

Before V. Ramaswami, C.J. and Ujagar Singh, J.

MEHAR SINGH,—Petitioner.

versus

LAND ACQUISITION COLLECTOR AND ANOTHER,—Respondents.

Civil Writ Petition No. 30 of 1988.

January 7, 1988

Land Acquisition Act (II of 1894)—Section 18—Land Acquisition (Amendment) Act, 1984—Section 28-A—Punjab Town Improvement Act (IV of 1922)—Section 36—Right to equal compensation—Jurisdiction of Land Acquisition Collector under Section 28-A to grant such benefit—Claimant once having had matter decided upon a reference under Section 18—Whether has right thereafter to invoke jurisdiction under Section 28-A—Collector—Whether has authority to vary or modify order of a superior Court.

Held, that Section 28-A of the amended Act would apply only to a case where one of the claimants applied for a reference to the Court and on such reference the court enhanced the compensation and that could be made applicable to a person who has neither asked for a reference nor any reference was made. As such it has to be held that the provisions of Section 28-A of the amended Act cannot be invoked by a person who has already asked for a reference under Section 18 of the Act and an award has been made by the Tribunal thereon. (Para4)

Held, that where the Land Acquisition Collector has not made a reference then the Tribunal is not seized of the matter and the only order or award that is available is the award of the Collector and he would have no jurisdiction either to vary or modify the order in the light of any order made by the Tribunal or superior Courts in another case. Hence the Land Acquisition Officer has no authority or jurisdiction to modify the award made by the Tribunal relying on Section 28-A. (Para 4)

Petition under Article 226 of the Constitution of India praying that :

- (a) *That a writ in the nature of certiorari may be issued quashing Annexure P. 3.*
- (b) *That a writ of mandamus may be issued directing the respondent No. 1 to grant benefit under section 28-A of*

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the act and award compensation @ Rs. 250 marla as has been awarded in the case of Karnail Singh etc. in land Acquisition case No. 50 of 1972.

- (c) *Any other writ, order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case may also be passed in favour of the petitioner.*
- (d) *Cost of the petition may also be awarded in favour of the petitioner.*

O. P. Goyal, Advocate, for the Petitioner.

JUDGMENT

V. Ramaswami, C.J.

In pursuance of notification published on December 11, 1970, under section 36 of the Punjab Town Improvement Act, 1922, which in substance is equivalent to section 4 of the Land Acquisition Act, an extent of 45 acres of land located in the revenue estate of two villages, namely, village Kuliawal and Jamalpur Awana were acquired by the Ludhiana Town Improvement Trust for the expansion scheme. The lands of the petitioner measuring about 52 kanals comprised in Khata No. 13/13 bearing Killa No. 43/1-21-22, 44/45, 45-5-6, 15/1, 15/2, 46/1, 2, 9, 10, 11/1, 12/2, 11/2 were also acquired. The Land Acquisition Collector awarded Rs. 100 per marla to the petitioner. Under the same acquisition, another land belonging to one Karnail Singh was also acquired and he was also given compensation at the rate of Rs. 100 per marla. The petitioner asked for a reference to the Land Acquisition Tribunal, Ludhiana, under section 18 of the Land Acquisition Act and a reference was made to it. The Land Acquisition Tribunal dismissed the same in Land Acquisition Case No. 50 of 1972, on August 21, 1974. A similar request for reference was made by Karnail Singh also and that was also referred to the Land Acquisition Tribunal. It appears that the cases were taken up on different dates by the Tribunal.

(2) The petitioner filed a regular first appeal against the award of the Tribunal but that was also dismissed by the learned Single Judge on the ground that it is not maintainable. In the reference made at the instance of Karnail Singh, the Tribunal enhanced the compensation to Rs. 125 per marla by an order dated November 5, 1975. Again, on further appeal, this was enhanced to Rs. 250 per

marla. The said Karnail Singh seems to have taken up the matter in appeal to the High Court. The Single Judge dismissed the appeal. Thereafter, the said Karnail Singh filed Civil Writ Petition and that was accepted by this Court and by an order dated May 18, 1983, the cases were remanded for re-assessing compensation of the acquired land by taking its future potential into account. After the remand, the Tribunal enhanced compensation to Rs. 250 per marla, by an order dated March 19, 1986. Thereafter, the petitioner filed an application before the Land Acquisition Collector purporting to be one under section 28-A of the Land Acquisition (Amendment) Act, 1984, praying that he also may be given compensation at the rate of Rs. 250 per marla as decided by the Tribunal in the case of Karnail Singh on the ground that both the lands were considered to be of equal value and the Land Acquisition Collector had awarded Rs. 100 per marla also for the Land of Karnail Singh, which has now been increased to Rs. 250 per marla. The Land Acquisition Collector dismissed this petition on the ground that section 28-A is not applicable to the present case. He also mentioned that the petitioner has suppressed the fact that he asked for a reference to the Land Acquisition Tribunal and on a reference made his claim petition was dismissed confirming the award of Rs. 100 per marla. It is at this stage that the present writ petition has been filed praying for quashing the order of the Land Acquisition Collector, Ludhiana and directing for the grant of benefit under section 28-A and awarding Rs. 250 per marla as decided in the case of Karnail Singh.

(3) The learned counsel contended that section 28-A is applicable to the facts and circumstances of this case. Section 28-A reads as follows:—

“28-A (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 under section 11, the persons interested in all the other land covered by the same notification under section 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 under section 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.

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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 the 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 provisions of the sections 18 to 28, so far as may be, apply to such reference as they apply to a reference under section 18".

(4) As may be seen from the provision that in terms of the section, the petitioner could not invoke the same as this is a case where the application was made to the Collector under section 18 and on a reference to it, the Tribunal confirmed the award. The section would apply only to a case where one of the claimants applied for a reference to the Court and on such reference, the Court enhanced the compensation and that could be made applicable to a person who has neither asked for a reference nor any reference was made. This is obviously for the reason that if a claimant asked for a reference to the Tribunal and the Tribunal makes an award, the award of the Land Acquisition Collector merges with the award of the Tribunal and ultimately the award that could be modified is only the award of the Tribunal and that award of the Tribunal could not be modified by the Land Acquisition Collector. In a case where the Land Acquisition Collector had not made a reference, then the Tribunal is not seized of the matter and the only order of award that is available is the award of the Collector and he would have no jurisdiction either to vary or modify the same in the light of any order made by the Tribunal or the superior courts in another case. Therefore, in this case, the Land Acquisition Officer would have no authority or jurisdiction to modify the award made by the Tribunal relying on section 28-A. Learned counsel, however, relied on certain decisions in support of his argument that even in a case where a claimant asked for a reference and

that was referred, he can ask the Collector to modify the award enhancing the compensation to be in consonance with the compensation awarded in the case to another claimant. In this connection, he relied on the decision of the Delhi High Court in *Ram Mehar v. Union of India* (1). As may be seen from the facts of that case that was a case under the Land Acquisition Act. The two claimants had filed in respect of the same acquisition two separate appeals to the High Court. One came before a Division Bench and the compensation was enhanced from Rs. 3,000 to Rs. 3,500 per Bigha by their judgment dated January 31, 1978. Another case regarding a different claimant came before a different Bench for hearing on October 11, 1984, and that Bench enhanced the compensation to Rs. 10,000 per Bigha from Rs. 3,000. Thereafter, first of the appellants, who was given only Rs. 3,500 per Bigha, applied for a review of the judgment dated January 31, 1978. The learned Judges held that though in terms of Order 47, Rule 1 of the Code of Civil Procedure, the review petition may not be maintainable, they would invoke the inherent powers under section 151 of the Code on the facts and circumstances of that case. On the merits, the learned Judges were of the view that section 28-A, in terms, would not be applicable and that section 28-A would be applicable only if the claimant had not asked for reference under section 18. They considered that the intention of section 28-A was to give equal compensation to all the claimants in respect of one acquisition and on that basis to give effect to that intention, they will have to interfere. Therefore, the learned Judges in review of their earlier order, accepted the review petition and enhanced the compensation to Rs. 10,000 per Bigha. We are unable to see how this judgement would help the learned counsel in any way in respect of his argument. On the other hand, we are of the view that the ratio of the judgment is that the provisions of section 28-A could not be invoked by a person who had already asked for reference under section 18 and the award had been made by the Tribunal or the appellate authority on reference arising thereunder. The other two judgments relied on by the learned counsel *Justice D. K. Mahajan and others v. Union of India and another* (2) and *Kartara and another v. The State of Punjab* (3), also do not support the contention of the petitioner. In fact the decision in the case of *Kartara and another v. The State of Punjab*, is against the contention of the learned counsel, but it is stated by the learned counsel that it is under appeal. Be that as it

(1) A.I.R. 1987 Delhi 130.

(2) 1987 P.L.J. 202.

(3) 1987 P.L.J. 464.

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may, on a plain reading of section 28-A, we are unable to agree with the learned counsel that the Land Acquisition Collector has any jurisdiction at this stage, after the matter has been referred to the Court which had decided the issue, to modify his award. If the learned counsel wanted to rely on the decision of the Delhi High Court or any other decision of this Court, he may only file a review petition before the Land Acquisition Tribunal and not to invoke the jurisdiction of the Land Acquisition Collector under section 28-A. There are, therefore, no grounds to interfere. This petition is accordingly dismissed.

R.N.R.

Before Ujagar Singh, J.

GURMIT KAUR,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 7900-M of 1987.

January 7, 1988.

Code of Criminal Procedure (II of 1974)—Sections 167(2) and 439—Right to bail—Failure to file charge-sheet within 90 days—Accused—Whether has right to be enlarged on bail—Subsequent filing of charge-sheet—Whether extinguishes his right.

Held, that as a matter of fact, the order of remand for judicial custody cannot be made by the magistrate if the custody after the production of the accused before a Magistrate has exceeded or is likely to exceed 60 days (now within 90 days after the said section has been amended), and it is the duty of the magistrate to release the accused on bail as soon as the said period expires. If the filing of the charge-sheet can extinguish the right to be released on bail, the provisions of the said proviso can be conveniently avoided by the investigating agency. In any case the application for bail was made before the challan was presented and, therefore, the accused had the right to be released on bail. (Paras 5 and 6)

H. S. Bhullar, *Advocate for the Petitioner.*

Miss Ritu Bahri, *Advocate for the State, for the Respondent.*