

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

RFA No.443 of 2020 (O&M)

Reserved on:- **August 08 , 2023**

Date of Pronouncement:- **August 18, 2023**

Mahabir and others

..... Appellants

vs

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Amit Jain, Advocate, for the appellants.
Mr. Shivendra Swaroop, DAG, Haryana,

HARKESH MANUJA, J.

1. By way of present regular first appeal, challenge has been laid to an order dated 03.10.2019 passed by learned Additional District Judge, Gurugram, in a reference filed by the appellants u/s 28-A(3) of Land Acquisition Act 1894 (hereinafter referred as “the Act”), whereby, the same has although been allowed, however, they have been granted compensation only on the basis of Reference Court Award and not as per the final determination by the higher courts and that too by declining interest from the date of award till the filing of the reference petition under Section 28-A of the Act.

2. Briefly stated, facts of the case are that notification under section 4 of 1894 Act was issued on 11.02.2010, through which land belonging to appellants was also sought to be acquired for the purpose of development and utilization of land for sector roads Sectors 81 to 95 at Gurugram. Award in present acquisition was passed by Land Acquisition Collector, Gurugram (for short “LAC”) on 14.06.2010 assessing market value @ Rs.60 lakhs per acre. In reference petition

filed by some other land owners under Section 18 of the Act, Reference Court vide common award dated 21.12.2013 enhanced compensation to Rs.12,10,70,693/- per acre besides statutory benefits. It is pertinent here to note that those other land owners filed appeal before this Court and this Court vide common judgment dated 27.05.2016 allowed the same partly, by further enhancing compensation at the rate of Rs.16,89,35,120/- per acre. Though, Hon'ble Apex Court in Civil Appeal Nos.11913-11945 of 2017 vide judgment dated 05.09.2017, altered the same in the State appeal and scaled down the compensation by 15% on account of development charges.

3. Application filed by appellants before the LAC under Section 28-A(1) of the Act for redetermination of the amount of compensation was dismissed by LAC vide order dated 31.12.2014 merely by recording a reason that appeal was pending before this Court. In reference filed under Section 28-A(3) of the Act, learned Reference Court after specifically recording that application under Section 28-A(1) of the Act was filed within prescribed period of limitation, vide order dated 03.10.2019, allowed the appeal and granted compensation equal to the amount determined by Reference Court in its award dated 21.12.2013 by placing reliance on judgment of Hon'ble Apex Court in **“Ramsinghai Vs. State of Gujarat”** reported as 2018(3) RCR (Civil) 114 and not as per the final determination by the higher Courts. Additionally, appellants were also deprived of interest from the date of award i.e. 14.06.2010 till the filing of the reference petition under Section 28-A of the Act before the LAC i.e. 26.02.2014.

4. By way of present appeal, order dated 03.10.2019 has been impugned and prayer has been made to grant compensation as determined by Hon'ble Apex Court vide decision dated 05.09.2017 pertaining to the same notification issued under Section 4 of the Act as well as a prayer has also been made to grant interest from the date of award by LAC rather than the date of award by the reference Court.

5. Learned counsel for the appellants submits that reliance placed by learned Reference Court on **Ramsingbhai's** case (supra) was misplaced as it only related to the question whether an application under Section 28-A of 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 as well. He also draws attention of the Court towards the fact that when application under Section 28-A was dismissed by LAC, no notice was given to the land owners. He further submits that even a copy of this order was supplied to them on 23.02.2015 only and he filed the reference under Section 28-A(3) of the Act immediately on 05.03.2015 and therefore, there cannot be any dispute that the application under Section 28-A(1) of the Act or the Reference Petition under Section 28-A(3) thereof were well within limitation. Lastly, he submits that the ratio of **Ramsingbhai's** case (supra) is thus not applicable in the present case and appellants are entitled to be granted the enhanced compensation as finally determined by Hon'ble Apex Court vide decision dated 05.09.2017, including the interest as well in accordance with section 34 of the Act.

6. 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, but also supports the order passed by the learned Reference Court.

7. I have heard learned counsel for 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 appellants.

8. This Court has discussed in detail the legal prepositions 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 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. ["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 preposition, when it is the admitted case that application under Section 28-A of the Act was within limitation and the petition under Section 28-A(3) thereof was filed immediately on receipt of order passed by the LAC in exercise of power under Section 28-A, it was obligatory for the LAC to grant compensation as per the final determination by the Hon’ble Apex Court.

9. Another contention raised by learned counsel for the appellants also requires consideration that they are entitled for the

grant of interest in accordance with Section 34 of the Act from the date of taking possession and not from the date of making application under Section 28-A of the Act. Section 34 thereof stipulates payment of interest from the date of possession till amount is paid to the landowners or deposited with the Court. In "**Union of India v. Pradeep Kumari**", reported as 1995(2) SCC 736, on an objection raised by State counsel that under Section 28-A of the Act, it is not permissible for the Collector to award interest on the additional amount of compensation awarded by him, It was held by the Hon'ble Apex Court that Section 34 of the Act would be applicable to the award made by the Collector under sub-section (2) of Section 28A and it would be permissible for him to award interest under Section 34 on the additional amount of compensation awarded by him. Relevant para of this judgment is reproduced below:

"14. Shri Goswamy has next contended that while re-determining the amount of compensation under Section 28A it is not permissible for the Collector to award interest on the additional amount of compensation awarded by him for the reason that under Section 28 of the Act only the Court can direct payment of interest on the excess amount awarded as compensation and no such power is conferred on the Collector and, therefore, interest cannot be awarded by the Collector on the additional amount of compensation determined under Section 28A. It is no doubt true that under Section 28 only the Court can direct payment of interest on the excess amount awarded as compensation and the Collector is not competent to award interest on the additional amount of compensation under the said provision. But sub-section (2) of Section 28A provides that after an application has been submitted under sub-

section (1) of Section 28A the Collector after conducting an inquiry makes an award determining the amount of compensation payable to the applicants and under sub-section (3) of Section 28A any person who has not accepted the award under sub-section (2) may move the Collector requiring that the matter be referred for determination to the Court and the provisions of Section 18 to 28 have been made applicable to such reference. This would show that after an application has been submitted under Section 28A(1) for re-determination of the amount of compensation the process of such redetermination results in making of an award by the Collector and a person not accepting the said award can move the Collector to refer the matter to the Court for determination and such reference is governed by Sections 18 to 28. If that is so Section 34 of the Act would be applicable to the award that is made by the Collector under sub-section (2) of Section 28A and it would be permissible for him to award interest under Section 34 on the additional amount of compensation awarded by him. The second contention urged by Shri Goswamy is, therefore, rejected."

In **"Union of India v. Pushpavathi"**, reported as 2018(3) SCC 28 as well, Hon'ble Apex Court held that payment of interest being statutory in character, it is mandatory for payment once conditions specified under Sections 28 or/and 34 are fulfilled. Furthermore, relying upon **Pradeep Kumari's** case (supra), different High Courts have held that the interest shall be payable from the date of possession.

9.(a) In **"Ayyanna Siddegowda v. Deputy Commissioner, Mandya District"** reported as 2012(52) R.C.R.(Civil) 102 (Writ Petition No. 26289 of 2012 (LA-RES), decided on 02.08.2012), circular issued

by Deputy Commissioner, which restricted the interest only from the date of receipt of application under Section 28-A of the Act was impugned before the Karnataka High Court, wherein the impugned circular was quashed finding it contrary to the statutory provisions contained in Section 34 of the Act. Relevant Paras of this judgment are reproduced here under:

- "6. Section 28A is intended and meant for the bus-missing parties, who on account of their poverty, ignorance, etc. have failed to take advantage of the right of reference granted under Section 18 of the said Act. The non-seeker of reference is put on par with the person who has sought the reference and who has got the amounts enhanced. Section 28A applicant can claim parity not only in getting the compensation but also interest thereon, if a similarly situated land is covered by the Court award.
7. Section 28A is to be interpreted liberally because it is the object of the legislation to give the benefit of the award passed by the Court to persons whose property is covered by the same preliminary notification, but who did not opt for filing the application for reference under Section 18. The persons covered by the same notification were carved out to be a class for extending the benefits.
8. The impugned circular runs contrary to the statutory provisions contained in Section 34 and to the interpretation that the said provisions have received at the hands of this Court and the Hon'ble Supreme Court in the above referred cases. It is therefore liable to be quashed and accordingly it is quashed. The respondent No. 2 is directed to award the interest from the day on

which the petitioner was dispossessed from the property in question."

9(b). A Division Bench of Bombay High Court in "**Ananda Baburao Pawagi v. State of Maharashtra**" reported as 2014(16) R.C.R.(Civil) 328 (Writ Petition No. 1218 of 2013 decided on 14.2.2014) held that while making an award under Sub-section (2) of Section 28-A of the Act, the Collector can always invoke Section 34 thereof. Relevant Paras of this judgment are reproduced here under:-

- "20. Hence, while making an award under Sub-section (2) of Section 28A of the said Act, the Collector can always invoke Section 34 of the said Act. As stated earlier, in the present case, the Collector has granted interest as provided in Section 34 of the said Act upto the date of the award though he has purported to invoke the power under Section 28 of the said Act. Merely because a Reference is made to a wrong Section, the exercise of power does not become bad. The Land Acquisition Officer was, therefore, justified in granting interest at the rates of 9% per annum and 15% per annum as provided in Section 34 of the said Act. But, he ought to have allowed interest till the date of payment of compensation or the date of deposit.*
- 21. It is true that the statute does not provide for any time limit for payment of compensation in terms of the award made according to Sub-section (2) of Section 28A of the said Act. But in view of applicability of Sub-section (1) of Section 31 of the said Act, it is obvious that the amount has to be offered immediately after the Award is made. Under Section 34 of the said Act, the interest is payable till the date of payment of compensation or the date of deposit of compensation."*

9(c). Similarly, Gujarat High Court in **"Vyas Kiritbhai Chandrakantbha v. Special Land Acquisition Officer and Ors."** reported as 2014(15) S.C.T. 654 (Special Civil Application No.7506 of 2012 decided on 23.1.2013), observed thus:-

"It is undisputed position that the application has been granted under Section 28A of the Act and the payment of compensation was to be paid is paid. It is also admitted fact that the interest has been paid as per the provision of the Act by the Competent Authority upto 1.2.2008 but it appears that the calculation of the interest has been made upto the date on which the District Court passed the award but has not been made until the amount is actually paid to the petitioner.

As per the provisions of the LAQ Act, the interest is payable for the first year @ 9% per annum and for subsequent year @ 15% per annum until the amount is paid or deposited with the Court whichever is earlier.

It is not in dispute that the Competent Authority has found the case of the petitioner as covered under Section 28A of the Act and the petitioner found entitled to get the benefit of the award passed by the reference Court in respect of other similarly situated claimants, whose lands were also acquired pursuant to the said acquisition.

Under the circumstances, the interest on the additional compensation under Section 28A is required to be paid until the amount is actually paid or deposited with the Court whichever is earlier. It is an admitted position that in the present case, the actual compensation has been paid only on 14.5.2009 but the interest has been calculated @ 15% per annum upto 1.2.2008."

9(d). A Division Bench of Kerala High Court in "**State of Kerala v. Kumaran Nair**", reported as 2001(1) KLT 539 bearing L.A.A. No. 1241 of 1998(C) decided on 18.7.2000, held that:

"Going by this dictum, the claimant for re-determination of land value is also entitled for interest as in an ordinary reference case arising under Section 18. Therefore, the claimant will be entitled for interest at 9% per annum on the additional land value of Rs. 750/- per cent for one year from the date of taking possession and thereafter at 15% per annum until it is paid."

9(e) Another Bench of Hon'ble Kerala High Court in "**T.P. Kamalakshi Amma v. Special Tahsildar, Kannur**", reported as 2004 (2) KLT 716 bearing L.A. App. No. 934 of 2001 decided on 02.06.2004, held as under:-

"5. *The submission of Mr. Edho that the appellant is entitled for payment of interest on the compensation redetermined by the Land Acquisition Officer under Section 28A certainly has force. This Court has held in Koruthukochukutty (supra) that the legislative objective underlying Section 28A is to create a parity in the matter of compensation received by alert claimants who had sought for reference to Courts under Section 18 and those inarticulate and poor people who were unable to seek such a reference. When the awardees of enhanced compensation under judgments of the reference Court in references under Section 18 are getting interest at the statutory rates it is only in keeping with the legislative intendment that awardees under Section 28A should also get such interest.*"

9(f) This proposition was also upheld / followed in many other cases including:-

- i. Kerala High Court in "**Malayamvally Ayyamparambath Othayoth, Kalliani Kutty Amma v. The Special Tahsildar**" reported as 2003 (1) KLT 1014 in case bearing no L.A.A. No. 561 of 1996 decided on 31.1.2003.
- ii. Karnataka High Court in "**Mehboob Sab v. The Special Land Acquisition Officer**" reported as ILR 2003 Kar 3120 : 2003 AIR Kant HCR 2843 bearing no. W.P. No. 27096-107 of 2003 (LA-RES) decided on 18.07.2003
- iii. Division Bench of Karnataka High Court in "**Nabibhai Alibhai v. State of Gujarat**" reported as 2015 AIR CC 1199 : 2014 (24) RCR (Civil) 871 in case bearing no. Special Civil Application No. 16912 of 2014. decided on 18.12.2014
- iv. Division bench of Bombay High Court in "**Kisan (Krishnaji) Aba Kamble since deceased v. State of Maharashtra**" reported as 2023(3) ALL MR 50 : 2023(3) BCR 875 in case bearing no Writ Petition No. 624 of 2022 decided on 04.03.2022.

10. 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 of the Act diligently, interest on the enhanced award should be governed by the Section 34 thereof 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, when no delay under Section 28-A of the Act can be attributed to the appellants and rather finding has been categorically recorded that the petition was filed within limitation, 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. 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 of the Act, is thus set aside.

12. In view of the above, the present appeal is allowed and respondent No.2 is directed to grant compensation to the appellants, at the same rate i.e. Rs. 2,92,98,240/- per acre with a cut of 15% as awarded by Hon'ble Apex Court vide order dated 05.09.2017, besides all other statutory benefits and interest thereupon. It is clarified that benefit of interest on the enhanced compensation shall be granted 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.

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

August 18, 2023
sanjay

(HARKESH MANUJA)
JUDGE

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