

CWP-3637-2020

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

CWP-3637-2020 (O&M)

Reserved on:- **August 4, 2023**

Date of Pronouncement:- **August 21, 2023**

Suresh

...Petitioner

vs.

State of Haryana & anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ajay Jain, Advocate,
for the petitioner.

Mr. Abhinash Jain, DAG, Haryana.

HARKESH MANUJA, J.

1. By way of present writ petition, prayer has been made for issuance of a writ in the nature of mandamus directing Respondent No.2 to release the enhanced amount of compensation as per order dated 05.09.2017 (P-4) passed by the Hon'ble Apex Court in Civil Appeal Nos.11913-11945 of 2017 arising out of SLP (C) Nos.8094-8126 of 2017 titled as "***State of Haryana and another Versus Pushpendra Kumar and others***".

2. Briefly stated, facts of the case are that notification under Section 4 read with Section 17 of the Land Acquisition Act, 1894 (hereinafter called as 'the Act') was issued on 11.02.2010 for acquisition of land including that of petitioners for public purpose, followed by notification under Section 6 thereof on 19.02.2010. Land Acquisition Collector, Gurugram (for short "LAC") announced the Award on 14.06.2010, assessing market value @ Rs. 60 lakhs per

acre for all types of land. Few other landowners aggrieved with the quantum of compensation amount, filed Reference Petition under Section 18 of the Act wherein they were held entitled to compensation @ Rs.1,39,87,202/- per acre along with all statutory benefits, vide Award dated 30.07.2014.

3. Petitioner not having availed the remedy of Section 18 of the Act, filed application under Section 28-A thereof before respondent No.2 for re-determination of compensation. Vide order dated 11.08.2015, the petitioner along with others were held entitled to receive compensation in terms of decision dated 30.07.2014 rendered by the Reference Court, although, at that point in time appeal filed by other landowners against the amount of compensation assessed by the Reference Court, was pending before this Court. Later, this Court vide its decision dated 27.05.2016 held the landowners of Village Dhorka, District Gurgaon to be entitled for compensation at a uniform rate of Rs.2,92,98,240/- per acre alongwith all statutory benefits. Subsequently, both the landowners as well as the State approached the Hon'ble Apex Court and vide judgment dated 05.09.2017, Hon'ble Apex Court modified the Award/Judgment dated 27.05.2016 and imposed a cut of 15% towards development.

4. Impugning the order dated 11.08.2015, learned counsel for petitioner submits that in the circumstance that State/ landowners approached the higher Courts for reduction /enhancement of quantum of compensation, LAC should have desisted from re-determination till decision qua market value of acquired land is finally rendered and thereafter, should have awarded compensation as per the modified

verdict of the higher Courts. He further places reliance upon the judgment of a Coordinate Bench of this Court in "**Nanhi v. State of Haryana**", reported as 2020 (4) RCR (Civil) 157 (CWP No. 451 of 2018 decided on 15.5.2019), where, in similar circumstances, though second application under Section 28-A(1) of the Act was held to be not maintainable, but a mandamus was issued to grant compensation to the landowners at the same rate as awarded by this Court in appeal.

5. On the other hand, learned State Counsel submits that the petitioner was having an alternative remedy of filing reference under Section 28-A(3) of the Act, but the same was not availed within time and when it became time barred, petitioner approached this Court and therefore, this petition was liable to be dismissed. However, he does not deny that application under Section 28-A(1) of the Act was within limitation period.

6. I have heard learned counsel for the parties and have through the paper-book as well as the law cited at the Bar. I find substance in the arguments raised by learned counsel for the petitioner.

7. This Court has discussed in detail the legal propositions applicable in such circumstances in almost similarly situated case bearing RFA-1300-2019, titled as "**Deep Chand vs State of Haryana and others**" decided on 27.07.2023. Though, for the sake of brevity, entire discussion is not being repeated here, but para 13 which incorporates the summary of consideration is reproduced hereunder:-

"13. Thus, as a crux of the discussion made hereinabove, following points of law may be summarized on the basis of the judgments of the Hon'ble Apex Court:-

- i. *Reference petition under Section 28A of the Act shall be made by the landowners within imitation period of 90 days from the judgment of Reference Court Under Section 18 of the Act. [“**Ramsingbhai Vs. State of Gujarat**” reported as 2018(3) RCR (Civil) 114]*
- ii. *The benefit of re-determination of amount of compensation under Section 28A of the Act can be availed on the basis of any one of the awards that has been made by the Reference Court provided the applicant seeking such benefit makes application under Section 28A of the Act within the prescribed period of three months from the making of the award on the basis of which re-determination is sought. [“**Union of India v. Pradeep Kumari**”, (1995) 2 SCC 736]*
- iii. *The enhanced compensation awarded by the Reference Court must be understood as the final amount of compensation payable as modified in appeal by higher Courts. [“**Union of India v. Munshi Ram (Dead) by LRs & others**”, reported as 2006 (4) SCC 538]*
- iv. *If appeal is pending before High Court or Hon’ble Supreme Court, LAC shall desist from passing any award and once the award becomes final, the compensation as determined by the High Court or Hon’ble Supreme Court be disbursed in favour of the landowners on the basis of doctrine of “merger of decree” [“**Babua Ram and others v. State of U.P. and another**”, reported as (1995) 2 SCC 689]*
- v. *If the LAC proceeds ahead and decides the application filed under Section 28A of the Act when the matter regarding enhancement is pending in appeal before the higher Courts, it may be directed to decide the application afresh after the judgment of Appellate Court. [“**Bharatsing and others v. The State of Maharashtra and others**”, reported as 2018(1) RCR (Civil) 497].”*

Therefore, in view of the above referred proposition, when it is the admitted case that application under Section 28-A of the Act was within limitation, it was obligatory for the LAC to keep the application pending until the final decision by the higher Courts and appropriate compensation should have been awarded as per the said final determination.

8. Argument raised by the learned State counsel that alternative remedy available to the petitioner having become time barred, writ petition is not maintainable, is also devoid of any merit as the Collector at the first instance, is at fault in deciding the application under Section 28-A of the Act, when the matter was pending in appeal and thus, respondents cannot be allowed to take the benefit of their own wrongs. It was on this count only that Hon'ble Apex Court in ***Bharatsing and others Vs. The State of Maharashtra and others***, reported as 2018 (1) RCR (Civil) 497 even directed the LAC to decide the application under Section 28-A of the Act afresh, after taking into consideration the award passed by the High Court. Relevant paras in ***Bharatsing's*** case (supra) are reproduced below:-

“16. Though there is no quarrel with the principle that only a single application is maintainable, in the instant case, unfortunately, the High Court omitted to take note of the fact that the appeals on the relied on awards were pending when the Section 28A application was decided. That is the special and distinctive factual position in the instant case. It must also be kept in mind that Section 28A is a beneficial provision.

17. The Section 28A application dated 31.12.1992 based on the awards in LAR Nos. 123 and 129

of 1983 was decided on 25.10.2000 when the appeals therefrom were pending. The Collector ought to have kept the application pending till the appeals were decided on 23.03.2009. On principle, the High Court is correct and justified in the view taken in the impugned judgment that there cannot be successive applications under Section 28A in view of Pradeep Kumari (supra). But that is not the point arising for consideration here. No doubt, the second application dated 27.05.2009 for re-fixation in light of the appellate court judgment is not maintainable. However, since the Collector is also at fault in deciding the application when the matter was pending in appeal, we are of the view that in the peculiar facts of the instant case, the application dated 31.12.1992 should be considered afresh. Accordingly, the appeal is disposed of as follows. The Land Acquisition Collector is directed to consider afresh the Section 28A application dated 31.12.1992 and pass orders in the light of the judgment of the High Court dated 23.03.2009 in First Appeal Nos.569 and 570 of 1997 on the file of the High Court of Bombay, Bench at Aurangabad. For enabling the Collector to pass orders as above, the order dated 25.10.2000 is set aside. However, the amounts already paid are to be duly adjusted.”

9. As argued by learned counsel for the petitioner, reliance in this regard can also be placed on the judgment of a Coordinate Bench of this Court in **Nanhi's** case (*supra*). In this case, although this Court observed that the issue of limitation under Section 18(2)(b) of the Act would also come into play when a matter was to be referred to the Civil Court once the application under Section 28-A(2) was dismissed, yet,

refraining itself from any detailed exposition thereupon perhaps having it open to be made in some other case, issued a writ of mandamus keeping in view the law laid down by the Apex Court in **Bharatsing's** case (**supra**) and “**Narendra & Ors. v. State of UP**”, reported as (2017) 9 SCC 426 that landowners are entitled for an equal amount of compensation. But, it is also required to be noticed that this Court also opined that in such circumstances benefit of interest shall only be granted from the date of order passed by LAC on application under Section 28-A of the Act and not from the date of the award. Relevant paras of this judgment are reproduced hereunder:-

- “13. It is also to be noticed that in the judgments of *Imrat Lal & others v. Land Acquisition Collector & others* 2015 (2) RCR (Civil) 437, *Dhiraj Singh (deceased) through LRs v. Haryana State & others* 2015 (2) RCR (Civil) 507 and *Samiyathal v. Special Tehsildar*, 2015(2) RCR (Civil) 441 the Apex Court has reiterated this. The basic principle being that a pedantic approach is not to be taken while deciding the cases pertaining to the land acquisition since the landowner is being deprived of his land and therefore is fighting against the might of the State who has acquired the land under the principle of eminent domain.
14. It is in such circumstances, this Court is of the opinion that to juggle the interests of both the parties, it would be appropriate if a writ of mandamus is allowed to this extent that the landowners will be entitled for the compensation @ Rs.3,78,467/- per acre along with all statutory benefits except the benefit of interest on the enhanced compensation on account of delay in not challenging the order dated 19.11.2008 (P3) at the earliest. The said benefit of interest shall

only be granted from 19.11.2008 and not from the date of the award i.e. 23.07.1998.”

10. There is one relevant distinguishing feature in the present case that application filed under Section 28-A of the Act by the petitioner was not dismissed, rather it was allowed by the LAC on 11.08.2015 and no cause of action strictly arose with the petitioner to seek reference by that time as the appeals filed by other landowners were pending adjudication before this Court, which came to be decided on 27.05.2016. Even otherwise, the issue of availability of alternative remedy, when the petitioner has approached this Court has already been discussed and dealt by a Co-ordinate Bench in CWP No. 3805 of 2018 decided on 14.3.2019 titled as **"Sunder Lal and others vs State of Haryana and others"** and held that:-

“Merely because there is an alternative remedy as such would not stand in the way of the petitioners, as it is settled principle that the writ Court can exercise its jurisdiction where it feels appropriate to reach out and grant the benefit of relief. It would be a futile exercise to refer the matter to the reference Court, which would be bound by the order of the Apex Court and to curtail unnecessary litigation and delay, the petitioner can be granted the same amount as the litigation qua the fixation of market value has been fixed. Accordingly, no ground is made out to send the matter to the reference Court, the prayer of the State to that extent stands declined.”

11. In view of the discussion made above, this writ petition is allowed and respondent No.2 is directed to grant compensation to the petitioner, at the same rate i.e. Rs. 2,92,98,240/- per acre with a cut of 15% as ordered by Hon'ble Apex Court vide judgment dated

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05.09.2017, besides all other statutory benefits and interest thereupon in accordance with Section 34 of the Act. However, it is clarified that keeping in mind the fact that petitioner approached this Court belatedly and also with the purpose that unnecessary burden is not placed upon respondents, benefit of interest on the enhanced compensation shall be restricted from 05.09.2017 i.e. the date of decision by the Apex Court, till 07.02.2020 when the petitioner approached this Court.

Pending miscellaneous application(s), if any, shall also stand disposed of.

August 21, 2023
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No