

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

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LPA No.106 of 2022 (O&M)
Date of Decision: September 19th, 2022

Shamsher Singh 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. Anil Rathee, Advocate
for the applicant-appellants.

AUGUSTINE GEORGE MASIH, J.

CM-263-LPA-2022

Prayer in this application is for exemption from filing the certified copies of writ petition along with annexures.

Application is allowed subject to just exceptions.

Exemption, as prayed for, is granted.

CM-264-LPA-2022

Prayer in this application is for impleading Haryana State Industrial and Infrastructure Development Corporation, C-13-14, Sector 6, Panchkula (HSIIDC) through its Managing Director as respondent No.4.

For the reasons mentioned in the application, which is supported by an affidavit of applicant/appellant No.1, the same stands allowed.

Haryana State Industrial and Infrastructure Development Corporation, C-13-14, Sector 6, Panchkula (HSIIDC) through its Managing Director is impleaded as respondent No.4.

LPA No.106 of 2022

In this appeal, challenge is to the order dated 10.08.2021 passed by the learned Single Judge, whereby the writ petition preferred by the appellants has been dismissed, where prayer for issuance of a writ of mandamus directing the respondents to make the payment of enhanced compensation to the appellants on parity as the other landholders of the Village Sankhol, Tehsil Bahadurgarh, District Jhajjar, have been granted in a Regular First Appeal by this Court as the notification for acquisition of the land and even the award passed by the Collector is the same. Principle of Article 14 was being sought to be invoked by the appellants before the learned Single Judge which has been rejected on the ground that the said principle of equality would not be applicable as the remedy lies under the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act')), which has not been availed of by the appellants.

2. It is the contention of learned counsel for the appellants that the notification for acquisition of the land under Section 4 followed by Section 6 of the 1894 Act as also the award being the same, with the compensation having been assessed at the same value, the appellants would be entitled to the benefit of the enhanced compensation as per the judgment passed by this Court in the Regular First Appeals, which have been preferred by co-villagers, which were decided by a common judgment dated 06.11.2015. He contends that merely because the appellants have not applied for reference under Section 18 nor have they filed an application under Section 28-A of the 1894 Act, they cannot be denied the enhanced compensation which has been granted to the co-villagers, where the nature of the land and the value is the same. No distinction, therefore, with regard to the land in question can be made out qua the appellants and the other co-villagers, whose land have been acquired

along with that of the appellants by the respondents. A higher compensation has been granted to the co-villagers, which is being denied and the benefit thereof to the appellants is being deprived, thus, violating Article 14 of the Constitution of India, which entitles equality before law and equal treatment under the statute. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***A. Viswanatha Pillai Versus Special Tehsildar for Land Acquisition 1991 (4) SCC 17***, wherein similarly placed co-owners of the land have been granted the benefit of enhanced compensation, where they have neither preferred an application under Section 18 for reference nor have they filed petition under Section 28-A of the 1894 Act by observing that they cannot be treated differently. On this basis prayer has been made for setting aside the impugned order passed by the learned Single Judge and accepting the present appeal.

3. Briefly the facts are that proceedings for acquisition of land in Village Sankhol, Tehsil Bahadurgarh, District Jhajjar, were initiated which concluded in passing of the award dated 20.01.2004 by the Land Acquisition Collector assessing the market value of the land at ₹5,50,000/- per acre. Some of the landowners, whose land have been acquired along with that of the appellants, sought reference under Section 18 of the 1894 Act, which was decided on 29.04.2009. After the conclusion thereof, Regular First Appeals were also preferred by them. These Regular First Appeals came to be decided by a common judgment dated 06.11.2015, whereby the compensation amount was enhanced. Appellants neither applied for reference under Section 18 nor did they file any application under Section 28-A of the 1894 Act. They rather slept over the matter and it is on 22.03.2021, a representation was submitted to the Land Acquisition Collector praying for grant of enhanced compensation as

granted by the High Court in the Regular First Appeal. According to the submissions, the said application was not received by the Collector but indicated that it was not maintainable. It is under these circumstances that the appellants have preferred the writ petition by contending that they did not have any remedy and, therefore, have approached this Court. The learned Single Judge has proceeded to dismiss the same leading to the filing of the present appeal.

4. Learned counsel for the appellants, with reference to the above facts, as have been narrated, submits that the appellants have been discriminated against when the land being identical with the proceedings for acquisition being also the same, they cannot be treated differently from the other landowners. The purpose and intent of the proceedings under the 1894 Act is for assessing and granting the correct value of the land which is acquired. The endeavour is to not acquire the land of the landowner without granting him just and reasonable compensation. With this principle in mind, the appellants would be entitled to the said benefit. His submission is that the object and purpose behind the provisions of the 1894 Act is salutary in nature. It is not that the landowners are voluntarily giving their land but the same is being acquired for public purpose and, therefore, they are entitled to get fair compensation. Once a particular rate of compensation is judicially determined as the fair compensation, benefit thereof should be given to those, who did not approach the Court. It would be unjust to grant lesser amount of compensation to a co-villager, whose land has been acquired along with the others merely because he has chosen not to file a reference or move an application under Section 28-A of the 1894 Act. Denying such a benefit would amount to discrimination by giving different treatment to the person though identically

situated, rather the fair play demands that they should be granted the same compensation i.e. enhanced, where it has been assessed through a judicial process. He on this basis submits that the present appeal may be allowed. Reliance has been placed upon the judgment in *A.Viswanatha Pillai's case (supra)* support his contentions.

5. We have considered the submissions made by learned counsel for the appellants and with his assistance, have gone through the pleadings and the documents attached with the writ petition as also the order passed by the learned Single Judge but do not find ourselves in a position to interfere in the judgment passed by the learned Single Judge.

6. The submission with regard to the applicability of Article 14 of the Constitution of India where co-villagers have been granted higher compensation merely because they have availed of the statutory remedies, whereas depriving the same to the others when the nature and quality of the land is identical would be discriminatory, appears to be very attractive at the first blush but the said plea cannot be accepted firstly in the facts and circumstances of the present case, where there has been total lethargy and inaction on the part of the appellants to put forth their claim, if any, as is being sought to be projected. Initially after the passing of the award on 20.01.2004 by the Land Acquisition Collector, appellants, it appears, had accepted the amount as assessed as compensation and, therefore, chose not to apply for a reference under Section 18 of the 1894 Act, especially when the other co-villagers had done so. After the reference Court had delivered its award on 29.04.2009, no application under Section 28-A of the 1894 for re-determination of the compensation was preferred. Having lost on the first count because of non-filing of the application under Section 18 and thereafter non-filing of

application under Section 28-A of the 1894 Act, the appellants lost their opportunity to file Regular First Appeal. No steps were taken by them at this stage. The other co-villagers preferred Regular First Appeals in the year 2009, which came to be decided on 06.11.2015 but thereafter also the appellants did not move. They have waken up after an inordinate delay of almost six years of the decision in the Regular First Appeals, when they assert that they had filed a representation on 22.03.2021 before the Land Acquisition Collector claiming the enhanced compensation as granted by the High Court in the Regular First Appeals. When nothing happened, writ petition was preferred by them in this Court. When taken from the date of the award of the Collector i.e. 20.01.2004, the delay is of 17 years and from the date of the award of the reference Court, which came to be passed on 29.04.2009, it would be 12 years and from the date of decision in the Regular First Appeal, it would be more than five years. This delay has not been explained at all and when confronted by this Court, counsel for the appellants does not have any explanation.

7. Even if this aspect is ignored, the claim as has been sought to be projected under Article 14 of the Constitution of India would not be acceptable in the light of the law laid down by the Hon'ble Supreme Court in ***Ramesh Singh and others Versus State of Haryana, 1994 (4) SCC 469***, where the Hon'ble Supreme Court has held that where the statutory remedy is available to a landowner under the 1894 Act, which he choses not to avail, merely because one of the claimants have got higher compensation, other do not automatically get the same compensation unless the remedies as provided under the Act is/are also availed by him. This was termed as reasonable classification. The subject matter having been regulated under the provisions of the Act, the right and remedy for higher compensation should be sought and

had only under the Act and the principle of equality of Article 14 cannot be extended in that behalf.

In ***Irshad Ali and others Versus Hazi Abdul Sukhur Mozumdar and others 1997 (7) SCC 88***, it was held that where no appeal has been preferred under the 1894 Act, he has waived his claim and hence not entitled to enhanced compensation. Equality as enshrined in Article 14 of the Constitution of India is not an absolute right but is dependent upon various factors which would include the rights which are covered under the statute which is applicable governing such rights. A person who does not avail of the statutory remedies provided, cannot at a later stage, claim equality vis-a-vis another, who has availed the statutory remedies, especially when there is no explanation whatsoever what to say justifiable for not availing such statutory remedy. Equality as a principle is available to a person, who is vigilant and follows the statutory principles and not for those who ignore or give up their claims only to come out of their hibernation and then try to catch up with the others who have moved forward. The Hon'ble Supreme Court has gone to the extent of saying that a co-sharer in the land without filing a reference under Section 18 cannot file an appeal before the High Court. It has held that such an appeal would not be maintainable unless he has sought reference under Section 18 of the 1894 Act. Mention of the judgment of Hon'ble Supreme Court in ***Ambey Devi Versus State of Bihar and another 1996 (9) SCC 84*** can also be made.

8. Learned counsel for the appellant has placed reliance upon the judgment of Hon'ble Supreme Court in *A. Viswanatha Pillai's case (supra)*, where the distinguishing features vis-a-vis the case of the appellants is that the reference has been sought by one of the co-owners of the coparcener and in the said reference it has specifically been pleaded that acquired property under

reference belong to him and his other brothers and the compensation awarded to them was inadequate and very low. His claim was that they together should get an enhanced amount at the figures vis-a-vis in the reference application. The claim, therefore, was never made in his personal capacity but on behalf of the co-owners of the property. It is under these circumstances that the Hon'ble Supreme Court had granted them enhanced compensation but the position in the present case is different, where the land as owned by the appellants is in their individual capacity and it is not a part of the pleadings that any of the co-sharers or co-owners had filed a reference under Section 18 of the 1894 Act or an appeal before the High Court. In the absence of such pleadings, the appellants are not entitled to take any benefit of the judgment, on which reliance has been placed by them. This is being said despite the judgment in *Irshad Ali's case (supra)* and *Ambey Devi's case (supra)*, where the Hon'ble Supreme Court in subsequent judgments, which would prevail, has dealt with the case of the co-shares and denied them the benefit because of non-availing of the statutory remedy.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

September 19th, 2022
Puneet

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes