

CM No.4477 of 2025 in/
RA-145 of 2025 in
CWP-15567 of 2022 (O&M)

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CWP-15567 of 2022 (O&M)

Haryana Shehri Vikas Pradhikaran
vs.
Land Acquisition Collector and others

Present: Mr. Vipin Pal Yadav, Advocate
for the applicant-respondent no.2.

CM No.4477 of 2025

1. For the reasons mentioned in the application, which are supported by an affidavit, the delay of 796 days in filing the review application is condoned.

2. CM stands disposed of.

RA No.145 of 2025

3. Review of the following order passed on 14.12.2022, has been sought:-

“Learned counsel representing the parties are ad idem that *in view of the judgment passed in CR-8456-2020 titled as 'Haryana State Industrial and Infrastructure Development Corporation Limited vs. Smt. Shanti and others' decided on 06.09.2021, the impugned order dated 29.12.2020 (Annexure P-5) is required to be set aside. In the aforesaid judgment, while relying upon the various judgments passed by the Supreme Court, it has been held by this Court that an application under Section 28A of the Land Acquisition Act, 1894, is maintainable only on the basis of the award passed by the Reference Court and not on the basis of the judgment passed by the High Court or the Supreme Court.*

Keeping in view the aforesaid consensus arrived

at, the writ petition is allowed.

The order dated 29.12.2020 (Annexure P-5) is set aside.

All the pending miscellaneous applications, if any, are also disposed of.

4. The learned counsel representing the review-applicant submits that in view of the subsequent judgment passed by the Supreme Court in **Banwari and others vs. Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC) and another(SLP(C) No.12221 of 2022)**, the application under Section 28-A of the Land Acquisition Act, 1894 is maintainable on the basis of the judgment of the High Court in appeal filed under Section 54 of the Land Acquisition Act, 1894.

5. This court has considered the submissions.

6. In fact, after considering the **Banwari's case (supra)**, this court in **Kanta Rani and another vs. State of Haryana(RFA No.5802 of 2013, decided on 28.02.2025)** has held that an application under Section 28-A of the Land Acquisition Act, 1894, can only be filed on the basis of any award passed by the Reference Court and not on the basis of the judgment by the High Court while deciding the appeal. The relevant discussion is extracted as under:-

*3.1 Section 28A of the 1894 Act, was inserted by Act no.68 of 1984. Initially, in **Babua Ram vs. State of Uttar Pradesh, (1995)2 SCC 689** and in **Union of India and others vs. Karnail Singh and others, (1995)2 SCC 728**, the Supreme Court interpreted that applications under Section 28A can be filed only on the basis of first award*

passed by the RC. This view was reversed by a three Judge Bench in Union of India vs. Pardeep Kumari (1995) 2 SCC 736. In para 10 of the Three Judge Bench judgment, the court laid down the conditions which are required to be satisfied, which are extracted as under:-

“10. A perusal of the provisions contained in sub-section (1) of Section 28A of the Act would show that after an award is made under Part III whereby the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, a right accrues to a person interested in the other land covered by the same notification under sub-section (1) of Section 4, who is also aggrieved by the award of the Collector but who had not made an application to the Collector but who had not made an application to the Collector under Section 18, to move an application before the Collector for re-determination of the amount of compensation payable to him on the basis of the amount of compensation awarded by the Court. This application for re-determination of compensation is required to be made within three months from the date of the award of the Court. The right to make the application under Section 28A arises from the award of the Court on the basis of which the person making the application is seeking re-determination of the compensation. There is nothing in sub-section (1) of Section 28A to indicate that this right is confined in respect of the earliest award that is made by the Court after the coming into force of Section 28A. By construing the expression 'where in an award under this Part

in sub-section (1) of Section 28A to mean 'where in the first award made by Court under this Part', the word 'first,' which is not found in sub-section (1) of Section 28A, is being read therein and thereby the amplitude of the said provision is being curtailed so as to restrict the benefit conferred by it.

*In the matter of construction of a beneficent provision it is not permissible by judicial interpretation to read words which are not there and thereby restrict the scope of the said provision (See **Jnan Ranjan Sen Gupta v. Arun Kumar Bose, (1975) 2 SCC 525, at P.530.**)*

11. *It is possible to visualise a situation where in the first award that is made by the Court after the coming into force of Section 28A the enhancement in the amount of compensation by the said award is not very significant for the reason that the person who sought the reference was not able to produce adequate evidence in support of his claim and in another reference where the award was made by the Court subsequently such evidence is produced before the Court and a much higher amount is awarded as compensation in the said award. By restricting the benefit of Section 28A to the first award that is made by the Court after the coming into force of Section 28A the benefit of higher amount of compensation on the basis of the subsequent award made by the Court would be denied to the persons invoking Section 28A and the benefit of the said provision would be confined to re-determination of compensation on the basis of lesser amount of compensation awarded under the first award that is made after*

the coming into force of Section 28A. There is nothing in the wording of Section 28A to indicate that the legislature intended to confer such a limited benefit under Section 28A. Similarly, there may be situation, as in the present case, where the notification under Section 4(1) of the Act covers lands falling in different villages and a number of references at the instance of persons having lands in different villages were pending in the Court on the date of coming into force of Section 28A and awards in those references are made by the Court on different dates. A person who is entitled to apply under Section 28A belonging to a particular village may come to know of the first award that is made by the Court after the coming into force of Section 28A in a reference at the instance of a person belonging to another village, after the expiry of the period of three months from the date of the said award but he may come to know of the subsequent award that is made by the Court in the reference at the instance of a person belonging to the same village before the expiry of the period of three months from the date of the said award. This is more likely to happen in the cases of inarticulate and poor people who cannot be expected to keep track of all the references that were pending in Court on the date of coming into force of Section 28A and may not be in a position to know, in time, about the first award that is made by the Court after the coming into force of Section 28A. By holding that the award referred to in Section 28A (1) is the first award made after the coming into force of Section 28A, such persons would be to

deprived of the benefit extended by Section 28A. Such a construction would thus result in perpetuating the inequality in the payment of compensation which the legislature wanted to remove by enacting Section 28A. The object underlying Section 28A would be better achieved by giving the expression "an award" in Section 28A its natural meaning as meaning the award that is made by the Court in Part III of the Act after the coming into force of Section 28A. If the said expression in Section 28A(1) is thus construed, a person would be able to seek re-determination of the amount of compensation payable to him provided the following conditions are satisfied:

(1) An award has been made by the Court under Part III after the coming into force of Section 28A;

(ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under Section 11, has been allowed to the applicant in that reference;

(iii) The person moving the application under Section 28A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;

(iv) The person moving the application did not make an application to the Collector under Section 18;

(v) the application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and

(vi) Only one application can be moved under Section 28A for re-determination of compensation by an applicant.

3.3 According to my understanding, subject to correction, in Pardeep kumari's case(supra), the larger Bench did not declare that application u/s 28A can be filed on the basis of assessment of the market value by the High Court in appeals filed u/s 54 of the 1894 Act.

3.4 With greatest respect, in Banwari's case (supra), the supreme Court was not apprised of the fact that the expression 'any award' used in Pardeep Kumari's case(supra) is with respect to the award passed under Section 18 by the 'RC' and is not related to judgment of the High Court in an appeal filed u/s 54 of the 1894 Act. It appears that due to lack of assistance, inadvertent error in the judgment passed in Banwari 's case(supra) crept in.

3.5 In fact, the attention of the Supreme Court was not also drawn to the bare language of Section 28A. Had it been brought to the notice of the Supreme Court the aforesaid error may not have crept in. The beauty of Indian Judicial System allows the lower court to invoke the doctrine of per incuriam if a decision has been rendered due to oversight.”

7. Keeping in view the aforesaid facts and discussion, no ground to review is made out.

8. The review application is dismissed.

April 03, 2025
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(ANIL KSHETARPAL)
JUDGE