

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

CWP-9208-2019 (O&M)

Reserved on: **07.08.2023**

Date of Pronouncement:- **21.08.2023**

Bhopal & others

...Petitioners

vs.

State of Haryana & Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Raj Kapoor Malik, Advocate, for the petitioners.

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 certiorari quashing the order dated 04.08.2017 passed by Land Acquisition Collector, Kaithal, (for short "LAC"); whereby petitioners have been granted compensation as assessed by the Reference Court only with further prayer for directing Respondent No.2 to release the enhanced amount of compensation as per judgment dated 01.05.2012 (P-5) passed by this Court in RFA-1714-2009, titled as State of Haryana and another Vs. Pala Ram & Others.

2. Briefly stated, facts of the case are that notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 23.08.2005 for acquisition of land of the petitioners in Village Kakot, Tehsil & District Kaithal, for the purpose of construction of BML Hansi Branch-Butana Branch Multi Purpose Link Channel, followed by notification under Section 6 thereof on

19.09.2005. The LAC announced the Award on 28.01.2006, assessing market value @ Rs. 5.00 lakhs per acre for all types of land. Few other landowners being aggrieved with the quantum of compensation amount, filed Reference Petition under Section 18 of the Act wherein they were held entitled to compensation @ Rs.7.00 lakhs per acre alongwith all statutory benefits, vide Award dated 08.01.2011.

3. Petitioners not having availed the remedy of Section 18 of the Act filed an application under Section 28-A thereof before respondent No.2 for re-determination of compensation. Meanwhile, appeal filed by the other landowners pertaining to the same acquisition proceedings seeking further enhancement was decided by this Court vide judgment dated 01.05.2012 in **Pala Ram's** case (surpa), whereby it was held that the landowners of Village Kakot to be entitled for compensation at @ Rs.9.00 lakhs per acre alongwith all statutory benefits. However, ignoring the same, vide impugned order dated 04.08.2017, respondent No.2 re-determined the amount of compensation in favour of petitioners in terms of decision dated 08.01.2011 rendered by the Reference Court without taking into consideration the enhancement awarded by this Court.

4. Impugning the aforesaid order dated 04.08.2017, learned counsel for the petitioners submits that in the circumstance wherein the State/landowners had approached the higher Courts for reduction/enhancement of quantum of compensation, which were ultimately allowed, LAC should have re-determined the compensation as per the modified verdict of the higher Courts. Learned counsel places reliance upon the judgment of a Coordinate Bench of this Court in "**Nanhi v. State of Haryana**" reported as 2020(4) R.C.R.(Civil) 157 (CWP No.

451 of 2018, decided on 15.5.2019), where, in similar circumstances, though second application under Section 28-A(1) 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. It has also been brought to the notice of this Court that initially there was some error regarding party names in the impugned order, however, correction about party name was done on 15.02.2019 before filing the present writ petition.

5. On the other hand, learned State counsel submits that the petitioners were having an alternative remedy of filing reference under Section 28-A(3) of the Act before the Reference Court, but without availing the same, they have directly approached this Court and therefore, this petition was liable to be dismissed. However, he does not deny that application under Section 28-A(1) was within limitation period. No other point was argued.

6. I have heard learned counsel for the 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 petitioners.

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].”*

8. Therefore, in view of the above referred proposition, it was obligatory for the LAC to grant the enhanced compensation as

awarded by this Court vide judgment dated 01.05.2012 passed **Pala**

Ram's case (supra) as an award by the Reference Court must be understood the final amount of compensation payable as modified in appeal by higher Courts. Hon'ble Apex Court in **Bharatsing's** case (supra) 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 from **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 petitioners, reliance in this regard can also be placed on the judgment of a coordinate Bench in **Nanhi’s case (supra)**, and relevant paras of which 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. Argument raised by the learned State counsel that present petition is not maintainable being devoid of any merit as petitioners were having the alternative remedy under Section 28-A(3) of the Act, since this issue has already been discussed and dealt with by a co-ordinate Bench of this Court in case bearing 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.3 is directed to grant compensation to the petitioners, at the same rate i.e. Rs. 9.00 lakhs per acre as awarded by this Court vide judgment dated 01.05.2012 in **Pala Ram's** case (supra), besides all other statutory benefits and interest thereupon in accordance with Section 34 of the Act.

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

21.08.2023
sanjay

(HARKESH MANUJA)
JUDGE

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