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

RFA-121-2020

Date of Decision: July 24, 2023

SATISH AND ANOTHER Appellants
Versus
STATE OF HARYANA AND OTHERS Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sandeep Sharma, Advocate for the appellants.
Mr. Abhinash Jain, DAG, Haryana.

HARKESH MANUJA, J. (ORAL)

1. By way of present appeal, challenge has been made to a decision dated 12.09.2019 passed by Reference Court-cum-Addl. District Judge, Gurugram whereby petition filed under section 28-A(3), filed at the instance of appellant-landowners has been decided.
2. In the present case, land owned by appellant, situated in Village Dhorka, District Gurugram was acquired vide notification dated 11.02.2010 issued under Section 4 read with Section 17(2) of Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') followed by notification dated 19.02.2010 issued under Section 6 thereof. The land was acquired for the purpose of development of Sector road 81-95 in Urban Estate Gurugram. Thereafter, Award No.4 under Section 11 was announced on 14.06.2010.
3. Though, no reference under Section 18 of 1894 Act was filed at the instance of appellants-landowners, however, other similarly situated landowners whose land formed part of same notification, invoked Section 18 of 1894 Act vide LAC-289-2012 which came to be

decided on 13.07.2014 whereby the landowners were awarded market value @ Rs.1,39,87,202/- per acre.

4. Based thereupon, the appellants filed petition under section 28-A of the 1894 Act before the Collector on 28.08.2014, the same was however dismissed for want of prosecution. Against the said order, the landowners-appellants invoked Section 28-A(3) on 17.10.2015 and the matter was sent to the Reference Court. The aforementioned Reference was decided by the Reference Court-cum-Addl. District Judge, Gurugram vide order dated 12.09.2019 thereby awarding compensation to the tune of Rs.1,39,87,202/- per acre in favour of appellants, relying upon the award dated 30.07.2014 passed by Reference Court in LAC-282-2012 pertaining to similarly situated landowners. In addition, it was specifically held that reference filed at the instance of appellants invoking Section 28-A of the 1894 Act was within limitation.

5. Learned counsel for appellants submits that reliance placed by learned reference court on “**Ramsingbhai Vs. State of Gujarat**” reported as 2018(3) RCR (Civil) 114 is misplaced as it only relates to the question whether an application under section 28-A of the Land Acquisition Act, 1894 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 as well. In the present case, there is no dispute that application u/s 28-A(1) was filed within the limitation period from the judgment of reference Court, ratio of **Ramsingbhai’s** case (supra) is thus not applicable in the present case. He therefore prays for grant of compensation in accordance with the market value assessed by the Hon’ble Supreme Court in the matters relating to the same acquisition proceedings pertaining to the same revenue estate, wherein the same

has been assessed at Rs.2,92,98,240/- per acre vide judgment dated 05.09.2017 passed in Civil Appeal No.11913-2017 (Annexure P-2/Pg.-96). In addition, learned counsel for the appellant also submits that the Reference Court went wrong while declining the benefit of interest in favour of landowners from the date of award i.e. 14.06.2010 till the date of filing of reference under Section 28-A i.e. 22.08.2014.

6. On the other hand, learned State counsel vehemently opposes the prayer made in the appeal while submitting that the landowners were not entitled for any interest from the date of award till the date of invoking reference under Section 28-A of the 1894 Act, however, learned State counsel has not been able to dispute the factum of enhancement of market value to the tune of Rs.2,92,98,240/- as regards the land pertaining to village Dhorka in view of the decision dated 05.09.2017 passed in Civil Appeal No.11913-2017.

7. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned counsel for the appellants. The primary question to be answered by the bench in **Ramsinghai's** case (supra) was:

“2. Whether an application under section 28-A 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 bench held that judgment of the appellate court is not within the purview of Section 28-A as the appellate courts under Section 54 are under Part VIII of the Act whereas the redetermination is only in respect of the Award passed by

the Reference Court under Part III of the Act. Hon'ble Apex Court while holding so placed reliance on **“Jose Antonio Cruz Dos R. Rodriguese & another v. Land Acquisition Collector & another”**, reported as 1997(2) RCR (Civil) 21 : (1996) 6 SCC 746) and **“Bharatsing and others v. The State of Maharashtra and others”**, reported as 2018(1) RCR (Civil) 497 : (2017) SCC Online SC 1453. In these cases also, similar position was upheld that reference under Section 28-A can be filed only within limitation period of 3 months from the Judgment of the reference Court under Section 18 and not on the basis of judgment by Appellate Court including High Court and 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 land owner has applied under Section 28-A of the Act, the enhanced compensation decreed by the Reference Court must be understood as the decree 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 28-A 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 28-A 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 28-A 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 28-A in the year 1995, much before the decree was actually modified.

9. We hold that under Section 28-A 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 28-A 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 28-A 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 28-A has been filed by the land owners 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, wherein, it was held that if appeal is pending before High Court or Supreme Court, LAC shall desist from passing any award and once the award becomes final, the compensation as determined by the High Court or Supreme Court shall be disbursed in favor of the landowners on the basis of doctrine of “merger of decree”. Relevant para of this judgment is reproduced here under:

"39. The next question is whether the Collector/LAO on receipt of the application under sub-section (1) of Section 28-A 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 28-A(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 L 10,000 to L 20,000. 'B' did not file appeal under Section 54 while 'C' filed the appeal. The High Court, suppose, further enhances the compensation to L 25,000 or reduces the compensation to L 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 L 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) directed the LAC to decide the application under Section 28-A 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 28-A application was decided. That is the special and distinctive factual position in the instant case. It must also be kept in mind that Section 28-A is a beneficial provision.

17. The Section 28-A 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 28-A 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 28-A 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 bench in **Ramsingbhai's** case

(supra), however, no observation or direction 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 28-A(1) of 1984 Act was pending before the LAC and compensation has been increased by the High Court in the present case, LAC or learned reference Court were bound to pass the award on the same terms as determined by this Court.

12. 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 case no 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. Relevant paras in this case are reproduced below:

"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 @ L 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. Once the reference filed under Section 28-A of 1894 Act at the instance of appellants-landowners was found to be within limitation and the final determination of market value, pertaining to the land under acquisition was made by the Hon'ble Supreme Court vide judgment dated 05.09.2017 passed in Civil Appeal No.11913 of 2017, the Reference Court was under a legal obligation to award similar relief to the appellants-landowners.

14. As regards the denial of interest in faovur of appellants-landowners from the date of award till the date of filing of reference under section 28-A by the Reference Court, the said finding is against law as no provision under the Land Acquisition Act, 1894 empowers the Reference Court to decline interest from the date of award till the date of filing of reference under Section 28-A of 1894 Act, rather sub-section 3 to Section 28-A enjoins the Reference Court to grant the statutory benefits as well as interest thereupon in consonance with the provisions of section 28-A of 1894 Act.

15. With the aforesaid observations, Award dated 02.09.2019 passed by the Reference Court is ordered to be modified to the following effect:-

“The appellants-landowners shall be entitled for market value @ Rs.2,92,98,240/- in accordance with decision dated 05.09.2017 passed by the Hon'ble Supreme Court in Civil appeal No.11913 of 2017 besides grant of other statutory benefits/interest under the '1894 Act' including statutory interest u/s 28, from the date of award till the date of filing of Reference under Section 28-A of 1894 Act as well.”

16. In view of the above, the present appeal is disposed of.

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

24.07.2023
tejwinder

(HARKESH MANUJA)
JUDGE

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