

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 24.04.2014

W.P.(C) 71/2014

JAIPAL SINGH

..... Petitioner

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rahul Sharma

For the Respondents : Mr Sanjeev Sabharwal for respondent No.1.
Mr Yeeshu Jain and Ms Jyoti Tyagi for respondent No.2.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. On 06.01.2014 when this matter was taken up for hearing the following order was passed by us:-

“This matter has a long history. Earlier two writ petitions had been filed by the petitioner. The earlier two petitions as well as the present petition pertain to the matter of payment of interest to the petitioner under Section 34 of the Land Acquisition Act, 1894 (hereinafter referred to as ‘the said Act’). It is not in dispute that the land in question was the subject matter of Award No.25/2005-06/DC (N-W) dated 06.02.2006. It is also not in dispute that the possession of the subject land was taken on 13.10.2006. Furthermore, on 06.12.2006 the

petitioner's written submission with regard to release of compensation amount is also on record. In that written submission an alternative request had been made for reference under Section 30/31 of the said Act. However, it is an admitted position that no such reference was made to the Court by the Collector. In the meanwhile, on 30.11.2010 the petitioner had settled the dispute with the other co-owners and a settlement was arrived at. On that very date i.e. on 30.11.2010 an application was moved before the Land Acquisition Collector for payment of compensation as per the settled share. Ultimately, the compensation was paid to the petitioner and the other co-owners in terms of the settlement on 03.06.2011 by the Land Acquisition Collector.

It is, thereafter, that the petitioner served a notice under Section 80 CPC on 29.08.2011 claiming interest under Section 34 of the said Act in respect of the compensation amount received by the petitioner. That was not replied. Since that was not responded by the Land Acquisition Collector, the petitioner filed the first Writ Petition being W.P.(C) 463/2012 wherein by order dated 23.01.2012 this Court observed as under:-

“The petitioner is represented through his son, Mr. Subhash Vijayran, for the present proceedings. He cannot seriously dispute that if there were issues qua apportionment, the LAC was obliged to withhold the distribution of the awarded amount and to deposit the same in the reference court but if no reference is sought, the amount would lie with the LAC.

Naturally this has given rise to a complication that the amount has earned no interest.

At this stage, the son of the petitioner states that apparently a reference was sought.

We are of the view that if a reference was sought and the LAC failed to make the reference then the natural consequences would follow, but if no reference was sought at all, a different situation would arise.

The petitioner should endeavour to locate the documents to support the plea that a reference was, in fact, sought and inform the LAC, as in that eventuality the LAC has to take necessary action.

At this stage the son of the petitioner does not press the petition as he states that he will endeavour to locate the necessary documents and approach the LAC and the LAC will take necessary action in case such documents are produced before the LAC.

Dismissed as withdrawn with the aforesaid observations.”

Subsequent thereto, the Land Acquisition Collector passed the order dated 24.07.2012. However, in that order the crucial aspect of whether the petitioner had or had not made a plea of reference under Section 30/31 of the said Act, had not been dealt with. Recognizing that fact, a Division Bench of this Court in the second Writ Petition [W.P.(C) 481/2013] filed by the petitioner, passed an order on 28.01.2013 wherein it was observed as under:-

“The petitioner’s case is that the written synopsis (Annexure P-3) filed before the LAC itself would show that in para 7 a reference was specifically prayed for (page 38). He states that in view thereof the petitioner sought interest and since the case was not proceeding even made a complaint for non-processing of the application of the petitioner (Annexure P-9 at page 67). It is thereafter that the impugned order has been passed at page 70 which is completely silent on the only crucial aspect, i.e., whether the petitioner had or had not made a plea for reference under Section 30/31 of the said Act and if the reference had been sought the interest ought to have been awarded.

We find merit in the contention of the learned counsel for the petitioner that the impugned order does not appear to deal with this aspect.

Learned counsel for the respondents fairly cannot dispute that this aspect has not been dealt with in the impugned order and initially sought leave to file an affidavit to support the order.

We put to learned counsel for the respondents as to how what is contained in the order can be expanded by filing an affidavit. We are, thus, of the view that the impugned order cannot be sustained and the LAC should be called upon to pass a fresh order dealing with the issue in question, a position which cannot be disputed by learned counsel for the respondents.

In view of the aforesaid the impugned order dated 23/24.7.2012 is quashed making the rule absolute and directing the LAC to pass a fresh order dealing with the issue as mentioned aforesaid within a maximum period of six (6) weeks from today.

The writ petition is accordingly allowed leaving the parties to bear their own costs.

Dasti to learned counsels for the parties.”

It is, thereafter, that the impugned order dated 21.03.2013 has been passed whereby the petitioner's claim for interest under Section 34 of the said Act has been rejected.

When we put it up to the learned counsel appearing on behalf of respondent No.2 (Land Acquisition Collector) as to on what basis interest under Section 34 of the said Act has not been paid to the petitioner, he states that he would require some time to take instructions on this matter. We make it clear that Section 34 of the said Act stipulates that interest is to be paid in case the amount of compensation is not paid or deposited on or before the possession of the land is taken. Initially, the rate of interest has to be 9% per annum from the date of taking possession until it is paid or deposited. We inquired from the learned counsel for respondent No.2 as to whether the compensation amount had been deposited in terms of Section 31 of the said Act, he submitted that he would have to take instructions in this regard. However, the learned counsel for the petitioner pointed out that the compensation, which the petitioner received on 03.06.2011 from the Land Acquisition Collector, and not from the Court, would clearly indicate that the

compensation amount was never deposited in Court. Since it was neither paid nor deposited, interest would become payable under Section 34 of the said Act. Furthermore, since the compensation amount was neither paid nor deposited within a period of one year from the deposit, the rate of interest from the subsequent period would be 15% per annum in terms of the proviso of Section 34 of the said Act.

The learned counsel for the respondent No.2 shall take instructions.

Renotify on 22.01.2014.”

2. The learned counsel for the respondent No.2 has taken instructions as to whether the compensation amount had been deposited in terms of Section 31 of the Land Acquisition Act, 1984. He now states that it had not been so deposited. Consequently, in view of our order dated 06.01.2014, the petitioner would be entitled to interest on the compensation amount @ 9% per annum for the first year and @ 15% per annum in terms of the proviso to Section 31 of the Land Acquisition Act, 1984 for the subsequent period. Interest would be paid w.e.f. 31.10.2006 up to 03.06.2011 when the compensation was received by the petitioner directly from the Land Acquisition Collector. The said interest be computed and paid to the petitioner within four weeks from today.

3. The writ petition is allowed as above.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

APRIL 24, 2014/mk