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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision : 27.02.2012

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W.P.(C) 1147/2012

HARDWARI LAL AND ANR

..... Petitioners

Through : Mr.B.S.Maan and Ms.Smita Maan, Advs.

versus

LAND ACQUISITION COLLECTOR/ADM (W) AND ANR.

..... Respondents

Through : Mr.Sanjay Kumar Pathak, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

SANJAY KISHAN KAUL, J. (Oral)

1. The petitioners claims to be Bhumidars of the land measuring 22 bighas and 18 biswas of the land situated in the Revenue Estate of Village Mundka, Delhi allotted to the petitioners in the consolidation proceedings. A notification under Section 4 of the Land Acquisition Act, 1894 ('the said Act' for short) was issued on 21.03.2003 seeking to acquire 1703 bighas and 18 biswas of the land situated in the Revenue Estate of Village Mundka, Delhi including the land of the petitioners for the public purpose of Rohini Residential Scheme. The declaration under Section 6 of

the said Act was issued on 19.03.2004 and award was passed bearing no.3/D.C./W/2005-06 dated 27.01.2006 determining the market value of the land of the petitioners and the other land owners. The possession of the land of the petitioners is stated to have been taken over under Section 16 of the said Act by R-1 on 19-20.01.2007 and 12.04.2007. The petitioners moved an application seeking release of compensation in their favour, but one Sh.Atma Ram filed objections dated 14.06.2007 before the Land Acquisition Collector/R-1. It was the case of Sh.Atma Ram that the petitioners had got more land during the consolidation proceedings than was due to them at his cost and that the land of the petitioners belong to the Gaon Sabha. However, R-1 disposed of the objections on 01.10.2007 finding that there was no merit in the objections and there was no prima facie dispute of apportionment within the meaning of Section 30 of the said Act. The R-1 directed release of compensation in favour of the petitioners.

2. The grievance of the petitioners now started as Sh.Atma Ram filed proceedings before the Financial Commissioner, Delhi as Case No.204/2007-CA under Section 42 of The East Punjab Holdings (Consolidation of Fragmentation) Act, 1948 ('the Consolidation Act' for short) seeking implementation of certain documents which the petitioners claimed were forged. In those proceedings, the LAC was also impleaded as a party apart from the petitioners. The Financial Commissioner in his wisdom admitted the petition and ordered maintenance of status quo. These proceedings were disposed of by the Financial Commissioner vide Order dated 21.02.2008. The Financial

Commissioner issued direction to the Deputy Commissioner (West) to enquire into the objections raised by Sh.Atma Ram qua the issue of consolidation and submit a report to the Court. It is important to note that para 14 of the order contains this direction and towards the end of para 13 it was observed as under:

“However, in order that no prejudice is caused to either party, the compensation for the suit land also shall not be released in favour of any party.”

3. The result of the aforesaid order was that the compensation was still not disbursed to the petitioners.
4. The revenue authorities submitted their enquiry report concluding that the documents on the basis of which Sh.Atma Ram had claimed rights were not genuine and were based on forged documents. The proceedings were, thus, revived before the Financial Commissioner and as the same were adjourned on couple of occasions, the petitioners filed WP(C) No.6580/2010 titled Sh.Hardwari Lal & Anr. v. Land Acquisition Collector (W) & Ors. In those proceedings, a direction was issued on 27.09.2010 by this Court directing the Financial Commissioner to dispose of the proceedings before him within a period of two months. The Financial Commissioner finally dismissed the revision petition filed by Sh.Atma Ram on 16.06.2011. The petitioners on 20.06.2011 claimed to have applied for release of the compensation and thus compensation was released on 02.08.2011 of Rs.1,23,08,156/- including principal amount and interest.
5. It is the plea of the petitioners that the amount of statutory interest under Section 34 of the said Act in respect of the delayed

payment to the petitioners has not been released as the possession was taken over on 19-20.01.2007 and 12.04.2007 while the compensation was paid on 02.08.2011. In effect the compensation has not been paid by the LAC to the petitioners for the period of delay when the proceedings were pending before the Financial Commissioner and the period when the enquiry in pursuance to the order of Financial Commissioner took place. It is also the plea of the petitioners that the amount in question ought to have been deposited with the competent court and not withheld by the LAC himself.

6. Since the requests made by the petitioners in this regard on 29.08.2011 and 19.11.2011 received negative response on 22.11.2011 stating that the amount could not be released due to orders passed by the Financial Commissioner, the present writ petition under Article 226 of the Constitution of India has been preferred seeking the following prayer:

“a) Pass a writ (s), order (s) or direction (s) in the nature of mandamus directing the respondents particularly respondent no.1 to pay the interest under Section 34 of the Land Acquisition Act, 1894 for delayed payment of compensation amount to the petitioners in respect of the acquired lands of the petitioners, which have been acquired by respondent no.1 vide award No.03/DC/W/2005-06 dated 27.01.2006 to the petitioners”

7. The case of the petitioners is based on the principle of restitution i.e. if the Financial Commissioner has passed a wrong order, the petitioners should not be made to pay for it by sacrificing the interest for that period of time. In this behalf, learned counsel for the petitioners has relied upon the judgment of the Supreme

Court in South Eastern Coalfields Ltd. v. State of MP and Ors. AIR 2003 SC 4482(1). In the said matter, the Supreme Court was examining the issue of delay in payment of royalty to the State of Madhya Pradesh under the Mines and Minerals (Regulation and Development) Act, 1957. In the first round of litigation, interim orders qua the payment of royalty at enhanced rates were granted and those proceedings ultimately did not succeed. The second round of proceedings began as the State Government demanded interest on the differential portion of the royalty which had not been paid and coal fields in turn demanded interest from the purchasers of the coal.

8. It is in the contours of these facts that the issue of liability to pay interest has been discussed in para nos.23 to 27 of the said judgment, which read as under:

“Liability of the consumers/purchasers to pay interest to the Coalfields:

(b) for the period for which the restraint order passed by the Court remained in operation

23. On the principle which we have upheld just hereinabove, it would not have been necessary to enter into this aspect of the issue, however, it becomes necessary to deal therewith inasmuch as it was submitted on behalf of the consumers/purchasers that their non-payment of enhanced amount of royalty was protected by judicial orders, though of an interim nature, passed by the courts, and therefore, they should not be held liable for payment of interest so long as the money was withheld under the protective umbrella of the court order. Merely because the writ petitions were finally held liable to be dismissed, it cannot be urged that the interim orders passed by the courts were

erroneous. Soon on dismissal of their writ petitions, the payment of the enhanced amount of royalty which was disputed earlier was promptly cleared by the writ petitioners and, therefore, their act was *bona fide*. We find no merit in this submission either.

24. In our opinion, the principle of restitution takes care of this submission. The word “restitution” in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see *Zafar Khan v. Board of Revenue, U.P.*) In law, the term “restitution” is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See *Black's Law Dictionary*, 7th Edn., p. 1315). *The Law of Contracts* by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that “restitution” is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done:

“Often, the result under either meaning of the term would be the same. ... Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.”

The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or

modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. **The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed.** There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.

25. Section 144 CPC is not the fountain source of restitution, it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the court has inherent jurisdiction to order restitution so as to do complete justice between the

parties. In *Jai Berham v. Kedar Nath Marwari* Their Lordships of the Privy Council said: (AIR p. 271)

“It is the duty of the court under Section 144 of the Civil Procedure Code to ‘place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed’. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the court to act rightly and fairly according to the circumstances towards all parties involved.”

Cairns, L.C. said in *Rodger v. Comptoir D'Escompte de Paris*: (ER p. 125)

“[O]ne of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression, ‘the act of the court’ is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case.”

This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (*A. Arunagiri Nadar v. S.P. Rathinasami*¹³). In the exercise of such inherent power the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

26. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the “act of the court” embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the court being

wrongful or a mistake or error committed by the court; **the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party.** The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is real and substantial justice. **The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so.** Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the

opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.

27. Once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.”

9. The aforesaid paragraphs set out the principle that if benefits are earned by an opposite under interim orders of the Court, it is permissible for the Court to restitute the party which has been deprived of the benefit. It has been elaborated that no one will suffer by an act of the Court is not a rule confined to an erroneous act of the court but embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law
10. We may notice an important fact that in that case i.e. South Eastern Coalfields Ltd. v. State of MP and Ors's case (supra) the challenge laid to the enhancement of royalty was not by any of the coal fields but by the consumers/purchasers. The coal fields were, in fact, impleaded as respondents. The Supreme Court had set aside the decision of the High Court of Madhya Pradesh and directed the writ petitions filed in the High Court to be dismissed. This is qua the first round.
11. In order to appreciate the plea of the petitioners, we have to look to the scheme of the said Act. The scheme envisages that the authority seeking compulsory acquisition of land under the said

Act has to approach the concerned Department/LAC. The compensation is deposited with the LAC and on conclusion of the acquisition proceedings, the compensation is paid by the LAC to the owner of the land. The LAC is not the beneficiary. It has no personal interest in the amount deposited with it. Part IV of the said Act deals with the apportionment of the compensation. The relevant Section 30 falling under Part IV of the said Act reads as under:

“30. Dispute as to apportionment. - When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.”

12. In the present case, the LAC performed its obligations under Section 30 of the said Act and, in fact, rejected the claim made by Mr.Atma Ram. The operative portion of the order of the LAC dated 01.10.2007 reads as under:

“ So, in view of above, no prima facie dispute u/s 30 of the Land Acquisition Act, 1894 is made out and payment of compensation be released in favour of interested persons as per the latest revenue record.”

13. The LAC, thus, did not form any opinion that there was dispute of apportionment which required adjudication by a Court. It is another matter that the Financial Commissioner thereafter exercised jurisdiction on a revision petition filed by Sh.Atma Ram under Section 42 of the Consolidation Act.
14. Learned counsel for the petitioners seeks to rely upon the Part V of the said Act dealing with payment. The relevant provisions referred to are under Section 31 (1) & (2) which read as under:

“31. Payment of compensation or deposit of same in Court. - (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.”

15. Learned counsel for the petitioners contends that it was the bounden duty of the LAC to have deposited the amount of compensation in the Court to which reference under Section 18 of the said Act would be submitted. Learned counsel submits that the petitioners have sought reference for enhancement of compensation under Section 18 of the said Act though he

concedes that these facts have not been set out in the present writ petition.

16. There can be no quibble, in our considered view, with the principles laid down by the Supreme Court qua the issue of restitution as enunciated in South Eastern Coalfields Ltd. v. State of MP and Ors's case (supra). It is, however, an equitable principle which must be based on the facts of each case.
17. In our considered view, such a restitution to the petitioners at the cost of the R-1 would not be permissible for the following reasons:
 - i) The LAC did not cause any delay but on the other hand when the compensation was sought to be disbursed to the petitioners and Mr. Atma Ram filed an application, a decision was taken promptly on 01.10.2007 holding that Sh. Atma Ram had not been able to establish any prima facie case for reference of the dispute qua apportionment under Section 30 of the said Act.
 - ii) The LAC is not a beneficiary of any amount, but only seeks to distribute the amount obtained from the beneficiary of the land. The interest is also paid by the beneficiary. That beneficiary in turn had deposited the amount with the LAC and the LAC was willing to disburse the amount after dealing with the objections of Sh. Atma Ram but for the interdict by the order of the Financial Commissioner.

In South Eastern Coalfields Ltd. v. State of MP and Ors's case (supra), it is noted that the test is whether “on account of an act of the party persuading the court to pass an order held at the end as not sustainable”, the other party has suffered impoverishment. In the facts of the present case, no order has

been passed at the behest of R-1. The order was passed at the behest of Sh.Atma Ram. Thus, the LAC is not the party which persuaded the court to pass an order which was ultimately held unsustainable. It has also been observed that the injury would be undone by suitably commanding the party liable to do so. Once again, the LAC is not the party “liable to do so”.

iii) If the petitioners plead on the basis of the reference sought under Section 18 of the said Act that the amount of compensation ought to have been deposited in the civil court, no averments in this petition have been made and, in any case, the petitioners did not also call upon the LAC to deposit that amount in those proceedings. The LAC was handicapped by reason of the interdict of the order passed by the Financial Commissioner and thus could not itself have deposited the amount with the reference court under Section 31 of the said Act.

iv) The Financial Commissioner passed an order on 21.02.2008. That order deemed it appropriate that an enquiry into the complaint made by Sh.Atma Ram should be carried out by the Deputy Commissioner (West). While passing the said direction, the Financial Commissioner was further pleased to direct that the compensation shall not be released in favour of any party so that the parties are not prejudiced. It is an undisputed position that this order was not assailed by the petitioners and the petitioners, thus, accepted this order. The acceptance of this order implies that the petitioners were satisfied with the arrangement that an enquiry should be made qua the claim of Sh.Atma Ram and that the amount should not be disbursed till such an enquiry is complete. If the petitioners were aggrieved by these directions,

nothing prevented the petitioners from assailing the same in appropriate proceedings especially since the petitioners in their wisdom on account of delay in conclusion of proceedings by the Financial Commissioner post the report had moved this Court in WP(C) No.6580/2010 when directions were issued for early conclusion of the proceedings before the Financial Commissioner.

18. We are thus of the considered view that in the given facts and circumstances, the principle of restitution by R-1 to the petitioners would not apply as the R-1 was not to blame for what happened. Interestingly, the petitioners have not claimed any relief against Sh.Atma Ram nor Mr.Atma Ram has been impleaded as a respondent in the present proceedings.
19. Dismissed.

SANJAY KISHAN KAUL, J.

FEBRUARY 27, 2012
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RAJIV SHAKDHER, J.