

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. LPA No.34 of 2022 (O&M)
Date of Decision: November 23rd , 2022
Nirvair Singh
.....Appellant

Versus

The Amritsar Improvement Trust, Amritsar and others
....Respondents

2. LPA No.827 of 2022 (O&M)
Harbhajan Kaur and others
.....Appellants

Versus

The Amritsar Improvement Trust, Amritsar and others
....Respondents

3. LPA No.828 of 2022 (O&M)
Tajinder Singh and another
.....Appellants

Versus

The Amritsar Improvement Trust, Amritsar and others
....Respondents

4. LPA No.836 of 2022 (O&M)
Ajit Singh
.....Appellant

Versus

The Amritsar Improvement Trust, Amritsar and others
....Respondents

5. LPA No.862 of 2022 (O&M)
Baldev Singh and others
.....Appellants

Versus

The Amritsar Improvement Trust, Amritsar and others
....Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Dilsher S. Manu, Advocate
for Mr. D.S. Pheruman, Advocate
for the appellants.

Mr. Kushagra Mahajan, Advocate
for respondent No.1 (in LPA Nos.827, 828, 836, 862 of 2022).

Mr. Vishnav Gandhi, Deputy Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J.

CM No.81-LPA of 2022 in LPA-34-2022

Prayer in this application is for condonation of delay of 12 days
in filing the appeal.

For the reasons mentioned in the application, which is duly
supported by an affidavit of the applicant-appellant, the same is allowed.

Delay of 12 in filing the appeal stands condoned.

CM No.1966-LPA of 2022 in LPA-827-2022

Prayer in this application is for condonation of delay of 109 days
in filing the appeal.

For the reasons mentioned in the application, which is duly
supported by an affidavit of applicant-appellant No.2, the same is allowed.

Delay of 109 in filing the appeal stands condoned.

CM No.1968-LPA of 2022 in LPA-828-2022

Prayer in this application is for condonation of delay of 361 days
in filing the appeal.

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

Delay of 361 in filing the appeal stands condoned.

CM No.1993-LPA of 2022 in LPA-836-2022

Prayer in this application is for condonation of delay of 365 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the applicant-appellant, the same is allowed.

Delay of 365 in filing the appeal stands condoned.

CM No.2068-LPA of 2022 in LPA-862-2022

Prayer in this application is for condonation of delay of 361 days in filing the appeal.

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

Delay of 361 days in filing the appeal stands condoned.

Main cases

Five appeals have been preferred against the order dated 24.08.2021 passed by the learned Single Judge, where five writ petitions preferred by the appellants were dismissed by a single order as the facts and questions, which arise for adjudication were identical i.e. whether Section 28 of the Land Acquisition Act, 1874 (hereinafter referred to as '1874 Act') would be application in the acquisition proceedings of land under the Punjab Town Improvement Act, 1922 (hereinafter referred to as '1922 Act'), which has been answered by the learned Single Judge in the negative.

2. Briefly the facts are that the Amritsar Improvement Trust prepared a 340 acres development scheme qua the land located on Amritsar-Jalandhar G.T. Road. To give effect to the same, a notification under Section 36 of the 1922 Act was issued on 06.10.1995 for acquiring the land followed by a declaration under Section 41 was published on 17.01.1996 leading to the passing of the award on 16.01.1998 by the Land Acquisition Collector.

Appellants did not apply for reference to the Land Acquisition Tribunal under Section 54 of the 1922 Act, whereas some other landowners preferred reference leading to the passing of the award by the Tribunal on 04.05.2019. After the award was given by the Tribunal, which had led to enhancement of compensation amount to the extent of 20% over and above the award amount as granted by the Land Acquisition Collector, appellants moved an application on 22.07.2019 to the Land Acquisition Collector under Section 28A of the 1894 Act for redetermination of compensation on the basis of the award dated 04.05.2019 of the Tribunal. The said application, as moved, when not decided, appellants serve legal notice, which also did not yield any result leading to the filing of the writ petitions before this Court, which were dismissed by the learned Single Judge by holding that Section 28A of the 1894 Act is not applicable to the acquisition of land under the 1922 Act. The reason assigned for the same was that the 1922 Act was a special Act, which had come into existence and promulgated subsequent to the 1894 Act. Not all provisions of 1894 were made applicable to the acquisition proceedings under the 1922 Act and only those provisions were to be applied, which were so mentioned in Section 59 of the 1922 Act and none other. It is this judgment which is under challenges in these appeals before us.

3. Learned counsel for the appellants asserts that the provisions as contained under the 1894 Act are applicable for proceedings for acquisition. Section 28A of the 1894 Act is a beneficial provision granting an opportunity to the landowners whose land has been acquired but had initially not availed of the benefit of reference under Section 18 of the 1894 Act. Assertion has also been made that the intent of the legislature is to give equal price to all landowners having same and similar land, which is the part of one acquisition.

Non-grant of the said benefit would amount to discrimination and would be violative of Article 14 of the Constitution of India. Counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Union of India Versus Smt. Hansoli Devi*** passed in Civil Appeal No.9477 of 1994 on 12.09.2002 to contend that if a person has not filed an application under Section 18 of the 1894 Act to make reference, such person can take benefit of Section 28A and claim enhanced compensation. Counsel has further relied upon the judgment in ***Nagpur Improvement Trust Versus Vithal Rao and others, AIR 1973 Supreme Court 689***, where it has been held by the Hon'ble Supreme Court that for the purpose of determination of amount of compensation, it is immaterial whether the acquisition of land is under one Act or another Act dealing with acquisition. Further reliance has been placed upon the judgment of the Supreme Court in ***Union of India Versus Tarsem Singh and others 2019 (9) SCC 304***, where it was held that the amount of compensation is required to be determined on the parameters laid down in the 1894 Act. On this basis, the counsel has contended that the judgment passed by the learned Single Judge cannot sustain and Section 28A of the 1894 Act would be applicable to acquisition of land made under the 1922 Act.

4. Having considered the submissions made by the counsel for the appellants and on going through the pleadings, the statutory provisions as also the judgments relied upon by him, we are unable to persuade ourselves to accept the plea that the provisions of Section 28A of the 1894 Act would be applicable to the acquisition proceedings under 1922 Act.

It can safely be said that as far as the 1894 Act is concerned, the same deals with the acquisition of land, determination of the compensation and the remedies including reference and appeal by an aggrieved party against

an order passed by the competent authority/Court. 1922 Act admittedly is a subsequent Act, which has been enacted for improvement of the towns in the State of Punjab. The said Act was legislated after obtaining previous sanction of the Governor General under Section 80 A (3) of the Government of India Act, 1935. The origin of 1922 Act is traceable to Entry 5 of List II (State List) of the 7th Schedule, whereas the 1894 Act can be traced to Entry 42 List III (Concurrent List) of the 7th Schedule. Thus the 1922 Act firstly being a subsequent Act and that too not a general Act but a specialized Act for a specific purpose would have precedence and would restrict its applicability to the provisions of any other statute which is sought to be invoked by a reference thereof. 1922 Act makes applicable only those provisions of the 1894 Act for the purpose of acquisition proceedings as provided for and specifically listed in Section 59 of the 1922 Act, which reads as follows:-

“59. Modification of the Land Acquisition Act, 1894. - For the purpose of acquiring land under the Land Acquisition Act, 1894, for the trust -

(a) the tribunal shall (except for the purposes of section 54 of the said Act) be deemed to be the Court, and the president of the tribunal shall be deemed to be the Judge, under the said Act; (

b) the said Act shall be subject to the further modifications indicated in the Schedule to this Act;

(c) the president of the tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 [5 of

1908]; and

(d) the award of a tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894 [1 of 1894] and shall be final.”

5. Perusal of the above would show that sub-section 59 of the 1922 Act lays down that the 1894 Act would be applicable for acquiring land subject to further modification indicated in the Schedule to the 1922 Act. Meaning thereby that the 1894 Act *ipso facto* as a whole is not applicable but to the extent as indicated in the Schedule to the Act. The Schedule to the Act contains various provisions which have been made applicable for the purposes of acquiring land under the 1922 Act. The glaring omission of Section 28A makes it amply clear that the said provision is not applicable to the 1922 Act, meaning thereby that the acquisition proceedings of immovable property under the 1922 Act, Section 28A of the 1894 Act is inapplicable. If that be the position when the 1894 Act is not universally and completely applicable to the acquisition under the 1922 Act, the benefit of Section 28A which has not been made applicable to the proceedings for acquisition of immovable property under the 1922 Act cannot be claimed to be inapplicable.

6. The judgments on which reliance has been placed by the learned counsel for the appellants would not be applicable to the present appeals, where it was an admitted position that the statutory provisions with regard to the acquisition of the land and determination of compensation was the 1894 Act or there was complete absence of any provision for determination for the said purpose. Section 28A is not of the said nature, which can be termed to be requiring determination of compensation amount. The judgments, thus, relied upon by the counsel for the appellants would be of no help to the appellants,

especially when the 1922 Act is a complete Act in itself with the legislature making applicable those provisions of the 1894 Act, whichever it intended to apply and have been specifically referred in the Schedule. When the intention of the legislature as also the purpose for which it was made applicable being clear and specific, the Court cannot extend the benefit beyond the said scope, as has been expressly provided by the legislature. The plea with regard to granting another opportunity for a landowner to claim enhanced compensation cannot be made available on an application or *suo moto* granted when the legislation does not intend such a benefit to be conferred upon a landowner under a particular statute.

7. Claim for enhancement of compensation is a statutory right, which has been conferred upon a landowner. It is, therefore, restricted and limited to the extent as provided under the statute, which can be claimed as a right as made available thereunder and not beyond that. The appellants have failed to take benefit of Section 18 of the 1894 Act for making reference at the stage of passing of the award by the Land Acquisition Collector to the Tribunal. They having slept over their right, cannot now put forth and claim the same, when it is not so provided under the 1922 Act and that too a special privilege of granting an additional opportunity to claim enhanced compensation under the 1894 Act, which would not be *ipso facto* applicable to the acquisition of land under a different and independent statute, which is a complete Code in itself, i.e. the 1922 Act.

8. Reference may be made to the judgment of the Hon'ble Supreme Court in the case of ***Dayal Singh and others Versus Union of India and others 2003 (2) SCC 593*** as also ***Union of India Versus Gurbachan Singh and others 1995 (1) SCC 292***, where with regard to the applicability of

Section 28A of the 1894 Act to the acquisition of land under The Requisitioning and Acquisition of Immovable Property Act, 1952, it has been held that the said provision is not applicable *ipso facto* unless specifically extended or made applicable. The said principle would be applicable to the present appeals.

9. In the light of the above, we do not find any ground to interfere with the judgment passed by the learned Single Judge and, therefore, dismiss these appeals.

(AUGUSTINE GEORGE MASIH)
JUDGE

November 23rd, 2022
Puneet

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes