

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

CWP-13997-2023 (O&M)

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

Haryana Urban Development Authority, Gurgaon ...Petitioner
vs.
State of Haryana & Others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Arvind Seth, Advocate,
for the petitioner.

Mr. Shivendra Swaroop, DAG, Haryana.

HARKESH MANUJA, J.

1. By way of present writ petition, prayer has been made for issuing a writ of certiorari quashing the award dated 29.12.2016 (P-7) passed by the Land Acquisition Collector, Urban Estates, Haryana Gurugram (Respondent No. 1), whereby the application filed by respondents No. 2 and 3, under Section 28-A of the Land Acquisition Act, 1894, (for short 'the Act') has been allowed.

2. Briefly stated, facts of the case are that notification dated 13.01.2010 under Section 4 read with Section 17 (1) of the Act was issued for acquisition of land for the public purpose, namely, development & utilization of the land for roads of Sectors-99 to 115 at Gurugram. An award No. 72 dated 31.03.2010 was passed by the Land Acquisition Collector, Urban Estates, Haryana, Gurugram (for short 'LAC') assessing the compensation @ Rs. 45,00,000/- per acre for all types of land. Being aggrieved against the award of LAC, the landowners including respondents No. 2 and 3 filed petition under

Section 18 of the Act in respect to land comprised in Rect. No. 40, Killa

No. 4 min (0-2), 7 min (3-13), 14/1 min (2-9), 14/2 (5-7), 15/2/3 (0-2), 16/2/1 min (0-1), 17/1 (1-4), 26 (0-9), 15/2/1 (0-9), 5/1 min (0-19), 6/2 (2-3) before LAC and the LAC sent the reference petitions to the District Judge, Gurugram for adjudication. The Reference Court allowed the reference petitions and enhanced the compensation vide its Award dated 16.12.2013 to Rs 1,50,33,333/- per acre. Still dissatisfied with the Award, respondents no. 2 and 3 filed Regular First Appeal No. 2365 of 2014 titled as “**Surje & Another vs. State of Haryana and Others**” which was allowed by this Hon'ble Court vide order dated 01.11.2019 in terms of adjudication made in Regular First Appeal No. 2131 of 2014 titled as “**Satya Narain vs State of Haryana and Others**”, enhancing the compensation to Rs 3,78,51,520/- per acre.

3. It is further specified in the petition that despite availing remedy under Section 18 of the Act, respondents No. 2 and 3 also filed an application under Section 28-A thereof before the LAC in respect to land comprised in Rect. No. 40, Killa No. 15/1/1 (0-12) praying to grant enhanced compensation as granted by the Reference Court vide decision dated 16.12.2013. LAC vide his order dated 29.12.2016 allowed the said application thereby enhancing the compensation to Rs.1,50,33,333/- alongwith other benefits under Sections 23 (1A) and 23(2) of the Act.

4. Impugning the aforesaid order dated 29.12.2016, learned counsel for petitioner submits that when respondents No.2 & 3-landowners have already availed the remedy under Section 18 of the Act, reference petition under Section 28-A thereof was not

maintainable. He further submits that on account of reference petition filed under Section 18 of the Act as well as the appeal filed before this Court, respondents No.2 & 3-landowners exhausted their remedies available in the law and thus, Reference petition under Section 28-A of the Act should not have been entertained as this recourse is available only to landowners who have not availed reference under Section 18 thereof and therefore, award passed by LAC is erroneous and illegal and thus, liable to be set aside. In support of his contentions, he places reliance upon:

- i. **“The Scheduled Caste Co-Operative vs Union of India And Others”**, reported as 1991 AIR (SC) 730 decided on 18.09.1990.
- ii. **“Babua Ram and others v. State of U.P. and another”**, reported as (1995) 2 SCC 689
- iii. **“Krishna veni & anr. Vs State of Orissa & ors.”** reported as 1995 SCC (2) 734
- iv. **“Union of India and another Versus Pradeep Kumari and others”** reported as 1995 AIR (Supreme Court)-2259.

5. I have heard learned counsel for the petitioner and gone through the paper-book as well as the law cited at the Bar. I do not find substance in the arguments raised by learned counsel for the petitioner.

6. Reference petition under Section 18 of the Act was filed by respondents No.2 & 3-landowners for a part of their land falling in Rect. No. 40, Killa No. 4 min (0-2), 7 min (3-13), 14/1 min (2-9), 14/2 (5-7), 15/2/3 (0-2), 16/2/1 min (0-1).. 17/1 (1-4), 26 (0-9), 15/2/1 (0-9),

5/1 min (0-19), 6/2 (2-3). At a later stage, after realizing their mistake that some portion of the land belonging to them i.e. land comprised in Rect. No. 40, Killa No. 15/1/1 (0-12) was not made part of reference under Section 18 of the Act, another reference petition under Section 28A was filed for remaining part of land only. It is not conceivable as to on what basis petitioner assumes that petition under Section 28-A of the Act was not maintainable when the land belonging to both these proceedings was completely different. It was for this reason only that even the stand taken by the petitioner before the LAC in the proceedings under Section 28-A of the Act was that no reference under Section 18 thereof regarding this land has been filed by the landowners. Relevant part of impugned order is reproduced below:-

*“As per the provisions of L.A. Act 1894 notice of hearing u/s-28-A (1) were issued to the petitioners and Estate Officer, HUDA, Gurgaon being interested persons in this case. In response of the notice the petitioners appeared for hearing regarding their claim u/s -28A of the Act **and nobody was present on behalf Estate Officer, HUDA, Gurgaon.***

Comments of the concerned appeal branch were taken as statement -19 wherein it has been reported that the land of the petitioners was acquired vide award No. 72 dt. 31-3-2010 and the petitioners received the amount of compensation as per their share of land under this award at the rate of Rs. 45,00,000/- per acre as awarded by the Land Acquisition Collector. It is also reported that the market value has been enhanced to Rs. 1,50,33,333/- per acre by the Ld. Addl. Distt. Judge, Gurgaon. This office has not filed any RFA against the judgment dated 16.12.2013. As per the opinion of LR Haryana this is not fit case for filling RFA. It is also categorically reported by the concerned officials that the petitioners did not file reference u/s-18 of the Act.”

This is admitted position of fact as well as categorical finding by the learned LAC in the impugned Award that reference under Section 28-A of the Act was filed well within limitation. In these circumstances, having not availed remedy for some portion of their land under Section 18 of the Act, respondents No.2 & 3-landowners were statutorily entitled to file reference under Section 28-A and learned LAC rightly allowed their application.

7. Rather, it is exactly the object and purpose behind introduction of Section 28-A in the Act that landowners who could not avail the remedy under Section 18 of the Act, are able to get the same compensation at a belated stage. The Hon'ble Supreme Court in "**Union of India v. Pradeep Kumari**", reported as (1995) 2 SCC 736, after recording the object and purpose of Section 28-A of the Act, held that it is in the nature of a beneficent provision and shall be construed in a manner which advances the policy of the legislation to extend the benefit; rather than a construction which has the effect of curtailing the benefit conferred by it. Relevant paras of **Pradeep Kumari's** case (supra) are reproduced below:-

"5. *The object underlying the enactment of these provisions, as indicated in the Statement of Objects and Reasons, was :-*

(ix) *Considering that the right of reference to the Civil Court under Section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed*

to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek redetermination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference Court under Section 18 of the Act.....

9. *We may, at the outset, state that having regard to the Statement of Objects and Reasons, referred to earlier, the object underlying the enactment of Section 28A is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the Civil Court under Section 18 of the Act. This is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek redetermination once any of them has obtained orders for payment of higher compensation from the reference Court under Section 18 of the Act. Section 28A is, therefore, in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor people who are not able to take advantage of right of reference to the Civil Court under Section 18, of the Act. In relation to beneficent legislation, the law is well settled that while construing the provisions of such a legislation the Court should adopt a construction which advances the policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it. The provisions of Section 28A should, therefore, be construed keeping in view the object underlying the said provision.”*

8. It can be seen from another angle as well, if both these parcels of land would have belonged to two different landowners, it was always possible that one landowner could have filed reference petition under Section 18 of the Act, while another owner having not availed benefit under Section 18 of the Act, would have subsequently filed reference under Section 28-A of the Act and there would not have been any hindrance. In the present case, just because both of these chunks of land are owned by respondents No.2 & 3-landowners, their rights under Section 28-A cannot be curtailed when the land in both the references is separate and distinct. Therefore, the arguments raised by learned counsel for the petitioner are devoid of any merit.

9. There is another ground as well to dismiss this petition as order which has been impugned by way of present petition is dated 29.12.2016 and the same is being assailed after inordinate delay of approximately 6½ years. Though, in para 11 (xiv) of the petition, a meek attempt has been made to explain the delay, but in my considered opinion, the reason for delay is not sufficient enough. In this regard, excerpt from **“Karnataka Power Corpn. Ltd Through its Chairman & Managing Director & Anr Vs. K. Thangappan and Anr”**, reported as (2006) 4 SCC 322, would be apposite:-

“Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party”.

10. Similarly, Hon'ble Apex Court in “**State of M.P. v. Nandalal Jaiswal**”, reported as (1986) 4 SCC 566 reiterated the principle articulated in earlier pronouncements, which is to the following effect:-

“The High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction”.

11. Therefore, on account of delay and laches as well, this petition is liable to be dismissed. Additionally, as observed in order dated 05.07.2023, even after expiry of such a long period, not even a single penny has been disbursed in favour of the landowners-respondents so far. So, not only the petitioner has been lethargic in pursuing his remedy and unnecessary burden has been placed on State exchequer on account of interest which would become payable for this duration, but it has also delayed the vested rights of the landowners-respondents No.2 & 3, which accrued in their favour on account of acquisition of their land and therefore, a cost of

Rs.1,00,000/- (Rupees One Lakh) is imposed on the petitioner to be recovered from the officials concerned those who delayed the entire exercise and made the petitioner liable for payment of interest for the delayed implementation of Award dated 29.12.2016 passed by LAC.

12. Accordingly, writ petition is dismissed with costs of Rs.1,00,000/- (Rupees One Lakh) to be paid to respondents No.2 & 3/ landowners within a period of eight weeks from today. The costs shall be recovered as arrears of land revenue and compliance report be filed on or before 01.12.2023 subject to modification/ setting aside/ stay of this judgment.

13. 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