



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RFA No.5802 of 2013 (O&M)  
and other connected cases  
Reserved on: 31.01.2025  
Date of Order:28.02.2025

Kanta Rani and another

..Appellants

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anish Setia, Advocate,  
for the appellants.

Mr. S.M.Sharma, Advocate  
for the appellant (in RFA Nos.7002 to 7008)

Ms. Safia Gupta, AAG, Haryana.

ANIL KSHETARPAL, JUDGE

1. **Brief Facts:-**

1.1 As per Article 141 of the Constitution of India, the declaration of law by the Supreme Court is binding on all the Courts. The High Court cannot question the correctness of the decision of the Supreme Court. However, a judgment in inadvertent ignorance is not a binding precedent in view of doctrine of per incuriam. The latin expression 'per incuriam' means through inadvertence. As per black's law dictionary “a judgment per incuriam is one which has been rendered inadvertently”. Despite due care and caution inadvertent errors happen. To err is human. That is how doctrine of per incuriam operates as an exception to the rule of precedence.



This court is faced with the aforesaid situation. Hence, with greatest respect and reverence, the matter is being examined.

1.2 The solitary point which arises for consideration is, “whether application u/s 28A of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act' can be filed by the landowners seeking enhanced market value of the acquired land on the basis of judgment passed by the High Court in appeals filed u/s 54 of the 1894 Act?”

1.3 The relevant facts, in brief, are being noticed in order to comprehend the issue involved in the present case:-

1.4 The notification under Section 4 of the '1894' Act was issued on 04.03.1983, proposing to acquire 135.07 acres of land in Patti Mehar, Ambala which was followed by declaration under Section 6 on 27.02.1986. Under Section 11 of the 1894 Act, the Land Acquisition Collector announced the award on 23.02.1988. On the applications filed under Section 18, the Reference Court(hereinafter referred to as 'the RC') vide award dated 11.08.1993, decided all the cases. Appeals filed before the High Court were decided in lead case RFA No.3074 of 1993, decided on 08.12.2009. The High Court assessed the market value of the acquired land at the rate of Rs.112/- per sq. yard. Some of the landowners who did not file an application under Section 18 of the 1894 Act, filed application under Section 28A on 05.03.2009, which were dismissed by the RC on 11.10.2010. Now these appeals have now come up for hearing.

2. **Arguments put forth by the learned counsel representing the parties:-**

2.1 The appellant's counsel relies upon the judgment passed by the

Hon'ble Supreme Court in **Banwari and others vs. Haryana State**



**Industrial and Infrastructure Development Corporation Limited (HSIIDC) and Another, 2024 INSC 1951, Union of India and another vs. Pardeep Kumari and others, 1995 (2) SCC 736 and Ch. Narasimha Rao & Ors. Vs. Land Acquisition Officer, Eluru & Ors. (Civil Appeal No.14248 of 2015, decided on 09.12.2015).**

3. **Analysis and Discussion:-**

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 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.*

3.2 In the aforementioned case, the facts were that first batch of petitions under Section 18 were decided by the RC on 24.09.1984, the second batch was decided on 27.12.1984 and, whereas the last batch was decided on 21.01.1987. Application under Section 28A was filed on 21.02.1987. It was declared that Section 28A is not using the word 'first but an award', hence, an award means 'any award' which can be even the last one passed by the 'RC'.

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.

3.6 The learned counsel representing the appellant has also relied upon the judgment in Ch. Narasimha Rao's case (supra). Section 28A did not come up for consideration.

4. Decision:-

4.1 Keeping in view the foregoing discussion, the appeals are dismissed.

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

(ANIL KSHETARPAL)  
JUDGE

February 28, 2025  
nt

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







|     | Case No.      | Appellant(s)             | Respondent(s)    |
|-----|---------------|--------------------------|------------------|
| 1.  | RFA-5802-2013 | KANTA RANI & ANR         | STATE OF HARYANA |
| 2.  | RFA-5803-2013 | SUSHIL KUMAR<br>OBEROI   | STATE OF HARYANA |
| 3.  | RFA-5804-2013 | SUREKHA SHARMA           | STATE OF HARYANA |
| 4.  | RFA-5805-2013 | SUBHASH CHANDER<br>& ANR | STATE OF HARYANA |
| 5.  | RFA-5806-2013 | JASBIR SINGH             | STATE OF HARYANA |
| 6.  | RFA-5807-2013 | B K GARG                 | STATE OF HARYANA |
| 7.  | RFA-5808-2013 | BAIJ NATH                | STATE OF HARYANA |
| 8.  | RFA-5809-2013 | P.C GUPTA                | STATE OF HARYANA |
| 9.  | RFA-5810-2013 | RAJEEV KUMAR             | STATE OF HARYANA |
| 10. | RFA-5811-2013 | SNEH LATA DOGRA          | STATE OF HARYANA |
| 11. | RFA-5812-2013 | CHARANJIT SINGH          | STATE OF HARYANA |
| 12. | RFA-5813-2013 | SATPAL<br><br>SABHARWAL  | STATE OF HARYANA |
| 13. | RFA-5814-2013 | MOHANI GUPTA             | STATE OF HARYANA |
| 14. | RFA-5815-2013 | SUSHMA MAHAJAN           | STATE OF HARYANA |
| 15. | RFA-5816-2013 | KAMINI GUPTA             | STATE OF HARYANA |
| 16. | RFA-5817-2013 | SUNIL KUMAR              | STATE OF HARYANA |
| 17. | RFA-5818-2013 | SUSHMA DHAWAN            | STATE OF HARYANA |
| 18. | RFA-5819-2013 | DURGA DEVI               | STATE OF HARYANA |
| 19. | RFA-5820-2013 | BASANT KUMAR             | STATE OF HARYANA |
| 20. | RFA-5821-2013 | RAKESH KUMAR             | STATE OF HARYANA |
| 21. | RFA-5822-2013 | NARINDER<br>SACHDEVA     | STATE OF HARYANA |
| 22. | RFA-5823-2013 | RAMESH CHANDER           | STATE OF HARYANA |
| 23. | RFA-5824-2013 | SUNITA GOEL &<br>ANR     | STATE OF HARYANA |
| 24. | RFA-5825-2013 | PREM KUMAR<br>SHARMA     | STATE OF HARYANA |
| 25. | RFA-6989-2013 | CHANDER PRABHA           | STATE OF HARYANA |
| 26. | RFA-7002-2013 | VARUN VATS               | STATE OF HARYANA |
| 27. | RFA-7003-2013 | RAKESH KUMARI            | STATE OF HARYANA |
| 28. | RFA-7004-2013 | SUNITA SHARMA            | STATE OF HARYANA |
| 29. | RFA-7005-2013 | SATISH SHARMA            | STATE OF HARYANA |
| 30. | RFA-7006-2013 | TRIPTA SHARMA            | STATE OF HARYANA |
| 31. | RFA-7007-2013 | PAWAN KUMAR              | STATE OF HARYANA |
| 32. | RFA-7008-2013 | CHANCHAL SEHGAL          | STATE OF HARYANA |
| 33. | RFA-7010-2013 | SHAKUNTLA DEVI           | STATE OF HARYANA |
| 34. | RFA-7011-2013 | CHANDER PARKASH          | STATE OF HARYANA |
| 35. | RFA-7012-2013 | VIRENDER KUMAR           | STATE OF HARYANA |
| 36. | RFA-7013-2013 | MULAKH RAJ               | STATE OF HARYANA |
| 37. | RFA-9502-2014 | RAJESH KUMAR             | STATE OF HARYANA |
| 38. | RFA-9503-2014 | JATISH KUMAR             | STATE OF HARYANA |

**(ANIL KSHETARPAL)**  
**JUDGE**