
(2002) 08 P&H CK 0082
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 484 of 2000

Lal Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-08-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Land Acquisition Act, 1894 — Section 28A

Citation : (2003) 133 PLR 152 : (2003) 1 RCR(Civil) 718

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : Sudershan Goel, for the Appellant; R.K. Malik, for the Respondent

Final Decision : Allowed

Judgement

K.C. Gupta, J.—This revision is directed by petitioners Lal Singh and others against the order dated 8th March, 1989 passed by the Additional District Judge, Jind, whereby their application u/s 28-A(3) of the Land Acquisition Act, was dismissed.

2. Briefly stated, the facts are that land belonging to Bir Singh, Birkha and Munishi Ram as well as other co-sharers measuring 580 kanals 19 marlas was acquired by the Government of Haryana for the construction of Jind Cooperative Sugar Mills, Jind. Compensation at the rate of Rs. 22,000/- per acre was awarded by the Land Acquisition Collector (hereinafter be referred to as the "Collector"). On the application of co-owners Lal Singh alias Lala, and Birkha Singh etc., reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter be referred to as the "Act") was made to the District Judge, Jind. The Additional District Judge, Jind allowed enhancement of the compensation. Out of the aforesaid acquired land, the land measuring 37 kanals 2 marlas belonged to the petitioners.

3. On 5th August, 1985 Lal Singh alias Lala, and Birkha represented by his legal representatives Rukman and others (petitioners) filed an application before the

Collector, Jind u/s 28-A of the Act, for the grant of same compensation to them as has been granted to the other co-owners. That application was dismissed by the Collector vide order dated 5th May, 1986 as barred by limitation. He held that copy of the order was prepared on 3rd May, 1985 and the delivery to Lal Singh alias Lala and Birkha Singh represented by his L.Rs. was made on 4th May, 1985. The application u/s 28-A of the Act should have been moved on or before 2nd August, 1985 but since it was moved on 5th August, 1985, so, it was barred by limitation.

4. The petitioners moved another application on 11th August, 1986 u/s 18 of the Act by saying that dismissal of the application filed by them u/s 28-A of the act vide order dated 5th May, 1986 was against law. It was also stated that the application u/s 28-A of the Act could be moved upto 5th August, 1985 because 3rd August, 1985 and 4th August, 1985 were gazetted holidays. It was further stated that the Additional District Judge, Jind had decided another land acquisition case No. 18 dated 8th February, 1984 titled Chander Bhan v. State of Haryana on 27th February, 1986 and, therefore, the application u/s 28-A of the Act, could not be termed as time barred.

5. The said application u/s 18 of the Act was referred by the Collector to the District Judge, Jind. The Additional district Judge, Jind, who tried this application, treated it as an application u/s 28-A of the act for re-determination of the compensation on the basis of the award given earlier in favour of the co-owners. However, it was dismissed as barred by time as it had not been moved within three months as required u/s 28-A of the Act.

6. Aggrieved by the order dated 8th March, 1989 passed by the Additional District Judge, Jind, Lal Singh etc. petitioners have filed the present revision petition.

7. Along with the application, they filed Civil Miscellaneous No. 1585-CII of 2000 for condonation of the delay of 9 years 3 months and 4 days in filing this revision. The said Civil Miscellaneous was allowed and the delay was condoned by Hon'ble M.L. Singhal, J. vide his order dated 26th February, 2002.

8. I have heard Shri Sudershan Goel, learned counsel for the petitioners, Shri R.K. Malik, learned counsel for respondent No. 2 and carefully gone through the file.

9. It is well settled that Section 28-A of the Act is intended to come to the rescue of those who had failed to seek reference u/s 18 of the Act to the District Judge and thus missed the bus to claim that amount of compensation which had been awarded to those whose land had been acquired through the same notification. There is no dispute about it that the land belonging to Bir Singh, Birkha, Munshi Ram and other co-sharers measuring 58 kanals 19 marlas was acquired by the Government of Haryana for the construction of Jind Cooperative Sugar Mills, Jind. The aforesaid land also included the land of the petitioners to the extent of 37 kanals 2 marlas. Compensation at the rate of Rs. 22,000/- per acre was awarded

by the Collector. On the application of Lal Singh alias Lala, Birkha and other co-sharers a reference was made by the Collector u/s 18 of the Act to the District Judge. The Additional District Judge, Jind, had allowed enhancement of compensation. On 5th August, 1985, Rukman and other L.Rs. approached Collector u/s 28-A of the Act, which was dismissed by the Collector vide order dated 5th May, 1986 as barred by limitation. According to the Collector, copy of the award whereby the Additional District Judge, Jind, enhanced the compensation was applied on 20th April, 1985. The copy was ready for delivery on 3rd May, 1985. The application u/s 28-A of the Act could have been made within three months of 20th April, 1985 and adding the time of 14 days consumed for obtaining the copy, the application u/s 28-A could have been made upto 3rd August, 1985 but since it was moved on 5th August, 1985, so, it was held to be barred by limitation. Of course, 3rd August, 1985 it was Saturday and on 4th August, 1985, it was Sunday but there is no evidence that on 3rd August, 1985, it was Gazetted holiday and on the other hand the notification shows that it was a working day.

10. Now the sole question to be determined is whether the petitioners should be disallowed the compensation which had been awarded to their co-sharers whose land had been acquired under the same notification. It is well settled that the petitioners cannot be discriminated viz-a-vis the similarly situated persons and they could not be deprived of the amount of compensation admissible to them on the basis of the judgment of this Court in respect of the land forming part of the same notification. The petitioners are co-owners and are illiterate persons living in rural areas. Birkha petitioner expired during the pendency of these proceedings. An application was filed before the Collector by his widow and the minor children. The petitioners cannot be unreasonably discriminated against the similarly situated persons and thus cannot be deprived of their needs and livelihood for no fault on their part. It has been observed in *Survesh Kumar and others v. The State of Punjab and Anr.*, 1989(2) Rev. L.R.480 that not making of an application, as conceived of in the aforesaid provisions, is not only an application factually not made but also includes an application which when made is not entertained for whatever reason by the Collector. It is different if an application is so made and is rejected on merits within the limited domain of the Collector on merits. An application which was not entertained being time barred was as good as an application not made. In this situation, it was held that the petitioners were entitled to the benefits of Section 28-A of the Act.

11. The application u/s 28-A of the act was made by the petitioners in reference to LAC No. 1 dated 8th February, 1984 titled Mewa Singh and Anr. v. State of Haryana, which was decided by the learned District Judge, vide his judgment dated 20th April, 1985 enhancing the compensation. In view of the said judgment dated 20th April, 1985, the petitioners had filed application u/s 28-A of the Act before the Collector on 5th August, 1985. However, it was dismissed as time barred being filed 3 days beyond the period of limitation.

12. On 11th August, 1986, the petitioners filed an application u/s 18 of the Act seeking reference of their dispute to the Court. In this application they had mentioned about the order dated 5th May, 1986 rejecting their application u/s 28-A of the Act. This application was referred by the Collector to the Court of District Judge and was registered as LAC No.2 dated 3rd March, 1987. However, this application was treated as an application u/s 28-A of the Act by the learned Additional district Judge and was dismissed vide his order dated 8th March, 1989 by recording a finding that the application was barred by time.

13. It may be mentioned here that when the matter was pending before the District Judge, another reference being LAC No. 16 dated 8th February, 1984 titled Chander Bhan v. State of Haryana was pending which was decided by the Court on 27th February, 1986. It may be further mentioned here that against the award dated 20th April, 1985, some of the co-owners of the land covered by the same notification approached this Court by way of Regular First Appeal No.964 of 1985 titled Ratti Ram and Anr. v. State of Haryana. In this appeal, this Court allowed enhancement of compensation vide judgment dated 19th March, 1987.

14. Since another reference was pending before the Additional District Judge, Jind, when the matter of the petitioners was pending before the Collector for redetermination of the market value of the land in dispute u/s 28-A of the Act, which was decided by him on 27th February, 1986 while the application of the petitioners was dismissed by the Collector on 5th May, 1986, therefore, the Collector could have re-assessed the compensation in the light of the order dated 27th February, 1986. Similarly, the learned Additional District Judge, should have held the application u/s 28-A of the Act not to be barred by time, in view of the award dated 27th February, 1986 passed in LAC No. 16 dated 8th February, 1984 titled Chander Bhan v. State of Haryana or the order dated 19th March, 1987 passed in Regular First Appeal No.964 of 1985 passed in Ratti Ram and Anr. v. State of Haryana. Certainly in the light of the aforesaid judgments, application u/s 28-A of the Act, cannot be held to be barred by time. The petitioners cannot be denied compensation as allowed to the other co-owners similarly placed, which is certainly violative of Articles 14 and 21 of the Constitution of India, as they have been unreasonably discriminated against the similarly situated persons. In such circumstances, the application had to be considered in time, in view of the above maintained award dated 27th February, 1986 in Chander Bhan's case and judgment of this Court dated 19th March, 1987 in Ratti Ram's case (supra).

15. Consequently, the revision petition is allowed. The impugned order dated 8th March, 1989 being illegal is set aside and the petitioners are entitled to the same amount of compensation as was allowed to the other co-owners whose land was acquired by the same notification and as allowed to the other co-owners in Regular First Appeal No. 964 of 1985 (Ratti Ram and Anr. v. State of Haryana) decided on 19th March, 1987.