STATE INDUSTRIAL AND
INFRASTRUCTURAL DEVELOPMENT CORPORATION
LTD AND ANRRESPONDENTS

(13) LPA NO.350 OF 2022 (O&M)

BANSIPETITIONER

VERSUS

HARYANA STATE INDUSTRIAL AND
INFRASTRUCTURE DEVELOPMENT CORPORATION
LIMITED (HSIIDC) AND ANR
....RESPONDENTS

(14) LPA NO.373 OF 2022

JAGDISHPETITIONER

VERSUS

S HARYANA STATE INDUSTRIAL AND
INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMTED AND ANOTHER
....RESPONDENTS

LPA No.689 of 2022 (O&M) and other connected cases

(15) LPA NO.397 OF 2022

BHAGWAN SAHAI AND ORSPETITIONER

VERSUS

HARYANA STATE INDUSTRIAL AND
INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD. AND ORSRESPONDENTS

(16) LPA NO.450 OF 2022 (O&M)

HARDEEP SINGH AND ORSPETITIONERS

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY
(NOW HSVP) AND ORSRESPONDENTS

(17) LPA NO.451 OF 2022 (O&M)

RAJBIR SINGH AND ORSPETITIONERS

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY
(NOW HSVP) AND ORSRESPONDENTS

**CORAM : HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE ALOK JAIN**

Present :- Mr. R.S. Rai, Sr. Advocate with
Mr. Kunal Dawar, Advocate and
Ms. Rubina Virmani, Advocate for the appellant (s) in
LPA Nos.548 to 554 of 2022.

Mr. Gorav Kathuria, Advocate for
the applicant-appellant in LPA-1088-2021.

Mr. Kunal Dawar, Advocate with
Mr. Vipul Sharma, Advocate in LPA-229-2022.

Mr. Mahendra Singh Tawatia, Advocate
for the appellant (s) in LPA Nos.350, 373 and 397 of 2022.

Mr. Rakesh Sobti, Advocate for the appellant(s)
in LPA Nos.328 and 329 of 2022.

Mr. Vikram Singh, Advocate for the appellant(s)
in LPA Nos.450 and 451 of 2022.

Mr. Parvinder S. Chauhan, Advocate
Mr. Ankur Mittal, Advocate for the respondent- HVSP
in all LPAs.

Mr. Pritam Saini, Addl. A.G., Haryana for respondent-HSIIDC
in all LPAs.

AUGUSTINE GEORGE MASIH, J. (Oral)

Challenge in these appeals is to the judgments passed by learned Single Judge whereby the writ petitions preferred by the **Haryana Shehri Vikas Pradhikaran, Gurugram** challenging the enhanced compensation having been granted vide award dated 30.07.2020 by the Land Acquisitions Collector on the basis of an application moved by the land owners under Section 28-A of the Land Acquisition Act, 1894. The challenge is based upon the fact that the said benefit of enhanced compensation was not payable as the statute did not permit the same and secondly that too after a period of limitation prescribed under the Act itself. The said writ petitions were allowed vide the impugned order leading to the filing of the present appeals by the land owners, which have been adversely affected because of the acceptance of the writ petitions, denying them the benefit of enhanced compensation in the light of the judgment passed by the said Court in CWP No.8456 of 2020 titled as ***“Haryana State Industrial and Infrastructure Development Corporation Ltd. vs. Shanti and Ors”***.

It is the contention of the learned Senior counsel for the appellant(s) that the appellant (s) are entitled to the benefit of Section 28-A of the Land

Acquisition Act. In support thereof, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Union of India vs. Munshi Ram*** (2006) 4 SCC 538.

What have been contended by the learned counsel for the appellant (s) is based upon Para 7 thereof, which reads as follows:

7. "We are of the view that the Union of India is right in its submission that the amount payable under Section 28-A of the Act is the amount which is finally payable by way of compensation to the owners of the land who challenged the award of the Collector and claimed reference under Section 18 of the Act. The said provision seeks to confer the benefit of enhanced compensation even on those owners who did not seek a reference under Section 18. It cannot be that those who secure a certain benefit by reason of others getting such benefit should retain that benefit, even though the others on the basis of those claim compensation was enhanced are deprived of the enhanced compensation to an extent. This would be rather inequitable and unfair. Moreover, even if it be that the compensation payable to claimants who have applied under Section 28-A of the Act, is the enhanced compensation decreed by the Reference Court, we much understand the decree to mean the decree of the Reference Court as modified in appeal by the high courts. Otherwise, an incongruous position may emerge that a person who did not challenge the award of the Collector and did not claim a reference under Section 18 of the Act would get a higher

compensation than one who challenged the award of the Collector and did not claim a reference under Section 18 of the Act would get a higher compensation than one who challenged the award of the Collector and claimed a reference, but in whose case a higher compensation determined by the Reference Court was subsequently reduced by the superior court. There can be no dispute that those claiming higher compensation and claiming reference under Section 18 of the Act are bound by the decree as modified by the superior court in appeal. The principle of restitution must apply to them. For the same reason, the same consequence must visit others who have been given the benefit of enhanced compensation pursuant to the decree passed in reference proceeding on the application of others.

This being the principle the stand which is being taken, reliance has also been placed upon the judgment of the Hon'ble Supreme Court in the case of **“Narendra and Ors. vs. State of Uttar Pradesh and Ors.”** (2017) 9 SCC 426 wherein Para 8, while dealing with the object and purpose for introduction of Section 28-A the Land Acquisition Act, the Hon'ble Supreme Court has had observed as follows:

8."The purpose and objective behind the aforesaid provision is salutary in nature. It is kept in mind that those landowners who are agriculturist in most of the cases, and whose land is acquired for public purpose should get fair compensation. Once a particular rate of compensation is judicially determined, which becomes a fair compensation, benefit thereof is to be given even

to those who could not approach the court. It is with this aim the aforesaid provision is incorporated by the legislature. Once we keep the aforesaid purpose in mind, the mere fact that the compensation which was claimed by some of the villagers was at lesser rate than the compensation which is ultimately determined to be fair compensation, should not be a ground to deny such persons appropriate an, fair compensation on the ground that they claimed compensation at a lesser rate. In such cases, strict rule of pleadings are not be made applicable and rendering substantial justice to the parties has to be the paramount consideration. It is to be kept in mind that in the matter of compulsory acquisition of lands by the 9 Government, the villagers whose land gets acquired are not willing parties. It was not their voluntary act to sell off their land. They were compelled to give the land to the State for public purpose. For this purpose, the consideration which is to be paid to them is also not of their choice. On the contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector. The Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court, etc. In order to ensure that the landowners are given proper compensation, the Act provides for "fair compensation". Once such a fair compensation is determined judicially, all landowners whose land was taken

away by the same notification should become the beneficiary thereof. Not only it is an aspect of good governance, failing to do so would also amount to discrimination by giving different treatment to the persons though identically situated. On technical-grounds, like the one adopted by the High Court in the impugned judgment, this fair treatment cannot be denied to them”.

It is on the basis of these observation in the above two referred to judgments, contention has been raised by the learned Senior Counsel for the appellant(s) that the writ petitions as have been preferred by respondent No.1 could not have been allowed and the benefit which had been rightly granted by the *Tehsildar* should have been set aside.

On the other hand counsel for the respondents has placed reliance upon the judgment of the Hon’ble Suprme Court in the case of CWP No.4885 of 2018 decided on 24.04.2018 titled as “***Ramsinghbhai (Ramsanghai) Jerambhai vs. The State of Gujarat and Anr.***” whereby in Para 3 of the said order it has been stated as follows.

3. Section 28A(1) of the Act reads as follows:

"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."

It is clear from the opening words of the provision that the redetermination under Section 28A is available only in respect of an "Award" passed by the "court" under Part III of the Act, comprising Sections 18 to 28A (both inclusive). The "court" referred to in Section 28A of the Act is the court as defined under Section 3(d) to mean "principal civil court of original jurisdiction...". Thus, the judgment of the appellate court is not within the purview of Section 28A. It is also to be noted that the appellate courts under Section 54 are under Part VIII of the Act whereas the redetermination is only in respect of the Award passed by the Reference Court under Part III of the Act. (See Jose Antonio Cruz Dos R. Rodriguese & another v. Land Acquisition Collector & another). In its recent judgment in Bharatsing and others v. The State of Maharashtra and others,

this Court has surveyed the decisions on this issue and reiterated the legal principle”.

This judgment i.e. *Ramsinghbhai (Ramsanghai) Jerambhai* (supra) being passed by the three Judges’ Bench would be binding on this Court being of a larger bench and thus, the judgments on which the reliance has been placed by learned counsel for the appellant(s) cannot be accepted. The learned Single Judge has therefore, rightly proceeded to accept the same and allowed the writ petitions preferred by respondent No.1.

We therefore, accept the judgment of the larger Bench of the Hon’ble Supreme Court in *Ramsinghbhai (Ramsanghai) Jerambhai* (supra) and dismiss the present appeals upholding the order passed by learned Single Judge.

In view of the dismissal of main cases, all pending civil misc. applications also stands disposed of accordingly.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ALOK JAIN)
JUDGE

29.08.2022
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No