

(1989) 03 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 371 of 1988

Smt. Champa and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 03-03-1989

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1990) 2 ILR (P&H) 1

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : S.P. Laller, for the Appellant;

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This order will also dispose of Civil Revision No. 372 of 1988 as well, as the question involved is common in both the cases.

2. The Haryana Government vide Notification dated 17.10.1978 acquired the land situated within the municipal limit of Karnal for which the Land Acquisition Collector gave its award on 2.6.1982. Hari Singh, Shamsheer Singh, Lal Singh, sons of Patta filed a reference u/s 18 of the Land Acquisition Act (hereinafter referred to as the Act) which was ultimately accepted by the Additional District Judge, Karnal vide order dated 1-5-1987 and awarded compensation at the rate of Rs. 30/- per square yard alongwith solatium and interest as provided under the law. The Petitioners claimed themselves to be the owners in possession of the land but did not file any reference u/s of the Act. They however, invoked the jurisdiction of the executing Court by way of filing the applications with a prayer that they be also given the benefit of the enhanced compensation being co-sharers in the same land. The said application has been dismissed by the executing Court vide impugned order dated 4-9-1987 on the ground that the land in question was acquired on 17.10.1978 and the award was rendered by the Land Acquisition Collector on 2.6.1982 while the present application has been filed on 22.5.1987. The position of law, emanating from various provisions

namely Section 18, 18-A, 19, 20 and 28-A of the Act, is that the application as such was not maintainable u/s 151 Code of Civil procedure.

3. Learned Counsel for the Petitioners submitted that the Petitioners being co-sharers were entitled to the same compensation which was enhanced on reference u/s 18 of the land Act at the instance of other co-sharers. Thus, argued the learned Counsel, the application filed before the executing court was maintainable. In support of his contention he referred to *State of Haryana v. Bishan Singh and Ors.* 1981 P.L.J 40, *Punjab State v. M/s. Globe Motors Ltd. and Anr.* 1981 P.L.J. 73, and *Shri Harmat Singh and Ors. v. Land Acquisition Collector, Gurgaon* (1987-2) 92 P.L.R. 188. He also tried to distinguish the authorities such as *Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon*, *Justice D.K. Mahajan and Ors. v. The Union of India* (1987-1) P.L.R. 578 and *Collector U.T. Chandigarh v. Smt. Dhanno (deceased)* (1987-2) P.L.R. 152 relied upon by the executing Court in support of the impugned order.

4. Admittedly, there was no statutory provision that the co-sharers are the persons whose Land was acquired under the same notification are entitled to the enhanced compensation which the other claimants are awarded. In the Land Acquisition Act, as amended, Section 28--A was added and it was provided therein as under:

28-A. Re-determination of the amount of compensation on the basis of the award of the Court.--(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, Sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18 by written application to the Collector, within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under Sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under Sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provision of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/

s 18.

In other words, by providing Section 28-A of the Act, it was given a statutory recognition and the procedure to claim the enhanced compensation was also provided. Under the said provision the application is maintainable before the Collector and not before the executing Court as such. Bishan Singh's case (supra) and M/s. Globe Motors case (supra) were considered by this Court earlier in *The State of Punjab v. Smt. Tej Kaur* 1985 P.L.J. 146 and were distinguished. In M/s. Globe Motors case (supra) the solitary point raised was that since only one of the share holders had claimed the reference u/s 18 of the Act the rest of the share holder would not take the benefit of the same. This contention was repelled by the learned Single Judge which was affirmed by the Letters Patent Bench. Similarly, in Bishan Singh's case (supra) the only contention raised was that the claimants could not take the benefit of the award given by the Additional District Judge as they had not asked for the reference; the reference having been made by the Collector only in respect of the claim of one Kissi u/s 18 of the Act. In the said case admittedly, the names of all the co-sharers were there in the reference but the application was signed by one of them. The only relevant case is *Shri Harmant's case* (supra) where such an application was made before the executing Court but the effect of Section 28-A as amended could not be considered there as the reference u/s 18 was decided by the Additional Distt. Judge on 20.4.1912, much prior to the amendment inserting Section 28-A. In the present case reference was decided by the Additional District Judge, on 1.5.1987, i.e. after the amended Act. The Supreme Court in *Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon*, discussed the scope of Section 28-A as inserted by Act 68 of 1984 and observed in para 5 thereof as under:

Furthermore, there is no provision in the Act apart from Section 28-A for reopening of an award which has become final and conclusive. No doubt Section 28-A now provides for the re determination of the amount of compensation provided the conditions laid down therein are fulfilled. For such re determination, the forum is the Collector and the application has to be made before him within thirty days from the date of the award, and the right is restricted to persons who had not applied for reference u/s 88 of the Act. If these conditions were satisfied, the Petitioner could have availed of the remedy provided u/s 28-A of the Act, In that event, Section 25 would enure to their benefit. Any other view would lead to disastrous consequences not intended by the Legislature.

5. Since the Petitioners did not avail the remedy provided u/s 28-A of the Act the executing Court has rightly declined to entertain the same as it was not maintainable as such. Consequently, both the petitions fail and are dismissed with no order as to costs.