

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 15221 of 2022

Date of Decision: 18.07.2022

Satpal Singh and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Shivam Garg, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. The petitioner prays for issuance of a writ in the nature of mandamus to direct the respondents to release the enhanced amount of compensation by treating the petitioners at par with other similarly situated landowners. They also pray for issuance of a writ in the nature of certiorari to quash the award dated 08.06.2018, passed by the Land Acquisition collector, Patran, under Section 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”).

2. Some facts are required to be noticed. In order to utilize the land for specified public purpose, notifications under Section 4 and 6 of the 1894 Act were issued on 20.11.2006 and 29.04.2007, respectively, and an award was passed by the Land Acquisition Collector, on 19.08.2008 offering to pay ₹5,25,000/- per acre. The various other landowners applied to the Land Acquisition Collector for referring the matter to the Court, however,

the petitioners did not avail the opportunity under Section 18 of the 1894

Act. The Reference court dismissed the various applications filed under Section 18 of the 1894 Act while recording a finding that the amount assessed by the Land Acquisition Collector is correct. In the meantime, the various regular first appeals were filed against the award passed by the Reference Court which came to be decided on 06.05.2016 in Regular First Appeal No. 2999 of 2013. The market value of the acquired land was enhanced to ₹ 15,95,600/- per acre. The petitioners, claiming to have become aware of the aforesaid judgment of the High Court in the month of January, filed an application under Section 28-A of the 1894 Act on 25.04.2018, which was dismissed.

3. From the narration of the facts, it is evident that the application under Section 28-A of the 1894 Act was neither maintainable nor filed within the prescribed time. Section 28-A of the 1894 Act is extracted as under:-

“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”.

4. It is well settled that the application under Section 28-A of the 1894 Act is maintainable only if the Reference Court assesses the market value higher than the one assessed by the Land Acquisition Collector. In the absence thereof, no application under Section 28-A of the 1894 Act is maintainable. The Supreme Court in ***Union of India and Another v. Pardeep Kumari and Others (1995) 2 SCC 736*** and ***Jose Antonio Cruz Dos R. Rodriguese and Another v. Land Acquisition Collector and***

Another (1996) 6 SCC 746, while interpreting Section 28-A of the 1894 Act, held that if the market value is enhanced, for the first time, by the High Court in appeal or by the Supreme Court, then, an application under Section 28-A of the 1894 Act is not maintainable.

5. Furthermore, it is evident that the application under Section 28-A of the 1894 Act was filed on 25.04.2018, whereas it was required to be filed within a period of three months from the date of award while excluding the time spent in obtaining a certified copy of the award relied upon.

6. Moreover, the petitioners could have availed the remedy as provided under Section 28-A(3) of the 1894 Act, but they did not opt for the same. At this stage, the petitioners cannot be permitted to circumvent the statutory remedy by filing the present writ petition that also after a period of more than four years.

7. In view of the aforesaid facts, the present writ petition is dismissed.

(Anil Kshetarpal)
Judge

July 18, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No