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THE JALANDHAR IMPROVEMENT TRUST

v.

THE STATE OF PUNJAB AND ORS.

NOVEMBER 27, 2002

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[DORAISWAMY RAJU AND P. VENKATARAMA REDDI, JJ.]

Land Acquisition Act, 1894:

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Ss. 18 and 28-A—Redetermination of compensation of a co-owner—Application for reference for enhancement of compensation at the instance of mother—Rejected as barred by time—Children added as petitioners in reference case—Their claim for enhanced compensation upheld—Mother filing application purporting to be u/s. 28A for redetermining her compensation in view of enhanced compensation granted to her children—Contention that

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mother's claim having been rejected as barred by time, provisions of s. 28A would not apply in her case—Held, irrespective of the relevance of applicability of s. 28-A, mother being a co-owner along with her children is entitled to have the benefit of the enhanced compensation given in respect of other co-owners in a reference made in respect of the land which belonged to all of them jointly—The fact that mother's application for reference u/s. 18 was rejected

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as barred by time does not make any difference—Since, by the order made by Land Acquisition Officer giving the benefit of enhanced compensation to the mother, real and substantial justice has been done, no interference is called for.

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A. Vishwanath Pillai and Ors. v. Special Tehsildar for Land Acquisition;
AIR (1991) Supreme Court 1966 relied on.

Union of India and Anr. v. Hansoli Devi and Ors., JT (2002) vol. 7
p. 42, cited.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8394 of 1995.

From the Judgment and Order dated 20.11.1987 of the Punjab and Haryana High Court in C.W.P. No. 8442 of 1987.

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S.K. Bagga and Mrs. Sureshta Bagga for the Appellant.

P.N. Puri for the Respondent.

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The following Order of the Court was delivered :

The above appeal has been filed against the order of a Division Bench of Punjab and Haryana High Court dated 20.11.1987 in Civil Writ Petition No. 8442 of 1987, summarily dismissing the writ petition filed by the appellant challenging the order of the Land Acquisition Collector, Improvement Trust, Jullundur dated 14.7.1986 made in the purported exercise of powers under Section 28A of the Land Acquisition Act, 1894, as amended by the Amending Act of 1984. The Lands in question were notified for acquisition and after observing the due formalities, the Land Acquisition collector passed an award No.3 of 1978 on 21.12.1978 and possession of the lands were also taken on 1.2.1979. The 4th respondent herein has sought for reference under Section 18 of the Land Acquisition Act for determining the enhanced compensation by a request made on 11.5.1983 as a consequence of which a reference came to be made on 1.6.1983 to the land Acquisition Tribunal constituted under the Improvement Trust Act. It is at that stage, on an application made by the four children of respondent no. 4, they were added as petitioners 2 to 5 in the land reference case which was originally, as indicated above, referred at the instance of 4th respondent.

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After considering the claims of the respective parties, the Land Acquisition Tribunal, on 5.2.1986 held that the reference made to it, so far as the 4th respondent was concerned could not be maintained since in the view of the Tribunal it was barred by limitation. The Tribunal was also of the view that though she had sufficient knowledge of the award in time, she did not make the claim for reference within the time stipulated therefor under Section 18. So far as the children of 4th respondent who have been subsequently impleaded as petitioners 2 to 5 to the reference are concerned, their claims for enhancement has been upheld and enhanced compensation, as indicated in the award dated 5.2.1986, came to be awarded by the Tribunal in their favour. At that stage and taking advantage of the enhancement granted in favour of those persons, the 4th respondent filed an application on 26.5.1986 purporting to invoke the powers under Section 28A of the Land Acquisition Act, 1894 seeking for redetermination of her compensation overruling the objections of the appellant, the Land Acquisition Collector on 14.3.1986 ordered enhanced compensation to her also with all the benefits that have been granted to petitioners 2 to 5 in the award dated 5.2.1986. It is on rejection of the challenge to the determination, by the High Court, as noticed above, the present appeal has been filed.

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- A Heard Mr. Bagga learned senior counsel for the appellant and Mr. S.M. Sarin, learned counsel for the 4th respondent.

The learned senior counsel for the appellant strenuously contended that in as much 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 28A of the Act and that to a case like the one on hand, section 28A will have no application. The learned counsel for the 4th respondent relied upon the judgment of the Constitution Bench reported in JT (2002) vol. 7 p. 42.

- C Having regard to the view we purpose 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 28A of the Act to the case of the nature before us. The 4th respondent indisputably is a co-owner alongwith 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 as far 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 AIR (1991) Supreme Court p. 1966 *A. Vishwanath Pillai and Ors. v. Special Tehsildar for Land Acquisition*.

In the light of the above conclusion of ours, and finding that real and substantial justice have been done to the parties, we decline to interfere with the order made by the Land Acquisition Collector, giving the benefit of enhanced compensation to the 4th respondent.

- G The appeal, therefore, fails and shall stand dismissed. No costs.

R.P.

Appeal dismissed.