

**(1997) 11 P&H CK 0102**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Letters Patent Appeal No. 344 of 1987

Smt. Raksha Rani

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 24-11-1997

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 151  
Land Acquisition Act, 1894 — Section 28A

**Citation :** (1998) 119 PLR 583 : (1998) 3 RCR(Civil) 64

**Hon'ble Judges :** Sarojnei Saksena, J;G.S. Singhvi, J

**Bench :** Division Bench

**Advocate :** Phool Chand Dhiman, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

G.S. Singhvi, J.—The question of law which arises for adjudication in this appeal is whether the compensation awarded by the Land Acquisition Collector under the Land Acquisition Act, 1894 (for short "the Act") can be enhanced by the District Judge by entertaining an application under Order 47 Rule 1 read with Section 151 of the Code of Civil Procedure.

2. After hearing Shri Dhiman, learned counsel for the appellant, we are convinced that the judgment under appeal does not suffer from any error of law warranting interference by the Appeal Bench.

3. The facts of the case are that vide notification dated March 30, 1976, issued u/s 4 of the Act, land measuring 54.37 acres including 27 kanals 6 marlas of land belonging to the appellant was acquired by the Union of India. Vide his award dated 2.3.1978, the land Acquisition Collector allowed compensation at rates varying from Rs. 12,000/- to Rs. 23,500/- per acre keeping in view the agricultural quality of different areas. In the reference made at the instance of the appellant, the learned District Judge, Chandigarh, passed the award dated 28.1.1980, enhancing the compensation payable to the appellant to Rs. 33,600/-

per acre along with statutory solatium at the rate of 15% and future interest at the rate of 6% per annum. The appellant and the respondent felt satisfied with the award passed by the learned District Judge and neither of them filed appeal before the High Court. However after more than 6 years of the passing of the award by the learned District Judge, the appellant applied for review under Order 47, Rule 1 read with Section 151 of the CPC had prayed for grant of compensation at par with the compensation awarded to Jagdev Singh by the learned District Judge vide his award dated 5.12.1985. The respondent objected to the maintainability of the application but the learned District Judge overruled the same and accepted the prayer made by the appellant for enhancement of compensation by invoking Section 28-A of the Act. Vide his order dated 4.8.1986, the learned District Judge directed that the appellant be paid compensation at the rate of Rs. 75,000/- per acre along with solatium at the rate of 30% and the future interest at the rate of 12% from the date of publication of the notification u/s 4 of the Act till the date of making of the award by the Land Acquisition Collector/date of taking over of possession of the land acquired by the department, whichever is earlier. The learned District Judge also directed that interest at the rate of 9% per annum shall be payable for the subsequent one year and 15% per annum for the remaining period till payment/deposit.

4. The learned single Judge, before, whom the Union of India filed F.A.O. No. 1023 of 1986, held that the order of the learned District Judge was without jurisdiction because he could not have directed the payment of enhanced compensation by invoking Section 28-A of the Act.

5. Shri Dhiman argued that even though the learned District Judge may have erred in relying upon Section 28-A of the Act, his order should have been upheld because substantial justice had been done to the claimant. He relied on the judgment of the Supreme Court in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, , and the judgment of Delhi High Court in, Ram Mehar v. Union of India AIR 1987 Del 130.

6. We have carefully perused the record of the case and the judgment relied upon by Shri Dhiman, but are unable to agree with him that the learned Single Judge should not have set aside the order dated 4.8.1986.

7. A look at the order dated 4.8.1986 shows that after noticing the argument urged on behalf of the respondent that the review application filed under Order 47 Rule 1 read with Section 151 of the CPC was not maintainable, the learned District Judge relied on the decision of the Supreme Court in Raja Shatrunji Vs. Mohammad Azmat Azim Khan and Others, and Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, , and held that the review application was maintainable. In doing so, the learned District Judge also relied on Section 28-A of the Act, as would appear from the following observations made by him:

"Since, Shri Bahri made the said award dated 28.1.1980, according to the provisions of the said Act, as the same then existed, and subsequently, the said

Act, has been amended so as to introduce therein Section 28-A which seeks to bring parity amongst all the owners whose land have been acquired through the same notification issued u/s 4 of the said Act, in respect of the compensation, payable in respect thereof, the error is to be deemed to have thereby crept in the said award of Shri Bahri and that error is patent on the face of the record. So, the requirement of Order 47, Rule 1 C.P.C. are to be deemed to be satisfied in the present case."

8. While accepting the first appeal filed by the respondent-Union of India, the learned Single Judge made reference to Section 28-A and then held as under:-

"Reading the said provision, it is quite obvious that thereunder the application lies to the collector and not to the District Judge as such. In the present case, admittedly, the claimants have sought a reference u/s 18 and the compensation was enhanced vide order dated January 28, 1980. They were satisfied with the same and did not file any appeal etc. Simply because later on in some other reference the compensation was enhanced is no ground to review the earlier order. It has been held in Mewa Ram's case (supra) by the Supreme Court that there is no other provision except Section 28-A which provides for the re-opening of award which becomes final and conclusive. Once, it is found that the conditions laid down therein are not fulfilled and the same is not attracted, then there is no other provision for re-opening of the award which has become final and conclusive between the parties. The authorities relied upon by the learned counsel for the claimants have no relevancy to the facts of the present case and are, therefore, clearly distinguishable."

9. In our opinion, the view taken by the learned Single Judge in the light of the judgment of the Supreme Court in Mewa Ram v. State of Haryana 1986 R.L.R. 488 is correct in law and does not warrant interference.

10. The scope of Section 28-A of the Act has been considered by the Apex Court in a large number of decisions rendered in recent years. In Babua Ram and Others Vs. State of U.P. and Another, , a Two Judges Bench made a detailed examination of the issues and held that a person who has not made application u/s 18 of the Act can seek re-determination of the amount of compensation payable to him on the basis of another award made for payment of enhanced compensation provided the application is made within 3 months from the date of making of the first award. The same view has been reiterated in Union of India (UOI) and Others Vs. Karnail Singh and Others, . These judgment have been partly overruled by a 3 Judges Bench in Union of India and another Vs. Pradeep Kumari and others, . In this decision, the Court has held as under :

"The object underlying Section 28-A would be better achieved by giving the expression "an award" in Section 28-A 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 28-A. If the said expression in Section 28-A(1) is thus construed, a person would be able to seek redetermination of the amount of compensation

payable to him provided the following conditions are satisfied.

- (i) An award has been made by the Court under Part III after the coming into force of Section 28-A;
- (ii) By the said award the amount of compensation in excess of the amount awarded by the Collector u/s 11 has been allowed to the applicant in that reference;
- (iii) The person moving the application u/s 28-A is interested in other land covered by the same notification u/s 4(1) to which the said award relates;
- (iv) The person moving the application did not make an application to the Collector u/s 18;
- (v) The application is moved within three months from the date of the award on the basis of which the redetermination of amount of compensation is sought; and
- (vi) Only one application can be moved u/s 28-A for redetermination of compensation by an applicant."

11. In *Bai Shakriben (dead) by Natwar Melsingh and Others Vs. Special Land Acquisition Officer and Another*, , their Lordships held that on the basis of an application filed under Order 47 Rule 1 and Section 151 of the Code of Civil Procedure, the award of the Reference Court, which has become final, cannot be amended. In paragraph 4 of the decision, reference has been made to an earlier judgment of the Apex Court in *Raja Shatrunji's case (supra)*, and the same has been distinguished in the light of the subsequent decision in *State of Maharashtra Vs. Maharau Srawan Hatkar*, .

12. In *Union of India v. Swaran Singh and Others*, (1996) 5 SCC 501 , the Supreme Court again relied upon the judgment in *State of Maharashtra v. Maharav Srawan Hatkar (supra)* and held that Sections 151 and 152 of the CPC cannot be invoked for granting enhanced solatium and interest. Some of the observations made in that case, which have got bearing on the issue raised in this appeal are:

"After the reference Court has granted an award and decree u/s 26(1) of the Act which is an award and judgment u/s 26(2) of the Act or on appeal u/s 54, the only remedy available to a party is to file an application for correction of clerical or arithmetical mistakes in the decree. The award of solatium and interest would be granted on enhancement of compensation when the Court finds that the compensation was not correct. It is a part of the judgment or award. The Amendment Act 68 of 1984 came into force as on 24.9.1984. It is settled law that if the proceedings are pending before the Reference Court as on that date, the claimants would be entitled to the enhanced solatium and interest. In view of the fact that the Reference Court itself has answered the reference and enhanced the compensation as on 24.12.1981, the decree as on that date was correctly drawn and became final. Reference Court or the High Court has no power or

jurisdiction to entertain any application Under Sections 151 and 152 to correct any decree which has become final or to independently pass an award enhancing the solatium and interest as amended by Act 68 of 1984. Consequently, the award by the High Court granting enhanced solatium at 30% u/s 23(2) and interest at the rate of 9% for one year from the date of taking possession and thereafter at the rate of 15% till date of deposits u/s 28 as amended under Act 68 of 1984 is clearly without jurisdiction and, therefore, a nullity."

13. In *Hukam Chand and Others Vs. State of Haryana and Others*, , the Apex Court held that the remedy u/s 28-A(1) is available only to the claimants who received compensation without protest and who did not avail of the remedy u/s 18. The Court also negated the plea that the denial of remedy to those who availed of remedy of reference u/s 18 of the Act amounts to invidious discrimination violating Article 14 of the Constitution.

14. In *The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others*, , a Three Judges Bench held that the benefit of Section 28-A(1) of the Act is available to only those claimants who failed to seek a reference u/s 18 of the Act. The Court also held that a claimant who has sought and secured reference u/s 18 of the Act cannot apply u/s 28-A of the Act.

15. In *Smt. Ambey Devi Vs. State of Bihar and another, and Ramesh Singh (died) By LRs and Others Vs. State of Haryana and Others*, , their Lordships have held that the payment of higher compensation to one co-owner of acquired land and denial thereof to the other co-owner does not involve violation of Article 14 of the Constitution.

16. In *Mewa Ram's case (supra)*, their Lordships held that the Land Acquisition Act does not provide for re-opening of award, which becomes final and conclusive, except u/s 28-A and also that Section 28-A can be restored to only on fulfilment of the conditions contained therein.

17. In view of the principles laid down in the aforementioned decisions of the : Apex Court, we do not have the slightest hesitation to conclude that the application filed by the appellant under Order 47, Rule 1 read with Section 151 of the CPC for payment of enhanced compensation was not maintainable and the learned District Judge did not have the jurisdiction to review the award made on 28.1.1980 by invoking Section 28-A of the Act. The judgments relied upon by Shri Dhiman do not in any manner help the case of the appellant because in neither of those decisions, scope of Section 28-A of the Act or the maintainability of the application under Order 47 Rule 1 read with Section 151 of the CPC has been considered and decided.

18. For the reasons mentioned above, the appeal is dismissed. However, the appellant is not saddled with costs because no one has appeared on behalf of the respondent to contest the appeal.