

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

Date of Decision:- **July 27 , 2023**

(1)**RFA No.1300 of 2019 (O&M)**

Deep Chand (now deceased) through LR and others Appellants

vs

State of Haryana and others

..... Respondents

(2)**RFA No.1338 of 2019 (O&M)**

Lakhi Ram

..... Appellant

vs

State of Haryana and others

..... Respondents

(3)**RFA No.1339 of 2019 (O&M)**

Suraj Bhan (now deceased) through LRs and others..... Appellants

vs

State of Haryana and others

..... Respondents

(4)**RFA No.1340 of 2019 (O&M)**

Pehlad

..... Appellant

vs

State of Haryana and others

..... Respondents

(5)**RFA No.1341 of 2019 (O&M)**

Suraj Bhan (now deceased) through LRs and others..... Appellants

vs

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Atul Yadav, Advocate,
for the appellants.

Mr. Shivendra Swaroop, DAG, Haryana,
for respondents No.1 and 2.

Mr. Pritam Singh Saini, Advocate,
for respondent No.3.

HARKESH MANUJA, J.**CM-2746-CI-2023 in RFA-1339-2019****CM-2760-CI-2023 in RFA-1341-2019**

Applications under Order XXII Rule 3 read with Section 151 of CPC to bring on record the LR's of Mukesh, one of the appellants, are allowed as prayed for subject to all just exceptions. The persons mentioned in para 2 of the applications are ordered to be impleaded as LR's of Mukesh to pursue the appeals.

Amended memo of parties are taken on record.

Registry to tag the same at appropriate place.

MAIN CASE :

1. This order shall dispose of the RFA Nos.1300, 1338, 1339, 1340, 1341 of 2019 as the same arise out of common acquisition/ Award.
2. By way of present regular first appeals, challenge has been laid to order dated 30.11.2018 passed by learned Additional District Judge, Gurugram (for short 'Reference Court') whereby the reference filed by the appellants u/s 28A(3) of Land Acquisition Act, 1894 (hereinafter referred to as 'Act'), although has been allowed, however, they have been granted compensation only on the basis of Reference Court Award; but their prayer to grant compensation as per the judgment dated 04.02.2016 passed by the High Court in RFA No.751 of 2012 has been declined. Since the factual matrix as well as the point of law involved in all these cases are identical, they are being taken up together. For convenience, facts are being taken from RFA 1300 of 2019.
2. Briefly stated, facts of the case are that notification under Section 4 of the Act was issued on 22.02.2002, vide which land

belonging to appellants was also sought to be acquired for public purpose, namely, for laying water carrier channels/ pipes Raw Water Storage, Sedimentation tank and pumping sets for Industrial Complex of Ch.Devi Lal Industrial Model Township, Manesar in Village Hayatpur Tehsil & Distt.Gurugram. Award in the present acquisition was passed by Land Acquisition Collector, Gurugram (for short 'LAC'), on 23.12.2002. In reference petition filed by some other landowners under Section 18 of the Act, Reference Court vide common award dated 26.9.2013 enhanced compensation to Rs.26,52,819/- per acre, besides 20% over and above the market value on account of severance charges along with statutory benefits. It is pertinent to mention here that some other landowners as well as respondent State filed respective appeals before this Court. This Court vide common judgment dated 04.02.2016 dismissed the appeals of respondent HSIIDC; whereas the appeals of landowners were allowed, compensation was enhanced to Rs.32,27,200/- per acre and they were also held entitled to 20% thereof on account of damages for severance, which was even upheld by the Hon'ble Apex Court vide judgment dated 12.09.2017.

3. Application filed by appellants before the LAC under Section 28A(1) of the Act for re-determination of the amount of compensation was dismissed vide order dated 08.06.2017, merely by recording a reason that certified copy of award of Reference Court was not filed. In reference filed under Section 28A(3) of the Act, learned Reference Court vide order dated 30.11.2018, after specifically recording that application under Section 28A(1) was filed within prescribed period of limitation, allowed the appeal and granted

compensation equal to the amount determined by Reference Court in award dated 26.09.2013. However, specific plea taken by appellants that they be granted compensation in accordance with award determined by the High Court, was rejected by placing reliance on judgment of Hon'ble Apex Court in "**Ramsingbhai Vs. State of Gujarat**" reported as 2018(3) RCR (Civil) 114.

4. By way of present appeal, order dated 30.11.2018 has been impugned and prayer has been made to grant the compensation as determined by this Court vide judgment dated 04.02.2016 (RFA No.751-2012, titled as Gopi Ram Yadav and others Vs. State of Haryana and others) pertaining to the same notification issued under Section 4 of the Act.

5. Learned counsel for appellants submits that reliance placed by learned Reference Court on **Ramsingbhai's** case (supra) was misplaced as it only relates to the question whether an application under Section 28A of the Act for re-determination of the compensation can be filed within a period of 3 months from the date of judgment of the High Court or the Hon'ble Supreme Court as well. He further submits that in the present case, there is no dispute that application under Section 28A(1) of the Act was filed within the limitation period from the judgment of Reference Court, thus, ratio of **Ramsingbhai's** case (supra) is not applicable and appellants are entitled to be granted the enhanced compensation awarded by this Court.

6. On the other hand, learned counsel for respondent No.3 though does not deny that application under Section 28A(1) of the Act was within limitation period, however, supports the order passed by the learned Reference Court.

7. I have heard learned counsel for parties and gone through the paper-book as well as the law cited at the bar. I find substance in the arguments raised by the learned counsel for the appellants. The primary question to be answered in **Ramsingbhai's** case (supra) was:-

“2. Whether an application under section 28A of the Land Acquisition Act, 1894 (for short "the Act") for redetermination of the compensation can be filed within a period of 3 months from the date of judgment of the High Court or Supreme Court passed in appeal under Section 54 of the Act is the question that arises for consideration in this case.”

8. It was in this context that the Hon'ble Supreme Court held that judgment of the Appellate Court is not within the purview of Section 28A of the Act, as the Appellate Courts under Section 54 are under Part VIII of the Act; whereas the re-determination is only in respect of the Award passed by the Reference Court under Part III of the Act. The Hon'ble Apex Court while holding so placed reliance on **“Jose Antonio Cruz Dos R. Rodriguese & another v. Land Acquisition Collector & another”**, reported as (1996) 6 SCC 746) and **“Bharatsing and others v. The State of Maharashtra and others”**, reported as 2018(1) RCR (Civil) 497. In these cases also, similar position was upheld that reference under Section 28A of the Act can be filed only within limitation period of 03 months from the judgment of the Reference Court under Section 18 of the Act and not on the basis of judgment by Appellate Court, including High Court and Hon'ble Supreme Court. However, Hon'ble Apex Court in **“Union of India v. Munshi Ram (Dead) by LRs & others”**, reported as (2006) 4 SCC 538, held that if a landowner has applied under Section 28A of the Act, the enhanced compensation decreed by the Reference Court

must be understood to mean the decree of the Reference Court as modified in appeal by higher Courts. Relevant paras of this judgment are reproduced here under:

"8. We are of the view that the Union of India is right in its submission that the amount payable under Section 28A of the Act is the amount which is finally payable by way of compensation to the owners of the land who challenged the award of the Collector and claimed reference under Section 18 of the Act. The said provision seeks to confer the benefit of enhanced compensation even on those owners who did not seek a reference under Section 18. It cannot be that those who secure a certain benefit by reason of others getting such benefit should retain that benefit, even though the others on the basis of whose claim compensation was enhanced are deprived of the enhanced compensation to an extent. This would be rather inequitable and unfair. Moreover, even if it be that the compensation payable to claimants who have applied under Section 28A of the Act, is the enhanced compensation decreed by the Reference Court, we must understand the decree to mean the decree of the Reference Court as modified in appeal by higher Courts. Otherwise, an incongruous position may emerge that a person who did not challenge the award of the Collector and did not claim a reference under Section 18 of the Act would get a higher compensation than one who challenged the award of the Collector and claimed a reference, but in whose case a higher compensation determined by the Reference Court was subsequently reduced by superior court. There can be no dispute that those claiming higher compensation and claiming reference under Section 18 of the Act are bound by the decree as modified by the superior Court in appeal. The principle of restitution must apply to them. For the same reason, the same consequence must visit others who have been given benefit of

enhanced compensation pursuant to the decree passed in reference proceeding on the application of others.

It was contended before us that after the order of redetermination was passed, Union of India could have challenged this order, and since it failed to do so, it lost its right to challenge that order. The submission overlooks the basic plea of the Union of India that at the stage when the order of redetermination was passed under Section 28A of the Act that order was fully justified and any further redetermination could be claimed only if there was variation of the decree and the amount awarded by way of compensation was reduced. In the instant case that happened in the year 1997, and therefore, in one sense it was indeed premature for the Union of India to challenge the redetermination under Section 28A in the year 1995, much before the decree was actually modified.

9. *We hold that under Section 28A of the Act, the compensation payable to the applicants is the same which is finally payable to those claimants who sought reference under Section 18 of the Act. In case of reduction of compensation by superior courts, the applicants under Section 28A may be directed to refund the excess amount received by them in the light of reduced compensation finally awarded.*

We are informed that none of the claimants have yet been paid in accordance with the order of redetermination under Section 28A or thereafter.

10. *In the facts and circumstances of the case, these appeals are allowed and a direction is made to the Collector under the Act to redetermine the compensation payable to the respondents in accordance with the compensation awarded by the judgment and decree of this Court dated 29th April, 1997 and pay the same to the claimants within a period of three months from today."*

9. Similarly, what shall be the course of action when application under Section 28A of the Act has been filed by the landowners within limitation before the LAC, has been succinctly specified by Hon'ble Apex Court in "**Babua Ram and others v. State of U.P. and another**", reported as (1995) 2 SCC 689, while holding that 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 shall be disbursed in favour of the landowners on the basis of doctrine of "*merger of decree*". Relevant para of above judgment is reproduced hereunder-:

"39. The next question is whether the Collector/LAO on receipt of the application under sub-section (1) of Section 28A is bound to redetermine the compensation while the award and decree under Section 26 is pending consideration in the appeal in the High Court or appellate forum. If he does so, whether award under Section 28A(2) is illegal? It is settled law that the decree of the trial court gets merged in the decree of the appellate court which alone is executable. The finality of the determination of the compensation is attained with the decree of the appellate forum, be it the High Court or this Court. Take for instance that 'A', 'B' and 'C' are interested persons in the land notified under Section 4(1) and the compensation determined in the award under Section 11. 'A' received the compensation without protest. 'B' and 'C' received the compensation under Section 31 under protest and sought and secured reference under Section 18. The court enhanced the compensation from the Collector's award of Rs.10,000 to Rs.20,000. 'B' did not file appeal

under Section 54 while 'C' filed the appeal. The High Court, suppose, further enhances the compensation to Rs.25,000 or reduces the compensation to Rs.15,000 per acre. 'A' is a person aggrieved only to the extent of the excess amount awarded either by the award and decree of the court under Section 26 but he will not get the enhancement of further sum of Rs. 5000 granted by the High Court in favour of 'C'. The decree of the High Court is the executable decree made in favour of 'C'. Unless redetermination is kept back till the appeal by the High Court is disposed of, incongruity would emerge. Suppose the State filed appeal in this Court under Article 136 against the High Court decree and this Court confirms the award of the Collector and sets aside the decree of civil court under Section 26 and of the High Court under Section 54. There is nothing left for redetermination. With a view to save 'A' or 'B' or the State from the consequences of such incongruous situations, the Collector/LAO should stay his hands in the matter of redetermination of compensation till the appeal is finally disposed of and he should redetermine the compensation only on the basis of the final judgment and decree of the appellate forum. Adoption of such course, would not merely avoid the chance element in the claimants getting the amounts of redetermined compensation but also avoids needless burden on public exchequer. As soon as the award of the civil court is carried in appeal, it becomes obligatory for the Collector to keep the application/applications for redetermination of compensation filed within limitation pending, awaiting decision by the appellate forum and to redetermine the compensation on the basis of the final judgment and decree...."

10. More importantly, on the basis of reasoning specified in **Babua's** case (supra), Hon'ble Apex Court in **Bharatsing's** case (supra) even directed the LAC to decide the application under Section 28A 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.”

11. Though the judgment in **Bharatsing's** case (supra) was well into consideration before the Hon'ble Supreme Court in **Ramsingbhai's** case (supra), however, no observations or directions were made negating the above stated ratio of that case; rather, it was affirmed and reliance was placed on this case. Therefore, as per the mandate of **Babua's** case (supra), when the application under Section 28A(1) of the Act was pending before the LAC and compensation was enhanced by the High Court, LAC or learned Reference Court was bound to pass the award on the same terms as determined by this Court.

Reliance in this regard can also be placed on the judgment of a coordinate Bench of this Court in "**Nanhi v. State of Haryana**" Law Finder Doc Id # 1507293, bearing CWP No. 451 of 2018 decided on 15.5.2019, where, in similar circumstances, though second application under Section 28A(1) of the Act was held to be not maintainable, but a mandamus was issued to grant the compensation to the landowners at the same rate as awarded by this Court in appeal. Relevant paras of **Nanhi's** case (supra) 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."*

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]

14. In view of the discussion made above, all these appeals are allowed and respondents are directed to grant compensation to the appellants, at the same rate i.e. Rs. 32,27,200/- per acre as awarded by this Court in **RFA-751-2012 titled as Gopi Ram Yadav and others Vs. State of Haryana and others**, decided on 04.02.2016, besides all other statutory benefits and interest thereupon.

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

July 27, 2023
sanjay

(HARKESH MANUJA)
JUDGE

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