

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 14924 of 2022

Harikesh and Others
... Petitioner(s)

Versus

State of Haryana and Others
... Respondent(s)

2. Civil Writ Petition No. 14923 of 2022

Jai Bhagwan
... Petitioner(s)

Versus

State of Haryana and Others
... Respondent(s)

3. Civil Writ Petition No. 14968 of 2022

Sunita and Others
... Petitioner(s)

Versus

State of Haryana and Others
... Respondent(s)

4. Civil Writ Petition No. 15045 of 2022

Laxmi and Others
... Petitioner(s)

Versus

State of Haryana and Others
... Respondent(s)

5.

Civil Writ Petition No. 15048 of 2022

Satish

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

6.

Civil Writ Petition No. 15049 of 2022

Muni Ram

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

7.

Civil Writ Petition No. 15055 of 2022

Muni Ram and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

8.

Civil Writ Petition No. 15200 of 2022

Khazani Devi and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

AND

9. Civil Writ Petition No. 15225 of 2022

Jagat Singh and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

**DATE OF DECISION: 20.07.2022
RESERVED ON: 15.07.2022/18.07.2022**

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sandeep Singal, Advocate
for the petitioner(s).

Mr. Harsh Vardhan, Assistant Advocate General,
Haryana, for the respondent No.1 to 3.

Mr. Ankur Mittal, Ms. Kushaldeep Kaur Manchanda and
Mr. Abhishek Sharma, Advocates, for the respondent No.4.

Anil Kshetarpal, J.

1. By this judgment, nine connected writ petitions shall stand disposed of. The learned counsel representing the parties are *ad idem* that the point in issue in the writ petitions is identical and the matter can conveniently be disposed of by a common order.

2. The question which arises for adjudication is that, “whether after the expiry of the period of limitation provided under Section 28-A(3) of the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”) for which no extension is permissible, can the direction to re-decide the application under Section 28-A (1 and 2) of the 1894 Act be issued, resulting in circumventing the statutory bar set by the said provision in the statute?

3. Some peculiar facts are required to be noticed. The State of

acquire the land for setting up an Industrial Model Township at District Rohtak. The notification under Section 6 of the 1894 Act was issued on 13.12.2008, whereas the Land Acquisition Collector (hereinafter referred to as “the LAC”), vide award No. 4 dated 30.07.2009, acquired the said land. The certain landowners filed the applications under Section 18 of the 1894 Act for referring the matter to the Court. On being referred, the Reference Court decided the cases on 30.03.2016. These petitioners did not file applications under Section 18 of the 1894 Act, but filed the applications under Section 28-A of the 1894 Act claiming parity with the amount assessed on 30.03.2016 by the Reference Court, which were allowed on 21.11.2017.

4. On the other hand, the appeals filed by various other landowners in the High Court challenging the decision dated 30.03.2006 passed by the Reference Court, came to be allowed on 15.11.2021. The petitioners sent various notices calling upon the LAC to re-decide the application under Section 28-A of the 1894 Act on the basis of the judgment passed by the High Court. Complaining failure to decide those notices by the LAC, the present writ petitions have been filed.

5. Heard the learned counsel representing the parties on the very first date of hearing and with their able assistance, perused the paper-book.

6. The learned counsel representing the petitioners while relying upon the judgment passed in ***Bharatsing and Others v. State of Maharashtra and Others (2018) 11 SCC 92*** contends that the LAC committed an error while deciding the applications under Section 28-A of the 1894 Act on the basis of the judgment passed by the Reference Court,

particularly when the appeals were pending. He submits that the LAC should be directed to re-decide the application under Section 28-A of the 1894 Act. In substance, the petitioners claim the benefit of the market value assessed by the High Court vide judgment dated 15.11.2021.

7. It may be noted here that Section 28-A of the 1894 Act was added by Act No. 68 of 1984. The objects and reasons for inserting Section 28-A of the 1894 Act were as under:-

“Considering that the right of reference to the civil court under Section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent land- owners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek re-determination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act”.

8. Section 28-A of the 1894 Act reads 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”.

9. Section 28-A of the 1894 Act has been the subject matter of interpretation by the Supreme Court from time to time. It would be noted here that over a period of time, there is a sufficient clarity on the interpretation of the aforesaid provision. In *Union of India and Another v. Pardeep Kumari and Others (1995) 2 SCC 736*, it was held that only one application under Section 28-A of the 1894 Act is maintainable. In *Union of India v. Hansoli Devi (2002) 7 SCC 27*, the three questions as referred were answered including the question of the effect of dismissal of the application under Section 18 of the 1894 Act on the ground of limitation. In *Babua Ram v. State of Uttar Pradesh and Another (1995) 2 SCC 689*, *Uttar Pradesh State Industrial Development Corporation v. State of Uttar Pradesh and Others (1995) 2 SCC 766*, *Union of India v. Munshi Ram (Dead) by LRs and Others (2006) 4 SCC 538* and *Kendriya Karamchhari Sehkari Grah Nirman Samiti Limited Noida v. State of Uttar Pradesh and Another (2009) 1 SCC 754*, it has been observed that the LAC should keep the decision on the application under Section 28-A of the 1894 Act pending, if the appeals are pending either before the High Court or the Supreme Court. In *Babua Ram's case (supra)*, the Court held that the application under Section 28-A of the 1894 Act can only be filed on the basis of the judgment passed by the Reference Court and not by the High Court. Even in *State of Punjab v. Raghbir Singh (1995 Suppl.) 2 SCC 679*, the same position was reiterated by the Supreme Court.

10. In view of the aforesaid position, the question which has been noted above arises. This Court has carefully read the judgment relied upon

formed an opinion that since the Collector was also at fault, therefore, he can be directed to re-decide the application under Section 28-A of the 1894 Act on modification of the assessment of the market value by the High Court or the Supreme Court.

11. On the careful reading of the judgment, it is evident that the attention of the Bench was not drawn to Section 28-A(3) of the 1894 Act which enables the landowner to apply to the LAC for referring the matter to the Reference Court if he is not satisfied with the order passed by the LAC. It is evident from the reading of sub-Section (3) to Section 28-A of the 1894 Act that the provisions of Section 18 to 28 of the 1894 Act, so far as may be applied to such reference to the Reference Court. Section 18(2) of the 1894 Act provides that the application for referring the matter to the Court for re-determination is maintainable only within the limitation period prescribed therein. Section 18 of the 1894 Act is extracted as under:-

“18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made-

(a) if the person making it was present or represented

*before the Collector at the time when he made his award,
within six weeks from the date of the Collector's award;
(b) in other cases, within six weeks of the receipt of
the notice from the Collector under section 12, sub-
section (2), or within six months from the date of the
Collector's award, whichever period shall first expire”.*

12. It is evident that the proviso to sub-Section 2 to Section 18 of the 1894 Act lays down that the maximum period for submitting an application under Section 18 of the 1894 Act is within six months from the date of the Collector's award. It is also provided that whichever period shall first expire shall be kept into consideration.

13. In ***Mohammad Hasnuddin v. State of Maharashtra 1979 AIR 404***, the Supreme Court while interpreting the provisions of the 1894 Act in the context of the powers of the LAC or the Court to condone the delay in filing the application under Section 18 of the 1894 Act held that neither the LAC nor the Reference Court has any power to condone the delay and such reference itself is wrong and irregular.

14. In that context, the matter is required to be examined. After having analyzed the arguments of the learned counsel representing the parties vis-a-vis the case law on the subject, this Court is of the considered view that the prayer made in the writ petition cannot be allowed for the following reasons:-

- I) The petitioners have failed to avail the remedy available under Section 28-A(3) of the 1894 Act. In the judgment passed in ***Bharating's case (supra)***, the attention of the

Court was not drawn to this provision.

- II) It is also well settled that the application under Section 28A cannot be filed on the basis of the assessment made by the High Court or the Supreme Court. For applicability of Section 28-A, it is necessary that the Reference Court has assessed the higher market value than the amount assessed by the LAC.
- III) In *Babua Ram's case (supra)*, *Uttar Pradesh State Industrial Development Corporation's case (supra)*, *Munshi Ram's case (supra)* and *Kendriya Karamchari Sehkari Grah Nirman Samiti Limited Noida's case (supra)*, there is an expression of hope and wish by the Court that the LAC should keep the decision on the application under Section 28-A pending till the issue of assessment of the market value is finally determined by the Court. However, these judgments with greatest respect do not, as a *ratio decidendi*, lay down that if the LAC decides the case on the basis of the judgment passed by the Reference Court, the same shall be without jurisdiction or illegal. Such observations are based upon hope and wish expressed by the Court, however, such expressions are not based upon the statute. In fact, sub-Section 3 to Section 28-A of the 1894 Act do enable the landowner to apply for modification of the assessment made under Section 28-A(2) of the 1894 Act. If the

landowner fails once again to avail the statutory remedy, it will be inappropriate for the Court to circumvent the provisions of the statute in a manner to render the limitation provided thereunder otiose. As per the scheme of the 1894 Act, the landowner whose land has been acquired is granted two opportunities to get the market value of the acquired land re-determined from the Court. The first opportunity is under Section 18, whereas the second opportunity is under Section 28-A. It is also a well settled principle that once an application under Section 18 of the 1894 Act has been submitted and the matter has been decided on merits by the Reference Court, but the landowner fails to file further appeal, he subsequently cannot invoke the power under Section 28-A of the 1894 Act even if the High Court or the Supreme Court enhances the market value.

15. It may be noted here that in the present case, the petitioners did not file an application under Section 18 of the 1894 Act. As per the statutory provision, the petitioners availed the second opportunity for re-determination of the market value under Section 28-A of the 1894. Once they applied and the matter was decided in the month of November, 2017, a statutory remedy under sub-Section 3 to Section 28-A of the 1894 Act was available to them. Once they failed to avail the remedy under sub-Section 3 to Section 28-A of the 1894 Act, their options to get re-determination of the market value are no more available. They were required to file an application under sub-Section

3 to Section 28-A of the 1894 Act within the period prescribed under Section 18 of the 1894 Act. As per the judgment passed by the larger Bench in *Mohammad Hasnuddin's case (supra)*, the LAC or the Court does not have power to extend the period as provided under Section 18 of the 1894 Act. In such circumstances, if the directions are issued, as prayed for by the petitioners, it would result in circumventing the statutory bar of limitation provided in the statute itself.

16. This matter can be examined on two more perspectives. The writ petitions have been filed seeking directions to the LAC to re-decide the application under Section 28-A after the same stands already decided in the year 2017. In the absence of any statutory right or enabling provision, it would not be appropriate for the High Court to exercise the writ jurisdiction. Moreover, such direction would result in setting aside the previous decision taken by the LAC in the month of November, 2017. It is not the case of the petitioners that they had no knowledge of the award passed by the LAC in the month of November, 2017. The writ petitions have been filed in the month of July, 2022.

17. There is yet another angle from which the matter can be examined. It is not the case of the petitioners that they had no knowledge of the award passed by the Reference Court. It is also not the case of the landowners that they did not know of the pendency of the appeals filed by various other owners of the same area. In such circumstances, the petitioners were in a deep slumber. They could have come to the Court at that very point of time either under Section 28-A(3). Now, after the passage

Court has increased the market value from what was assessed by the Reference Court.

18. Finding no merit, keeping in view the aforesaid discussion, all the writ petitions are dismissed.

**(Anil Kshetarpal)
Judge**

July 20, 2022
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No