

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

RFA No.118 of 2022 (O&M)

Reserved on:- **August 16, 2023**

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

Smt.Shakuntla & another

..... Appellants

Vs

Haryana State and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Akshay Kumar Jindal, Advocate, for the appellants.
Mr. Abhinash Jain, DAG, Haryana,

HARKESH MANUJA, J.

1. Brief 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 11.02.2010 for acquisition of land for the purpose of development of roads for Sectors 81 to 95, Gurugram which included the land of appellants. Award was passed by Land Acquisition Collector, Gurugram,(in short “LAC”) on 14.06.2010 and Rs.60 lakhs per acre was awarded as compensation.

2. Co-sharers of the appellants filed reference petition under Section 18 of the Act and the Reference Court in case titled as “***Mahender Singh @ Bansi Lal vs. State of Haryana***” vide award dated 17.04.2015 determined compensation @ Rs 1,81,01,217 per acre. Appeal filed against the award dated 17.04.2015 was allowed vide judgment dated 27.05.2016 rendered by this Court in RFA No.5316 of 2014 and other connected matters titled “***Pushpender***

Kumar and others v. State of Haryana and another", awarding compensation @ Rs.3,75,70,419/- per acre from the date of notification under section 4 of the Act, besides all the statutory benefits available to them under the relevant provisions of the Act. However, as per judgment dated 05.09.2017 passed by the Hon'ble Supreme Court in Civil Appeal Nos.11913-11945 of 2017 (Arising out of SLP (C) Nos.8094-8126/2017) abovementioned compensation was ordered to be disbursed after making deduction of 15% towards development.

3. Meanwhile, application filed by the appellants before the LAC under Section 28-A(1) of the Act for redetermination of the amount of compensation was dismissed, vide order dated 31.05.2016 on account of non-prosecution. It has been specifically pleaded in the present appeal that when application under Section 28-A of the Act was dismissed for want of prosecution by LAC, no prior notice was served upon the landowners. It has been further averred that when the appellants visited the office of LAC on 11.05.2018 and enquired about their case, then they were informed by the officials/concerned Patwari that their petition stood dismissed for non-prosecution on 31.05.2016. Faced with this, they applied for copy of above order passed by LAC vide application dated 11.05.2018; received the same on 17.05.2018 and immediately thereafter filed the petition under Section 28-A(3) of the Act.

4. In reference filed under Section 28-A(3) of the Act, the Reference Court after recording that application under Section 28-A(1) thereof was maintainable vide order dated 03.03.2021, allowed the same and granted compensation in accordance with judgment dated 05.09.2017

passed by the Hon'ble Supreme Court, however, the appellants were deprived of interest from the date of award i.e. 17.04.2015 till the filing of the reference petition under Section 28-A(2) of the Act before the LAC.

5. By way of present appeal, judgment dated 03.03.2021 has been impugned to a limited extent and prayer has been made for grant of interest from the date of award by LAC; rather than the date of award by the Reference Court.

6. Learned counsel for the appellants submits that no notice was given to the appellants either before the scheduled hearing or after dismissal of their application in default. He further submits that once the appellants came to know about the impugned order, they immediately filed the present appeal after receiving a copy thereof on 17.05.2018, thus delay cannot be attributed to them and therefore, they are entitled for interest for the entire period.

7. On the other hand, learned State counsel though does not deny that application under Section 28-A(1) of the Act was within limitation period, however, contends that as the same was dismissed in default, learned Reference Court rightly restricted the interest for the duration specified above.

8. I have heard learned counsel for parties and gone through the paper-book as well as the law cited at bar. I find substance in the arguments raised by the learned counsel for the appellants.

9. This Court has discussed in detail the legal propositions applicable and the course of action to be adopted by LAC when an application under Section 28-A of the Act is filed, in 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 thereof, 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 decision pending on the application until the final determination by the higher Courts. Even if LAC has pursued the application, nothing has been brought on record to suggest that either before the scheduled hearing or even after the order dated 31.05.2016 was passed, any communication was made to the appellants regarding such order having been passed, which was most essential for the same to become operative and binding against the appellants. This finds support from the view expressed by Hon’ble Supreme Court in case ***Nareshbhai Bhagubhai & Ors. Vs. Union of India & Ors.***, reported as (2019) 15 SCC 1. Relevant portion therefore, is reproduced hereunder:-

“27. *In Bachhittar Singh V. State of Punjab, a Constitution bench held that merely writing something on the file does not amount to an order. For a file noting to amount to a decision of the Government, it must be communicated to the person so affected, before that person can be bound by that order. Until the order is communicated to the person affected by it, it*

cannot be regarded as anything more than being provisional in character."

10. It is no more *res integra* that in an application filed under Section 28-A of the Act, landowners are entitled for grant of interest in accordance with Section 34 thereof i.e. from the date of taking possession and not from the date of making application under Section 28-A of the Act. Section 34 stipulates payment of interest from the date of possession till amount is paid to the landowners or deposited with the Court. Detailed discussion on this aspect after analyzing the judgments of different High Courts has been held by this Court in **"Mahabir and others vs State of Haryana and another"**, (RFA No.443 of 2020), wherein it has been held that landowners can be disentitled for interest only for that duration where cause of delay can be attributed to them. Concluding para of the same is reproduced below:-

"11. Therefore, in view of the discussion held in last para, it can be held that under normal circumstances when the landowner / claimant has pursued remedy under Section 28-A diligently, interest on the enhanced award should be governed by the section 34 of the Act i.e. it shall be calculated from the date on which possession was taken by the state. However, if delay can be attributed to the landowner / claimant, in that case, he cannot be allowed to take the benefit of his own wrong and the concerned Court can decide from which date interest shall be awarded on the enhanced amount by taking into consideration the facts and circumstances of that case."

11. In the present case, since neither before the Reference Court; nor before this Court, any material has been brought on record to suggest that appellants have intentionally caused delay or acted negligently in the present matter, no fault can be attributed to them. Therefore, appellants are entitled for the interest in accordance with Section 34 of the Act i.e. from the date of possession being taken over by the State or from the date of the Award by LAC i.e. 14.06.2010. Consequently, direction in the impugned order that no interest shall be granted from the date of Award till the filing of application under Section 28-A is hereby set aside.

12. In view of the above, present appeal is allowed.

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