

CWP No. 25310 of 2019 (O&M);
CWP No. 27791 of 2019 (O&M); and
CWP No. 30328 of 2019 (O&M)

2023:PHHC:164423

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

(1) CWP No. 25310 of 2019 (O&M)
Reserved On: 10.10.2023
Pronounced On: 20.12.2023

Mange Ram and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

(2) CWP No. 27791 of 2019 (O&M)

Ram Singh (since deceased) through his legal heirs

..... Petitioners

Versus

State of Haryana and others

..... Respondents

(3) CWP No. 30328 of 2019 (O&M)

Surja Ram @ Surje Ram Kataria

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Jagmohan Ghumman, Advocate
for the petitioner(s) (in CWPs-25310 & 27791-2019)

Mr. Vishal Sharma, Advocate and
Mr. S.S. Aviraj, Advocate
for the petitioner. (in CWP-30328-2019)

Mr. Abhinash Jain, Deputy Advocate General, Haryana

HARKESH MANUJA, J.

This order of mine shall dispose off all the above-mentioned three writ petitions as the facts and law points involved in the petitions are common. By way of present writ petitions, prayer has been made for directing the respondents to disburse the compensation as per the final determination by the Hon'ble Supreme Court on the application filed by the petitioners under Section 28-A of the Land Acquisition Act, 1894 (for short "1894 Act"). For convenience, facts are being taken from CWP-25310-2019.

[2] Briefly stated, facts of the case are that land of the petitioners was acquired by the respondents vide Notification dated 25.01.2008 under Section 4 of 1894 Act. The Land Acquisition Collector (hereinafter to be referred as "LAC"), vide Award No. 65 dated 23.12.2009 assessed market value at the rate of Rs.60,00,000/- per acre. Thereafter, a reference under Section 18 of 1894 Act came before the learned Additional District Judge, Gurugram (in short "Reference Court") in similarly connected matters wherein vide Award dated 29.01.2014, compensation was enhanced to the tune of Rs. 1,02,00,000/- per acre from Rs. 60,00,000/- per acre.

[2.1] While appeal filed by the State against the aforesaid award in RFA-5507-2013 was dismissed by this Court vide judgment dated 30.08.2013 (Annexure P-1), on the other hand, appeal filed by landowners was allowed vide decision dated 20.05.2016 (Annexure P-3) in RFA No.4475 of 2012 and this Court enhanced the compensation to the tune of Rs. 1,92,30,400/- per acre from Rs.1,02,00,000/- per acre. Though, the Hon'ble Supreme Court in Special Leave Petition (Civil) No.8024-8074 of 2017 vide its judgment dated 05.09.2017 made a deduction to the tune of

15% in the order passed by this Court in lieu of development charges and therefore, the compensation was finally reduced to Rs. 1,63,45,840/- per acre.

[2.2] Meanwhile, after Reference Court's Award dated 29.01.2014, petitioners, who did not file their independent Reference Petition against the Award dated 23.12.2009 passed by LAC, filed petition under Section 28-A of the 1894 Act within the prescribed period of limitation, before the LAC for re-determination of the award of compensation on the basis of the Award dated 29.01.2014 passed by Reference Court. The LAC, vide order dated 31.12.2014 (Annexure P-2), disposed off the application of the petitioners under Section 28-A of 1894 Act and enhanced the compensation to the tune of Rs.1,02,00,000/- per acre as awarded by Reference Court.

[3] Present petitioners are aggrieved on account of the fact that despite of having filed representation before the LAC for disbursing the enhanced award as finally determined by the Hon'ble Apex Court, they have not received the enhanced compensation as awarded by the Hon'ble Apex Court vide judgment dated 05.09.2017 pertaining to the same acquisition and therefore, present petitions have been filed for directing the LAC-respondent No. 2 to release the enhanced amount of compensation.

[4] Legal prepositions applicable in such circumstances have been discussed in detail by this Court in another similarly situated case bearing ***RFA No. 1300 of 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 reproduced here, but para-13 which incorporates the summary of entire discussion 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. [**“Ramsinghai 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].”*

[5] Therefore, in view of the above referred preposition, it was obligatory on the part of LAC to grant the enhanced compensation as per final determination by the Hon’ble Apex Court because an award by Reference Court must be understood as final amount of compensation payable as modified in appeal by higher Courts. The Hon’ble Apex Court in case “**Bharatsing and others Versus 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 1894 Act afresh, after taking into consideration the award modified 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.”

[6] Reliance in this regard can also be placed on the judgment of Coordinate Bench of this Court in case **"Nanhi & Ors. Versus State of Haryana & Ors."**, reported as **2020(4) R.C.R.(Civil) 157**, 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.”*

[7] Learned counsel for the State places reliance upon a judgment of Division Bench of this Court passed on 10.10.2017 in CWP-23688-2016, vide which writ petition filed by the petitioner-company in that case was dismissed. Learned counsel further draws attention of the Court towards the fact that the order of Division Bench was also upheld by the Hon’ble Apex Court in Special Leave Petition (Civil) No 618 of 2018, titled as “**M/s. Model Economic Township Ltd vs. Land Acquisition Collector**”. A perusal of the judgment of Hon’ble Apex Court reveals that while upholding the judgment of Division Bench, two facts were taken into consideration by the Hon’ble Apex Court, which are as under:-

- (i) Pendency of appeal filed by the landowners was not brought into the knowledge of LAC who then proceeded on the footing that assessment made by the Reference Court had attained finality.
- (ii) Company being a resourceful entity should have preferred the appropriate application for reference in time and accordingly, explanation offered by the petitioner-company regarding delay, was not accepted by the Court.

[8] With respect to first factual consideration, it has been pointed out by learned counsel for the petitioners that LAC was duly made party as respondent No 2, in Regular First Appeals (i.e. RFA-5665-2013 & RFA-4475-2012) filed before this Court, wherein, compensation was enhanced. In that circumstance, when LAC was itself a party as respondent No 2 and was represented through State Counsel, it cannot be said that he was not aware about the pendency of the appeal. Secondly, a perusal of the judgment dated 20.05.2016 passed in RFA-4475-2012 further shows that the State was also in appeal before this Court, therefore, in the facts and circumstances of the present case, it cannot be said that fact regarding pendency of appeals was not in the knowledge of the LAC. Additionally, in the present case, Special Leave to Appeals against the judgment of this Court in these Regular First Appeals were filed by the State only, so it cannot also be said that LAC was not aware about the further proceedings before the Hon'ble Apex Court. In the context of second factual consideration, it is apparent that in the present cases, petitioners are individual landowners, who cannot be kept at par with

[10] Pending miscellaneous application(s), if any, shall also stand disposed off.

'*dk kamra*'

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>