

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. 305 of 2021

Decided on June 03, 2022

U.P. Avas Evam Vikas Parishad Petitioner

Through : Mr. Vivek Saran, Advocate

v/s

Mohd. Yaqoob and others Respondents

Through : Mr. A.K. Roy, Additional Chief Standing Counsel for
respondent No.2

**CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE J.J. MUNIR, JUDGE**

ORDER

RAJESH BINDAL, C.J.

1. The matter has been placed before this Bench on a reference made by learned Single Judge for consideration of the following issue, as the order passed by an earlier Division Bench in Writ-C No. 2015 of 2021 was apparently found to be per incuriam:

“Whether the Collector, exercising powers under Section 28A of the Land Acquisition Act, 1894 is a ‘Court’ and his order made on an application for re-determination of compensation, an award of the Court for the purpose of an appeal under Section 54 of the Act of 1894?”

2. The order dated August 2, 2021 passed by learned Single Judge, while referring the aforesaid question of law for consideration by larger Bench containing facts, in brief, is quoted below:

“This appeal has been preferred from an order of the Additional District Magistrate (Land Acquisition/Awas), Kanpur Nagar

dated 23.01.2001 passed in Case No. 15 of 2021. The said order has been passed in exercise of powers under Section 28A of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act of 1894'). An application was made to the Collector for determination of compensation payable to the claimant-respondent-landholders on ground that the Additional District Judge- IVth, Kanpur Nagar vide judgement and award dated 27.01.2021 passed in Reference No. 59/70/1994 relating to the same acquisition proceedings and covered by the same notification under Section 4 of the Act of 1894/28 of the Avas Vikas Parishad Adhiniyam had granted a higher compensation than that awarded by the Collector.

This order of the Additional Collector is impugned in the present appeal under Section 54 of the Land Acquisition Act. At the outset, this Court inquired of Mr. Vivek Saran as to how a first appeal is maintainable from an order of the Collector made under Section 28A of the Act of 1894. He invited the attention of the Court to an order of a Division Bench of this Court in Writ-C No. 2015 of 2021, where their Lordships of the Division Bench, after referring to the provisions of Section 28A of the Act of 1894 and Section 54 held that the writ petitioner has an efficacious remedy available under Section 54 of the Act. A perusal of the aforesaid order, which summarily parts with the writ petition, indicates that there, their Lordships were of opinion that against an order under Section 28A passed by the Collector, redetermining compensation on the basis of an award made by the Court in a reference under Section 18 covered by the same notification under Section 4(1) of the Act of 1894, would be appealable to this Court under Section 54.

A reading of Section 54 of the Act of 1894 clearly shows that the provision opens with a non obstante clause and says that

appeal shall lie in any proceedings under this Act to the High Court from the award or from any part of the award of the Court. This being so, the provisions of Section 54 are explicit that what is appealable to this Court is an award or a part of the award of the "Court". The "Court" has been defined under Section 3(d) of the Act of 1894 as follows:

"3. Definitions.— In this Act, unless there is something repugnant in the subject or context,-

(a) X X X

(b) X X X

(c) X X X

(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless, the (appropriate Government) has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act;"

Clearly, to the understanding of this Court, the definition of "Court" under the Act of 1894 means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed a special Judicial Officer within any specified local limits to perform the functions of the Court. The Collector, exercising powers to re-determine the compensation payable on the basis of an award of the Court passed in relation to the same acquisition covered by the same notification under Section 4(1) is not the "Court", envisaged under Section 54 of the Act of 1894.

In view of the said reasoning, I am of opinion that the view of the law taken by their Lordships of the Division Bench appears to be contrary to the statute. Still, this Court does not wish to

express a final opinion in the matter holding the decision of their Lordships of the Division Bench per curiam. In the opinion of this Court, this matter is required to be considered by a larger Bench. The following question is, accordingly, referred for consideration by a larger Bench:-

"Whether the Collector, exercising powers under Section 28A of the Land Acquisition Act, 1894 is a 'Court' and his order made on an application for re-determination of compensation, an award of the Court for the purpose of an appeal under Section 54 of the Act of 1894?"

Let papers of this case be laid for orders before His Lordship the Hon'ble the Acting Chief Justice by the Registry for the purpose of constitution of a larger Bench to consider the question."

3. As the earlier order dated January 27, 2021 passed by a Division Bench of this Court opining that against an award passed by the Collector in terms of Section 28-A of the Land Acquisition Act, 1894 (for short, 'the Act') is appealable under Section 54 of the Act, we deem it appropriate to reproduce the same as well, as the same is quite brief and the opinion was expressed without examining the issue in detail:

"The challenge in this petition is to an order dated 19.02.2020 passed by Additional Collector (Land Acquisition) / (Housing), Kanpur Nagar. The order as apparent therefrom is passed in exercise of Section 28-A of the Land Acquisition Act, 1894 which mandates:

"[28A. 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 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:

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

In our considered opinion, the petitioner has remedy under Section 54 of the Act of 1894 which provides for:

"[54. Appeals in proceedings before Court. - Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to 4[the Supreme Court] subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof.]"

Since the petitioner has efficacious statutory remedy available under Section 54 of the Act, we are not inclined to interfere in the petition against the order. Instead, we relegate the petitioner to avail the remedy available under the Act of 1894.

Petition stands disposed of finally.”

4. Learned counsel for the appellant submitted that in view of the opinion expressed by the Division Bench of this Court in the aforesaid judgment dated January 27, 2021 in **Writ-C No. 2015 of 2021 (U.P. Avam Vikas Parishad Vs. State of U.P. and others)**, the appellant has a right to file an appeal challenging the award of the Collector as passed under Section 28-A of the Act, whereas the stand taken by learned counsel for the respondent is that no appeal would be maintainable as the same can be filed only against any award or part of the award of the Court and the Collector cannot be termed as ‘Court’.

5. Heard learned counsel for the parties and perused the paper book.

6. The relevant provisions of the Act are extracted below:

"Section 3(d)

3. Definitions.- In this Act, unless there is something repugnant in the subject or context,-

(a) to (c) xx xx xx

(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless, the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act;

Section 28A

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 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:

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 subsection (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 subsection (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 Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.

Section 54

Appeals in proceedings before Court.— Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLIV thereof."

7. Section 28A was inserted in the Act (Act 68 of 1984) with effect from September 24, 1984. The object is to grant parity in compensation even to those landowners who, on account of various reasons such as poverty, ignorance or other disability, could not file objections and seek reference to the court for re-determination of compensation under Section 18 of the Act. The benefit of Section 28A of the Act is available only to a landowner who had not earlier sought reference under Section 18 of the Act. As per scheme of Section 28A of the Act, a person who is interested in the land covered by

the same notification and had not filed application under Section 18 of the Act earlier, may, by written application to the Collector within 3 months from the date of award of the Court, require that the amount of compensation payable to him/them may be re-determined on the basis of the amount of compensation awarded by the court to the landowners who had filed objections under Section 18 of the Act. On receipt of the application under sub-section (1) of Section 28A of the Act, the Collector is required to conduct an enquiry after giving notice to all the persons interested and giving them reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicant(s). Sub-section (3) of Section 28A of the Act provides that any person, who is not satisfied with the award passed under sub-section (2) may by written application to the Collector require that the matter may be referred by the Collector to the Court for determination of compensation. The provisions of Sections 18 to 28 of the Act are applicable.

8. The scheme of Section 28A of the Act was considered by Hon'ble the Supreme Court in **Babua Ram and others Vs. State of U.P. and another, (1995) 2 SCC 689**, wherein it was opined that Section 28A of the 1894 is a complete Code in itself providing for remedy to the persons who could not earlier file application under Section 18 of the Act. Relevant paragraph thereof is extracted below:

"14. ... A bare reading of sub-section (1) of Section 28-A would indicate that wherein an award under this Part, (Part III consists of Sections 18 to 28), 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(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 writing make an application to the Collector within three months from the date of the award of

the Court requiring that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the court. The proviso gives a right to exclude the time taken from the day on which the award was pronounced and the time required to obtain a copy of the award in computation of three months within which the application for redetermination has been made in writing to the Collector under sub-section (1) of Section 28-A. The basis for redetermination is the award of the Court and the compensation awarded therein. Sub-section (2) thereof enjoins the Collector to issue notice to all the persons interested, i.e., the applicant, the State and the beneficiary, if any, to give them reasonable opportunity of being heard in the inquiry conducted thereon and to make the award determining the amount of compensation payable to the applicants under sub-section (1). Sub-section (3) gives a right to the applicant either to accept the award or to accept the compensation under protest. In the latter case he has been given a right under sub-section (3) to make a written application to the Collector to refer the matter for determination under Section 18 to the Court. The provisions of Sections 18 to 28, as far as may be, apply to such references. Thus, Section 28-A is a complete Code in itself providing substantive right to an interested owner who received compensation under Section 18 without protest for higher compensation, and remedy has been provided to make a written application within the prescribed period. The non-obstante clause lifts the rigour of the bar created by Section 18(1) and the second proviso to Section 31 and makes him eligible to be on a par with his neighbour to claim parity for compensation to the land similarly situated as the land covered by the court award." *(Emphasis supplied)*

9. In the aforesaid judgment, it was further opined that the Collector while considering the application under Section 28A of the Act should wait for the final verdict either of the High Court concerned or Hon'ble the Supreme Court before making an award, in case the issue has still not attained finality.

10. The issue was further considered by Hon'ble the Supreme Court in **V. Ramakrishna Rao Vs. The Singareni Collieries Company Ltd. and another, 2011 (1) RCR (Civil) 149**, wherein it was held that the amendment carried out in the Act after 90 years of its enactment, while adding Section 28A of the Act was with an object to provide some solace to the landowners, whose land had been acquired, but on account of various reasons including poverty, ignorance and other disabilities could not file objections under Section 18 of the Act for disputing the award of the Collector and claiming higher compensation. They have been given opportunity to seek compensation at par with other landowners, whose land was acquired vide same notification. However, the benefit of Section 28A of the Act is available only to a landowner who had not been able to file objections to the Collector under Section 18 of the Act. It was further opined that remedy against award under Section 28A(2) of the Act is to file application under Section 28A(3) of the Act seeking reference of the dispute to the Court. Reliance was placed upon an earlier judgment of Hon'ble the Supreme Court in **Union of India and another Vs. Pradeep Kumari and others, (1995) 2 SCC 736**. Relevant paragraphs 9 and 11 of judgment of **Ramakrishna Rao's case (supra)** are extracted below:

"9. The above reproduced provision represents the Legislature's determination to ensure that the goal of equality enshrined in the Preamble of the Constitution and Articles 38, 39 and 46 thereof is translated into reality, at least in the matter of payment of compensation to those who are deprived of their land for the benefit of the State, its instrumentalities/agencies and even private persons. Section 28A also represents statutory

embodiment of the doctrine of equality in matters relating to the acquisition of land. The Act which was enacted in 1894 and was amended after 90 years has the potential of depriving a large segment of the society i.e. the 'agriculturist' of their only source of livelihood. The scheme of Section 28A provide some solace to this segment of the society by ensuring that such of the land owners whose land was acquired under the same notification but who could not, on account of poverty, ignorance and other disabilities join others in seeking reference under Section 18 get an opportunity to claim compensation at par with others. This section is aimed at removing inequality in the payment of compensation in lieu of acquisition of land under the same notification. To put it differently, this section gives a chance to the land owner, who may not have applied under Section 18 for determination of market value by the Court to seek re-determination of the amount of compensation, if any other similarly situated land owner succeeds in persuading the Reference Court to fix higher market value of the acquired land. Therefore, Section 28A has to be interpreted in a manner which would advance the policy of legislation to give an opportunity to the land owner who may have, due to variety of reasons not been able to move the Collector for making reference under Section 18 of the Act to get higher compensation if market value is revised by the Reference Court at the instance of other land owners, whose land is acquired under the same notification. Of course, this opportunity can be availed by filing application within the prescribed period. In **Union of India v. Pradeep Kumari (supra)**, a three-Judge Bench of this Court held that Section 28A is in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor landowners, who are not able to take

advantage of the right of reference to the Civil Court under Section 18 of the Act and such a provision should be interpreted in a manner which advances the policy of legislation.

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11. If sub-section (3) of Section 28A is interpreted keeping in view the object sought to be achieved by enacting the provision for removing inequality in the matter of payment of compensation, it must be held that a person who is not satisfied with an award made under Section 28A(2) can make an application to the Collector under Section 28A(3) for making a reference to the Court as defined in Section 3(d) of the Act and this right cannot be frustrated merely because as a result of re- determination made under Section 28A(2) read with Section 28A(1) the applicant becomes entitled to receive compensation at par with other land owners. There is nothing in the plain language of Section 28A(3) from which it can be inferred that a person who has not accepted the award made under Section 28A(2) is precluded from making an application to the Collector with the request to refer the matter to the Court. Of course, the Court to which reference is made under Section 28A (3) will have to bear in mind that a person who has not sought reference under Section 18 cannot get compensation higher than the one payable to those who had sought reference under that Section."

(Emphasis supplied)

11. In the aforesaid judgment, it was also opined that the object of Section 28A of the Act is not that a person, who had not sought reference initially under Section 18 of the Act, can get compensation higher than one payable to those who had sought reference by filing application under Section 18 of the Act.

12. Section 54 of the Act, which provides for appeal, inter-alia, lays down that an appeal shall lie in any proceedings under the Act to the High Court against an award or any part thereof, of the Court. This clearly means that appeal lies to this Court only against the award or a part thereof passed by the Court. The term "Court" has been defined in Section 3(d) of the Act to mean Principal Civil Court of original jurisdiction, unless the Government has appointed a special judicial officer within any specified local limits to perform functions of the Court under the Act. It is not the case set up by either of the parties that the Collector has been appointed by the Government as a special Judicial Officer to perform functions of the Court under the Act. It has been opined by Hon'ble the Supreme Court in **Officer on Special Duty (Land Acquisition) and another Vs. Shah Manilal Chandulal and others, (1996) 9 SCC 414** and **State of Karnataka Vs. Laxuman, (2005) 8 SCC 709** that Collector being not a Court, provisions of Limitation Act do not apply to the proceedings before him. The same view was followed by the Punjab and Haryana High Court in **Smt. Nikko and others Vs. State of Haryana and another, 2013(1) RCR (Civil) 90** and **RFA No. 4643 of 2013 – Lajwanti and others Vs. State of Punjab and another**, decided on 18.9.2014.

13. The aforesaid provisions make it crystal clear that an appeal to this court lies only against the award or a part of the award passed by the court and not the Collector. In the present case, the beneficiary of the acquisition has filed appeal impugning the award of the Collector passed under Section 28A(2) of the Act, which is not appealable under Section 54 of the Act. In fact, the remedy against the same has been clearly provided in Section 28A(3) of the Act.

14. The contention of learned counsel for the landowners that going to the Reference Court would be an exercise in futility as the Collector had already awarded the compensation on the basis of the award of the Reference Court is merely to be noticed and rejected. Once a specific procedure has been provided, the same deserved to be followed. Remedy of appeal is a creation of statute, unless it is specifically provided that the

order/award cannot be impugned before the Court. Reference can be made to the judgments of Hon'ble the Supreme Court in **Indira Nehru Gandhi (Smt.) Vs. Raj Narain and another, (1975) 2 SCC 159** and **Shiv Shakti Coop. Housing Society, Nagpur Vs. M/s Swaraj Developers and others, AIR 2003 SC 2434**.

15. In CR No. 4225 of 2014 – **Dalbir Singh and another Vs. State of Punjab and others**, decided on 25.5.2015, the Punjab and Haryana High Court opined that a revision against the award of the Collector under Section 28A of the Act is not maintainable.

FINDINGS

16. Accordingly, the question is answered in terms that against an award of the Collector passed under Section 28A of the Land Acquisition Act, 1894, appeal is not maintainable before this Court as the remedy against the same is available under Section 28A(3) of the Act by filing an application to the Collector seeking reference of dispute to the Court.

17. The matter shall now be placed before the regular Bench as per roster for decision in the light of this judgment.

(J.J. Munir, J.) (Rajesh Bindal, C.J.)

Allahabad
June 03, 2022
AHA

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes✓/No