

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
107**

**CM-2867-LPA-2011 &
LPA-1224-2021**

Date of decision: 29.09.2022

RAMESH CHAND AND ANOTHER

.....APPELLANTS

Versus

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

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

Present: Mr. Ram Bilas Gupta, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J.

CM-2867-LPA-2011

C.M. is allowed subject to just exceptions. Filing of certified and true typed copies of impugned order dated 21.09.2021 and writ petition with Annexures is dispensed with and true typed/photostat copies of the same are taken on record.

LPA-1224-2021

Challenge in this appeal is to the impugned order dated 21.09.2021 passed by the learned Single Judge in a writ petition preferred by the appellants (petitioners therein) where they were seeking mandamus to direct The Land Acquisition Collector, Faridabad-respondent No. 3 to decide an application filed under Section 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') dated 24.02.2020 (Annexure P-5) for re-determining the amount of compensation on the basis of a

judgment passed by the Hon'ble Supreme Court on 11.04.2013 (Annexure P-2), which was dismissed on the ground that the writ petition was not maintainable, secondly on the ground that the application under Section 28-A of the 1894 Act, as preferred by the appellants, would not be maintainable as the same has not been filed within the time stipulated i.e. three months from the date of passing of the Award by the Reference Court. In any case, it has been mentioned that the said application under Section 28-A would not be maintainable on the basis of the judgment passed by the Hon'ble Supreme Court as Section 28-A can be claimed on the basis of an Award passed by the Reference Court and not by the Appellate Court or any other higher Court.

2. It is the contention of the learned counsel for the appellants that the judgment passed by the learned Single Judge is not sustainable in the light of the fact that the application under Section 28-A of the 1894 Act if would have been preferred by the appellants, the same had to be kept in abeyance till the Appellate Court is seized of the matter. In support of this contention, he has placed reliance upon a judgment of the Hon'ble Supreme Court in **Kendriya Karamchari Sehkari Greh Nirman Samiti Ltd., Noida vs. State of U.P. and another**, 2009 (1) SCC 754 and a Division Bench judgment of this Court in **Prem Singh vs. State of Haryana and another**, 2017 (3) RCR (Civil) 680. He contends that it is after the finalization of the judgment up to the Supreme Court that an application has been preferred under Section 28-A of the 1894 Act, which was required to be decided by the Collector.

3. Apart from this, it is contended by the learned counsel for the appellants that the Hon'ble Supreme Court, in various judgments, has

held that merely because a statutory remedy under the 1894 Act has not been availed of, that could not dis-entitle the land owners from claiming the benefit under Section 28-A of the 1894 Act. All persons, irrespective of the fact whether they have availed of the statutory remedy or not under the 1894 Act, would be entitled to the benefit of equal compensation. The compensation, as enhanced by the Supreme Court in respect of all land owners, would be available to them irrespective of the fact that they had filed a reference and subsequently, the other statutory remedies including the appeal. In support of this contention, counsel for the appellants has placed reliance upon the judgments of the Supreme Court in the cases of **Narendra & Ors. vs. State of Uttar Pradesh & Ors.**, 2017 (9) JT 98, **Samiyathal and others vs. Spl. Tehsildar and others**, 2015 (2) RCR (Civil) 441 and a judgment of a Single Bench of this Court in **Nanhi & Ors. vs. State of Haryana & Ors.** 2020 (4) RCR (Civil) 151. It is, on these basis, that the prayer has been made by the counsel for the appellants that the writ petition was maintainable as there was no remedy available to the appellants and that the delay alone cannot be a ground for denying the benefit, as has been claimed in the application under Section 28-A of the 1894 Act.

4. We have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned order passed by the learned Single Judge and the pleadings but find no fault in the order which has been passed by the learned Single Judge calling for interference by this Court in the present appeal.

5. Briefly, the facts are that the land was acquired vide Award dated 08.02.1995. No application under Section 18 of the 1894 Act

was preferred by the appellants. However, some other land owners, whose land was acquired along with that of the appellants, approached the Reference Court, which gave its Award on 12.01.1998. The High Court, where the Regular First Appeal was preferred, vide judgment dated 07.07.1999, reduced the market value of the land. The matter was taken to the Hon'ble Supreme Court where it was remanded back to the Reference Court vide order dated 27.10.2004. On remand, the Reference Court determined the market value vide its Award dated 12.01.2008 leading to the filing of the Regular First Appeals in this Court, which passed its judgment on 01.09.2009 enhancing the amount of compensation. The Supreme Court further revised the rates by increasing the amount of compensation on 11.04.2013.

6. It may not be out of way to mention here that after the Award dated 12.10.2000 by the Reference Court, which had awarded compensation @Rs.90/-per sq. yard to the similarly situated land owners, the appellants had preferred an application under Section 28-A of the 1894 Act on 09.01.2001, which was allowed vide order dated 17.10.2007 and the benefits as granted in the Award by the Reference Court along with the other statutory benefits were granted to them.

7. Aggrieved by this order, revision was preferred by the petitioners being Civil Revision No. 1136 of 2008 for modification of the order passed by the Land Acquisition Collector. The said revision petition was admitted on 08.09.2008. It is during this period that the Supreme Court finally enhanced the compensation and granted compensation to the similarly situated persons @Rs. 325/- per sq. yard.

8. The Civil Revision came up for consideration before this

Court on 14.02.2020 when the same was permitted to be withdrawn as the Court had questioned the maintainability of the said petition. The right was reserved to invoke the jurisdiction of this Court under appropriate recourse available to them. It is, thereafter, that an application under Section 28-A was preferred on 24.02.2020 before the Land Acquisition Collector, Faridabad-respondent No. 3 claiming the enhanced compensation of Rs. 325/- per sq. yard as has been granted by the Hon'ble Supreme Court on 11.04.2013. When nothing was done on the part of the Collector, a writ petition was preferred by the appellants.

9. A perusal of the above facts would indicate that the appellants want re-determination of the amount of compensation by moving an application under Section 28-A of the 1894 Act on the basis of the judgment passed by the Hon'ble Supreme Court on 11.04.2013. The said claim, as has been sought to be made before the Collector under Section 28-A, would not be maintainable in the light of the judgment of the Supreme Court in **Union of India and another vs. Pardeep Kumari and others**, (1995) 2 SCC 736 and **Jose Antonia Cruz Dos R. Rodriguese and another vs. Land Acquisition Collector and another**, (1996) 6 SCC 746, where it has been held that the term 'The Court', which has been referred to in Section 28-A, is the Reference Court alone and not the subsequent Courts either in appeal before the High Court or in the SLP before the Hon'ble Supreme Court. Since the entitlement is only limited to the extent of Reference Court, the benefit under Section 28-A would be available only, in case enhancement in the compensation amount is granted by the Reference Court. No benefit of the judgment of the High Court in the Regular First Appeal or of the Hon'ble Supreme Court would be available to a land owner

under Section 28-A of the 1894 Act.

10. It is not in dispute that the benefit of enhanced compensation, as assessed by the Reference Court, had already been granted by the Land Acquisition Collector, Faridabad vide order dated 17.10.2007. Once the enhanced compensation amount has already been made available to a land owner who has not preferred any proceedings against the said order, as provided under the Land Acquisition Act i.e. Section 28-A (3), the benefit of the judgment of the High Court or the Hon'ble Supreme Court, as availed by the other land owners, would not be available to him.

11. Hon'ble Supreme Court in Civil Appeal No. 4885 of 2018 titled as **Ramsinghbhai (Ramsanghai) Jerambhai vs. The State of Gujarat and another**, decided on 24.04.2018, has, while dealing with Section 28-A of the 1894 Act in para-3, 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.”

12. The above judgment, as has been passed by the Three

Judges' Bench of the Hon'ble Supreme Court, would be binding on this Court being that of a Larger Bench and the judgments, on which reliance has been placed by the counsel for the appellants, would not be of any help as the same cannot be accepted.

13. The judgment, therefore, passed by the learned Single Judge, which is impugned in the present appeal, being in accordance with law does not call for any interference by this Court in the present appeal.

14. The appeal being without merit, therefore, stands dismissed.

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

**(AUGUSTINE GEORGE MASIH)
JUDGE**

29.09.2022
PJ

**(ALOK JAIN)
JUDGE**

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