(2020) 01 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6250 Of 2018

Inderjit Singh & Others — APPELLANT

Vs

Union Of India And Others — RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 18, 23(1A), 23(2), 28A, 28A(3)
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 01 P&H CK 0011

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Naresh Kaushal, Rajiv Sharma, Ambika Bedi

Final Decision : Partly Allowed

Judgement

G.S. Sandhawalia, J

The petitioners in the present writ petition filed under Article 226/227 of the Constitution of India, seek directions in the nature of mandamus for payment of compensation qua the acquired land of the petitioners, in compliance of the order dated 31.08.2010 (Annexure P-1), passed by the Land Acquisition Collector, SAS Nagar, Mohali under Section 28-A of the Land Acquisition Act, 1894 (for short, the 'Act'). Resultantly, the demand notice dated 08.01.2018 (Annexure P-4), to that extent, is sought to be enforced. Claim has also been made for further enhancement on the strength of the judgment rendered in RFA-3161-2009 titled Jasmer Singh & another Vs. State of Punjab, decided on 01.06.2016. Reference has also been sought to be made to the applications dated 23.09.2016 & 14.10.2016 (Annexures P-2 & P-3) made before the LAC to be referred to the Reference Court, as per the provisions of Section 28-A(3) of the Act.

A perusal of the paperbook would go on to show that land measuring 75 biswas was sought to be acquired, falling in Village Gharuan Hadbast No.377, vide notification dated 23/28.11.2000, issued under Section 4 for the public purpose of setting up of Chandigarh- Ludhiana Broad-Gauge Railway Line, the award of which was passed on 21.08.2001, whereby the Land Acquisition Collector had awarded a sum of Rs.4 lakhs per acre. The other landowners had filed petitions under Section 18 of the Act whereby the market value had been enhanced to Rs.6 lakhs per acre + 50% severance charges, vide award dated 30.05.2007, passed by the Reference Court in land Reference No.79/13.02.2003 titled Sewak Singh & others Vs. State of Punjab & others.

Resultantly, the petitioners had filed an application under Section 28-A, claiming the same benefits which had been allowed vide order dated 31.08.2010 (Annexure P-1), granting the same amount of compensation along with all statutory benefits. The amounts were to be calculated and were to be deposited by the Railway Department, to be released to the applicants after obtaining adequate security in the form of indemnity bonds duly attested by Executive Magistrate or the Notary Public.

As noticed, the petitioners are seeking higher compensation on account of the judgment passed by this Court in Jasmer Singh's case(supra). It is not disputed that the State has rightly taken the objection that the said amounts are not payable. It is pertinent to notice that for Village Gharuan, a sum of Rs.62,16,415/- per acre was assessed as market value by the Co-ordinate Bench on an earlier occasion, in appeal. The Apex Court in CA-23530-23531-2017 titled Union of India & others Vs. Jasmer Singh & others, decided on 01.02.2017, set aside the said judgment and allowed the appeals filed by the Railways and remanded the matter to this Court for re-decision. Resultantly, the prayer made, as such, for the said market value to be paid, cannot be acceded to.

Respondent No.4, in the written statement filed, also stated that the funds have not been released by the Railway authorities and the enhanced compensation could not be paid by the said respondent and the amount would be disbursed to the petitioners, keeping in view the orders of the Apex Court.

The said appeal along with other connected matters have now been re-decided bearing RFA-3161-2009 titled Jasmer Singh & another (II) Vs. State of Punjab on 07.12.2019 whereby this Court has fixed the market value for Village Gharuan @ Rs.13,44,000/- per acre along with all statutory benefits plus 30% severance charges. It is, thus, apparent that the landowners have become entitled not only for the enhanced compensation, as directed by the LAC in the case of other landowners but now would also be entitled to compensation @ Rs.13,44,000/- per acre. It was also held that the State should comply with the directions as laid down by the Apex Court in Haryana State Industrial Development Corporation Vs. Pran Sukh & others 2010 (11) SCC 175, wherein the amount had to be deposited in the bank accounts of the landowners, which was to be furnished to the Land Acquisition Collector within a period of 3 months. The relevant portion reads as under:

"Relief

235. Resultantly, a uniform amount of compensation to the tune of 30% on account of severance of land is granted on the market value which has been assessed for different villages and for different notifications. However, it is made clear that on the amount of 30% severance charge, the landowners would not be entitled for the benefits of Section 23 (1A) and Section 23 (2) as it has been held not to be the market value as such by the Apex Court in 'State of Punjab Vs. Amarjit Singh', 2011 (4) SCC 734.

236. Keeping in view the above discussion, the market value alongwith all statutory benefits is fixed as under:-

xxxx

(d) Qua notification dated 28.11.2000

(i) xxxx

(ii) For village Peer Sohana the market value is fixed @ Rs.13,05,700/- per acre alongwith all statutory benefits, whereas for villages Simbal Majra and Sakrullapur the market value is fixed @ Rs.12,09,600/- per acre alongwith all statutory benefits. For village Gharuan the market value is fixed @ Rs.13,44,000/- per acre alongwith all statutory benefits. For village Marauli Kalan and Marauli Khurd the market value is fixed @ Rs.10,75,200/- per acre alongwith all statutory benefits."

The Apex Court, though, has held that the application under Section 28-A should not be decided till the decision by the superior Courts, in Union of India & another Vs. Pradeep Kumari & others (1995) 2 SCC 736, Union of India Vs. Smt. Hansoli Devi 2002 (7) SCC 273 and Bharatsing & others Vs. The State of Maharashtra & others 2018 (1) RCR (Civil) 497 but in the peculiar facts and circumstances of the present case, it is to be noticed that the LAC directed payment on 21.08.2001 whereas the Reference Court had decided the matter on 30.05.2007, enhancing the compensation. Petition filed under Section 28-A had also been allowed on 31.08.2010 and inspite of that the amount has not been deposited by the Railway with the LAC. Almost 2 decades have passed since the award was rendered on 21.08.2001 and the landowners had been divested of their possession since then.

In Udho Dass Vs. State of Haryana 2010 (12) SCC 51, the Apex Court noticed the difficulties which were faced by the landowners as to the delay in the adjudication of the reference proceedings and the payment of compensation which is paid in driblets, which is directly applicable to the facts of the present case. Similarly, it was held in Union of India Vs. Munshi Ram (Dead) by LRs & others 2006 (4) SCC 538, that the applicants can be directed to refund the excess amount received by them in case of reduction of compensation by the superior Courts. It was also held that the principle of restitution would apply to the landowners who have been given the benefit of enhanced compensation, in pursuance to the decree passed in the proceedings on the applications of the other landowners. Relevant portion reads as under:

"8. We are of the view that the Union of India is right in its submission that the amount payable under Section 28A 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 28A 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 28A 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 28A in the year 1995, much before the decree was actually modified.

9. We hold that under Section 28A 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 28A 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 28A 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."

In V.Ramakrishna Rao Vs. The Singareni Collieries Company Ltd. & another 2010 (10) SCC 650, the provisions of Section 28-A were noticed and it was held that they were incorporated for the purpose of ensuring the goal of equality and that all the landlosers should be given the same amount of compensation.

Similar view has also been taken by the Apex Court in Narendra & others Vs. State of Uttar Pradesh & others (2017) 9 SCC 426. Relevant portion of the judgment read as under:

"8) The purpose and objective behind the aforesaid provision is salutary in nature. It is kept in mind that those land owners who are agriculturist in most of the cases, and whose land is acquired for public purpose should get fair compensation. Once a particular rate of compensation is judicially determined, which becomes a fair compensation, benefit thereof is to be given even to those who could not approach the court. It is with this aim the aforesaid provision is incorporated by the Legislature. Once we keep the aforesaid purpose in mind, the mere fact that the compensation which was claimed by some of the villagers was at lesser rate than the compensation which is ultimately determined to be fair compensation, should not be a ground to deny such persons appropriate and fair compensation on the ground that they claimed compensation at a lesser rate. In such cases, strict rule of pleadings are not be made applicable and rendering substantial justice to the parties has to be the paramount consideration. It is to be kept in mind that in the matter of compulsory acquisition of lands by the Government, the villagers whose land gets acquired are not willing parties. It was not their voluntary act to sell of their land. They were compelled to give the land to the State for public purpose. For this purpose, the consideration which is to be paid to them is also not of their choice. On the contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector. Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court etc. In order to ensure that the land owners are given proper compensation, the Act provides for 'fair compensation'. Once such a fair compensation is determined judicially, all land owners whose land was taken away by the same Notification
should become the beneficiary thereof. Not only it is an aspect of good governance, failing to do so would also amount to discrimination by giving different treatment to the persons though identically situated. On technical grounds, like the one adopted by the High Court in the impugned judgment,

this fair treatment cannot be denied to them.

9) No doubt the judicial system that prevails is based on adversarial form of adjudication. At the same time, recognising the demerits and limitations of adversarial litigation, elements of social context adjudication are brought into the decision making process, particularly, when it comes to administering justice to the marginalised section of the society."

In such circumstances, this Court is of the opinion that the present writ petition is liable to be partly allowed, to the extent that similarly situated landowners have been given the benefit of the enhancement and directions have been issued to comply with the directions of Pran Sukh (supra). In view of the fact that the petitioners have also not resorted to their remedy under Section 18, they are entitled for the same amount of compensation. Thus, respondents No.2 & 3-Railways shall deposit the amount of compensation as assessed for Village Gharuan @ Rs.13,44,000/- per acre along with all statutory benefits with the Land Acquisition Collector, Kharar within a period of 2 months from today. The said amount shall then be disbursed to the landowners, who shall furnish indemnity bonds to the Land Acquisition Collector that in case the amounts are reduced, they would refund the same.

The issue of reference of the matters to the District Judge for further enhancement, has been rendered infructuous at the present point of time and accordingly, the said issue is not adjudicated upon. However, it shall be open to the landowners to press the said applications before the LAC in case further enhancement is granted to similarly situated landowners by the Apex Court.

Writ petition stands partly allowed, to the above extent.

