



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 28 November 2024**
Judgment pronounced on : 10 December 2024

+ **W.P.(C) 5864/2019 and CM APPL. 40279/2019**

MIR SINGH (THROUGH LRS)Petitioner
Through: **Mr. Anand Yadav and Ms. Anita Tomar, Advs.**

versus

UNION OF INDIA & ANRRespondents
Through: **Mr. Anubhav Deep Singh, Adv. For R-2. Mr. Sanjay Kumar Pathak, SC with Mrs. K. K. Kiran Pathak, Mr. Sunil Kumar Jha and Mr. M.S. Akhtar, Advs. For LAC**

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The petitioners, who are the legal heirs of late Shri Mir Singh are invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, *inter alia* seeking directions against the respondents to pay enhanced compensation for the land belonging to late Shri Mir Singh, which stood acquired *vide* Award No. 17/89-90, along with all the statutory benefits which were awarded to the other co-owners in respect of the acquisition of the said jointly-owned land.



2. The petitioners have claimed the following reliefs in the instant writ petition: -

“(a) Quash and set aside letter/decision no. ADM/LAC/SW/2019-20/20333 dated 25.04.2019 passed by the ADM (South-West)/LAC.

(b) Directing the Respondents to pay the enhanced compensation to the Petitioners of land of Late Shri Mir Singh acquired vide Award no. 17/89-90 as paid to Shri Balwant Singh one of the co-owner/co-sharer in RFA No. 715/2003.

(c) any other and further writ, order or direction that this Hon’ble Court may deem fit and proper in the circumstances of the case be also made in favour of the Petitioners and against the Respondents”

FACTUAL BACKGROUND:

3. Shorn of unnecessary details, Sh. Mir Singh along with Sh. Rattan Lal, Sh. Mange Ram and Sh. Balwant Singh were the co-owner of a parcel of land measuring 64 Bigha 14 Biswa¹, situated in the Revenue Estate of Village Dhul Siras, Delhi. In the aforementioned land, each of them had 1/4th share. It is also borne out from the record that Sh. Mir Singh along with Sh. Rattan Lal, Sh. Mange Ram and Sh. Balwant Singh were co-owners of the land admeasuring 13 bigha 14 biswa², situated in Revenue Estate of Village Dhul Siras, Delhi, and each had 1/5th share.

4. The petitioners contend that the respondents notified the lands in question of Late Sh. Mir Singh under Section 4 of the Land Acquisition Act, 1894³, through Notification No. F-7(1)/84/L&B dated 09.01.1987, for public purpose, i.e., 400 KV Sub Station for

¹Khasra Nos. 61//1(4-8), 2(4-08), 9(4-16), 10(4-16), 11(4-16), 12(4-16), 18/2(1-12), 61/19(4-16), 20(4-16), 21(3-19), 23(1-14), 22(2-16), 23(1-04), 24/1(0-6), 28(0-5), 29(0-4), 62//16(4-09), 24/2(1-03), 25(4-09), 64//5 (0-10) and 65//1(0-3), 249/1(5-12).

² Khasra Nos. 62/6 (4-9), 7(4-16) and 15(4-9)

³ 1894 Act



DESU⁴. It is stated that the LAC⁵ announced the Award No. 17/1989-90 on 15.09.1989, and in the said award, under the heading “Claim of Compensation”, at Serial Nos. 8 to 11, mentions the names of Sh. Ratan Lal, Sh. Mir Singh, Sh. Mange Ram, and Sh. Balwant Singh, each holding a 1/4th share in land measuring 56 Bigha 1 Biswa, comprising Khasra No. 61//1, etc., and a 1/5th share in land measuring 13 Bigha 14 Biswa, comprising Khasra No. 62//6, etc. The LAC awarded compensation of Rs. 9,300/- per Bigha. The said Award included land admeasuring 13 Bigha 14 Biswa, comprising Khasra Nos. 62//6(4-9), 7(4-16), and 15(4-9), owned by the abovementioned persons, each holding a 1/5th share. Additionally, the Award includes land comprising Khasra Nos. 61//1 (4-8), 2 min. (1-08), 9 min. (4-15), 10 (4-16), 11 (4-16), 12 (4-16), 18/2 (1-12), 61/19 (4-16), 20 (4-16), 21 (3-19), 22 (2-16), 23 (1-14), 24/1 (0-6), 28 (0-5), 29 (0-4), 62//16 (4-09), 24/2 (1-03), 25 (4-09), 64//5 (0-10), and 65/1 (0-3), owned by the abovementioned persons, each holding a 1/4th share.

5. It is averred that being aggrieved by the said Award, the co-owners filed reference petitions under Section 18 of the 1894 Act, and the learned ADJ⁶, by way of different orders, awarded an amount at the rate of Rs. 19,000/- per Bigha.

6. It is further submitted that the petitioners were informed on or around 20.09.2018 that RFA No. 715/2003⁷, filed by one of the co-owners, namely Sh. Balwant Singh, regarding the land acquired under

⁴ Delhi Electric Supply Undertaking

⁵ Land Acquisition Collector

⁶ Additional District Judge

⁷ Balwant Singh v. Union of India & Anr.



Award no. 17/89-90, had been allowed, resulting in an enhancement of compensation from Rs. 19,000/- per bigha to Rs. 37,000/- per bigha, along with all statutory benefits under the 1894 Act. The operative part of the order dated 22.07.2016 passed by this Court is reproduced below: -

“1. This land acquisition appeal under Section 54 of the Land Acquisition Act, 1894 (hereinafter “the Act”) challenges the judgment of the trial court dated 15.1.2003 by seeking enhancement of compensation granted by the impugned judgment under Section 18 of the Act.

2. Learned counsel for the appellant has argued that the land which was acquired and which is the subject matter of the impugned judgment is the land in village Dhul Siras with respect to which Notifications were issued under Sections 4,6 and 17 of the Act vide Notification no. F. 7(1)/84/L&B(i)(ii)(iii) dated 9.1.1987 and 18.9.1987 for the public purpose of construction of 400 KV Sub-station for the erstwhile Delhi Electric Supply Undertaking (DESU) and with respect to same notification the adjacent land of village Bamnauli was also acquired. With respect to the land of village Bamnauli acquired under the same notification a Division Bench of this Court in the judgment reported as **Risal Singh & Ors. Vs. Union of India and Anr. 2006 (89) DRJ 527 (DB)** has granted compensation @ Rs. 37,000/- per bigha in addition to the interest and statutory benefits under Section 23(1-A) of the Act and therefore this appeal be also disposed as covered by the judgment in the case of **Risal Singh & Ors. (supra)**.

3. Learned counsel for the respondents could not dispute that the notification which was in issue in the case of **Risal Singh & Ors. (supra)** is the same notification which is in issue in the present case and the land in the village Bamnauli subject matter of the decision in the case of **Risal Singh & Ors. (supra)** is the adjacent land to the land in village Dhul Siras. Both lands are acquired for 400 KV Sub-station. Accordingly, this appeal is disposed of following the ratio in the judgment in the case of **Risal Singh & Ors. (supra)** and appellant will be entitled to compensation at Rs. 37,000/- per bigha with statutory interest and other statutory benefits as per Section 23(1-A) of the Act.

4. The judgment in the case of **Risal Singh & Ors. (supra)** appealed before the Supreme Court and the Supreme Court has dismissed the SLP nos. 22796-22804 of 2007 on 5th July, 2010.



5. Any inter se dispute as to who is to pay compensation ie whether the respondent no. 1 or respondent no. 2, as argued on behalf of the counsel for respondent no. 2/DPCL, is not and cannot be the subject matter of the present appeal.

6. The appeal is allowed and disposed of accordingly.”

7. It is stated that the petitioners herein were under the impression that their father, i.e., Late Sh. Mir Singh had appealed against the order of the Learned ADJ, but they were unable to trace any such appeal. Reliance is placed on **Smt. Kalawati and Ors. v. Union of India & Ors.**⁸, wherein it was held that when a person’s land is acquired and compensation is determined by the LAC, they should ordinarily seek enhancement as per the procedure under the 1894 Act. However, if a co-owner secures enhanced compensation through appeal or other proceedings, all co-owners are entitled to the same treatment, since the land was held jointly. In furtherance of the above, reliance is also placed upon **Sh. Karam Chand (Now deceased) through his LRs v. Union of India & Ors.**⁹, wherein this Court had held that in view of the fact that the other co-owners of acquired land had been granted enhanced compensation, the petitioners would also be entitled to the same treatment as the other co-owners, and resultantly the petitions were allowed by this Court.

8. It is averred that Late Sh. Mir Singh, being a co-owner of the acquired land, is entitled to the same enhanced compensation as granted to another co-owner, Sh. Balwant Singh, in RFA No. 715/2003. On the established legal principle that all co-owners of

⁸ 2004 (74) DRJ 515 (DB)

⁹ W.P.(C) Nos. 7184, 7188, 7211 and 7249 of 2015



jointly held land are entitled to equal treatment in matters of enhanced compensation, the legal heirs of Late Sh. Mir Singh are similarly entitled to such benefits. Accordingly, the petitioners submitted an application dated 08.10.2018 to respondent No. 1, with a copy served to respondent No. 2, requesting compensation for Late Sh. Mir Singh's share at the rate of Rs. 37,000/- per bigha, along with all statutory benefits, as awarded to Sh. Balwant Singh.

9. The petitioners further submit that despite the enhancement of compensation to Rs. 37,000/- per bigha, along with statutory interest and benefits awarded in RFA No. 715/2003 to co-owner Sh. Balwant Singh, the petitioners have not been granted the same enhanced compensation for their share of the acquired land. The application dated 08.10.2018 and a reminder dated 05.11.2018 were submitted to the respondents, however no compensation has been paid yet, nor has any reply been received. On being aggrieved of the same, the petitioners filed W.P.(C) 13806/2018 and this Court *vide* order dated 20.12.2018 directed the respondent No. 1 to dispose of the representation of the petitioners within 6 weeks and communicate the said decision within a period of two weeks thereafter.

10. The petitioners submit that they had made a representation dated 10.01.2019 and a reminder dated 08.03.2019 for compliance of the order dated 20.12.2018. Thereafter, they received a notice dated 15.03.2019 from the ADM¹⁰(South-West) [**'ADM'**]/Land Acquisition Collector for a hearing scheduled on 29.03.2019 and subsequently received a letter/decision dated 25.04.2019 (No.



ADM/LAC/SW/2019-20/20333) from the learned ADM (South-West)/LAC. In the said decision, the ADM referred to Section 28A of the 1894 Act, and stated that the ADM lacked the authority to enhance compensation to match that of the co-owner, as requested by the petitioners.

11. It is submitted that the ADM failed to consider binding precedents, including the judgments in *Smt. Kalawati (supra)* and *Karam Chand (supra)* by this Court, despite the same being brought to his attention and copies being provided. The petitioners urge that the respondent No. 1, as the acquiring authority, is liable to pay compensation for the acquired land, and the ADM acts on its behalf in disbursing such payments. Accordingly, it is prayed that the letter/decision dated 25.04.2019 be quashed, as it holds no legal validity.

ANALYSIS & DECISION

12. After hearing the arguments presented by the learned counsels for the parties and reviewing the record, we find that the impugned order dated 25.04.2019 passed by the ADM (South-West)/LAC is not legally sustainable.

13. It would be expedient to reproduce the aforesaid order, which reads as follows:

**“OFFICE OF THE ADDITIONAL DISTRICT
MAGISTRATE SOUTH WEST, ROOM NO. 12 GOVT OF
NCT OF DELHI, OLD TERMINAL TAX BUILDING,
KAPASHERA DELHI-110037**

No.ADM/LAC/SW/2019-20/26333

Dated:- 25/04/19

¹⁰ Additional District Magistrate



To,
Smt. Chanderwati Wd/o Sh. Mir Singh,
Ms. Kavita D/o Mir Singh,
Sh. Muneesh Kumar S/o Sh. Mir Singh, Sh. Vineet Kumar S/o Sh.
Mir Singh,
All R/o Village & P.O. Dhoolsiras,
New Delhi.

**Subject:- In the matter of Sh. Mir Singh Thr. Lrs. Vs. UOI
& Anr. W.P.C. No. 13806/2018 of Village
Dhoolsiras.**

Sir,

In Compliance of the Hon'ble High Court order, petitioners were directed to appear before the undersigned alongwith the petition/representation on 29/03/2019.

The petitioner Sh. Vineet Kumar S/o Sh. Mir Singh appeared with reference to the direction of aforesaid court order and submitted that his petition/representation may be considered for enhancement of compensation Passed by Hon'ble High Court, in favour of Balwant Singh in RFA No. 715/2003 Vs. UOI & Anr. dated 22/07/2016 and stated that he claims the enhanced compensation in parity with Balwant Singh. The petitioner has submitted that he has already taken the enhanced compensation passed by Hon'ble ADJ Court.

After consideration of the petitioner viz-a-viz provision of the Land Acquisition Act, 1894, it is accordingly concluded that undersigned has no power to enhanced the compensation at par with co-owner of the land in question as pleaded by the petitioner. As the same can not be enhanced U/s 28-A of LA Act, 1894, "wherein 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 U/s 4, sub-section (1) and who are also aggrieved by the award of 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". However, there is no such power to LAC under LA Act, 1894 to provide enhanced compensation in parity to the other



person who got enhanced compensation by virtue of an order passed by Hon'ble High Court.

Sd/-
(M.T.KOM)
ADM(SW)”

14. The explanation is straightforward. As established in law, landowners in the same village, with land acquired under the same notification and award, must receive equal compensation for their land. In this regard, it would be expedient to refer to the Section 28A of the 1894 Act, which reads as follows:

“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, required 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.”



15. The aforesaid proposition came to be interpreted by the Supreme Court in the case of **Babua Ram & Ors. v. State of U.P. & Anr.**¹¹, wherein it was held as under:

36. The next question is whether an interested person who sought and secured reference under Section 18 but was either unsuccessful and filed no appeal or had carried in appeal but unsuccessful, would be entitled to redetermination when the compensation was enhanced by the appellate court either under Section 54 or on further appeal under Articles 132, 133 and 136 of the Constitution. In *Mewa Ram case* [(1986) 4 SCC 151] this Court held in paragraph 5 that Section 28-A provides for the determination of amount of compensation subject to the conditions laid down therein are fulfilled. For such redetermination, the forum is the Collector and the application has to be made before him within 30 days from the date of the award under Section 26 and the right is restricted to persons who had not applied for reference under Section 18 of the Act. If these conditions are satisfied, the petitioner could have availed of the remedy provided under Section 28-A of the Act. In *Scheduled Castes Coop. Land Owning Society Ltd. v. Union of India* [(1991) 1 SCC 174] this Court held that : (SCC p. 178, para 4)

“It is obvious on a plain reading of sub-section (1) of Section 28-A that it applies only to those claimants who had failed to seek a reference under Section 18 of the Act. The redetermination has to be done by the Collector on the basis of the compensation awarded by the court in the reference under Section 18 of the Act and an application in that behalf has to be made to the Collector within 30 days from the date of the award. Thus only those claimants who had failed to apply for a reference under Section 18 of the Act are conferred this right to apply to the Collector for redetermination and not all those like the petitioners who had not only sought a reference under Section 18 but had also filed an appeal in the High Court....”

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The doctrine of res judicata under Section 11 of CPC operates against such persons. Having pursued the remedy in a competent civil court and allowed the decree under Section 26 or under Section 54 to become final, it binds the parties and the State and operates as res judicata and he or they cannot fall back upon the right and remedy under sub-section (1) of Section 28-A as the

¹¹ (1995) 2 SCC 689



public policy envisaged is that such a party cannot agitate its right twice over. Sub-section (1) of Section 28-A, therefore, by the non-obstante clause made available the right and remedy to the poor and inarticulate persons interested in other lands covered by the same notification under Section 4(1) and made no application under Section 18 to avail the right and remedy under Section 28-A(1). But those who sought and secured reference under Section 18, be the poor or others, and failed before the civil court or in appeal under Section 54 or under Article 136 etc. the right and remedy provided by Section 28-A(1) is not available to him/them. In other words, the operation of Section 28-A is confined to the award made in Part III only and not to the judgment or decree of the High Court or the appellate court under Section 54 or of this Court under Articles 132, 133 or 136 of the Constitution. Therefore, the unsuccessful interested persons who sought and failed in the reference under Section 18 or in appeal under Section 54 or under Article 136 etc. are not persons aggrieved under sub-section (1) of Section 28-A, when other similar person had higher compensation by pursuing that remedy. Therefore, he or they, though interested in the land covered by the same notification under Section 4(1), are not entitled to make an application/applications for redetermination under sub-section (1) of Section 28-A.”

16. The aforesaid dictum came to be applied by this Court in the cited case of *Smt. Kalawati (supra)*, wherein some of the co-owners who had preferred Reference Petitions under Section 18¹² of the 1894 Act, were granted enhanced compensation while the other co-owners were deprived in respect of their joint land in the same village, acquired under the same notification and award. The plea raised on

¹² 18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;



behalf of the LAC that the finality of the award under Sections 11 & 12 of the 1894 Act cannot be disturbed was repelled by this Court, while relying on decision of the Supreme Court in the case of **Jalandhar Improvement Trust v. State of Punjab & Ors.**¹³, wherein it was held as follows:

“4. The learned Senior Counsel for the appellant strenuously contended that inasmuch as the claim of the 4th respondent came to be rejected by the very same award dated 5-2-1986, no advantage can be taken by the 4th respondent who has not challenged that part of the award rejecting her claim for availing of the benefit of Section 28-A of the Act and that to a case like the one on hand, Section 28-A will have no application. The learned counsel for the 4th respondent relied upon the judgment of the Constitution Bench reported in *Union of India v. Hansoli Devi* [(2002) 7 SCC 273].
5. Having regard to the view we propose to take and the manner of disposal intended to be given, it is unnecessary for us to even advert to the relevance or applicability of Section 28-A of the Act to the case of the nature before us. The 4th respondent indisputably is a co-owner along with her children who were added as Petitioners 2 to 5 to the award dated 5-2-1986, in which case, even on the first principles of law one co-owner is entitled to have the benefit of the enhanced compensation given in respect of the other co-owners in a reference made at his instance in respect of the land acquired, which belonged to all of them, jointly. So far as the fact that in this case the 4th respondent's application for reference under Section 18 was rejected by the Tribunal ultimately on the ground that the reference was made on a belated application, does not make any difference and, is no reason, in our view, to differentiate the claims of such co-owners whose claims came to be really sustained and that of the 4th respondent, for differential treatment. We are fortified to some extent in the view expressed above, by the principles laid down by this Court in the decision reported in *A. Viswanatha Pillai v. Special Tahsildar for Land Acquisition* [(1991) 4 SCC 17].
6. In the light of the above conclusion of ours, and finding that real and substantial justice has been done to the parties, we decline to interfere with the order made by the Land Acquisition Collector,

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

¹³ (2003) 1 SCC 526



giving the benefit of enhanced compensation to the 4th respondent.”

17. This Court in the case of *Smt. Kalawati (supra)* accordingly held as under: -

“22. Thus, we conclude that normally a person whose land is acquired and thereupon award is made by the LAC fixing the compensation, he should seek enhancement thereof in the manner provided under the Act by resort to the provisions of Sections 18, 54 and 28 of the Act. However, if he is co-owner of the land acquired and other co-owner gets enhanced compensation in appeal etc., he would be entitled to same treatment even if he did not prefer appeal, on the first principles of law that one co-owner is entitled to have the benefit of the enhanced compensation given in respect of other co-owners of the land acquired, which belonged to all of them, jointly.”

18. In view of the foregoing analysis, the present writ petition is allowed, and a writ of *mandamus* is issued to the respondent No.1/LAC to award compensation to the petitioners *qua* their share in the subject land @ Rs.37,000/- per bigha, along with all other statutory benefits, subject to verification of their entitlement, within a period of three months from today.

19. The pending application also stands disposed of.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 10, 2024

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