IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13837 of 2014 (O&M)
Date of Decision: December 19, 2015

Pankaj Aggarwal and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Shri D.R. Bansal, Advocate, for the petitioners.

Ms. Palika Monga, DAG, Haryana,

Shri R.S. Sihag, Advocate, for respondent No.2.

HEMANT GUPTA, J.

The challenge in the present writ petition to an amount of interest on the enhanced amount of compensation on account of acquisition of the land.

The land measuring 231 bigha and 790 biswa was acquired for a public purpose for development and extension of Industrial Estate at Karnal, vide notifications dated 17.05.2002 and 13.05.2003 under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short `the Act'). Subsequent notifications dated 27.11.2002 and 14.11.2003 under Sections 4 and 6 of the Act, were issued for acquiring 103 bigha and 469 biswas of land. The Land Acquisition Collector, announced Awards dated 10.5.2005 and 30.05.2005 in respect of the two acquisitions.

After the acquisition of land, the same vested with the Haryana State Industrial and Infrastructure Development Corporation, a Company incorporated in the year 1967. As per the petitioners, the said Corporation is working on no profit-no loss basis. It was in 2007, the plots were allotted to the petitioners vide separate letters of allotment dated 26.03.2007 and 20.12.2007. One of the conditions in the regular letter of allotment issued on 26.03.2007 is the tentative area and price of the plots @ Rs.1800/- per square metre. The entire regular letter of allotment makes the mention of the tentative price at various places. However, one of the relevant conditions read as under:-

> "(v) After the acceptance of the allotment aforesaid plot/shed in case you do not opt to pay the balance amount of 75% of the tentative price of aforesaid plot/shed in lump sum within 60 days of the date of issuance of the RLA in that eventuality the remaining 75% tentative price of aforesaid plot/shed shall be payable by you in five equal half yearly instalments with interest @ 11% p.a. on the balance outstanding as per following schedule of payment of instalments: -.........
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> (vii) Any additional price of the aforesaid plot/shed as a consequence of enhancement in compensation that may be awarded by the Court(s) in any matters/cases arising out of the acquisition proceedings or any incidental or connected matter thereto, shall be payable by you, in lump sum within 30 days from the date of issuance of demand notice, failing which penal interest @ 14% on the due amount shall be charged from the date of notice till the date of payment. In the event of non payment of such enhanced compensation within a period of three months from the date of notice, the aforesaid plot/shed shall also be liable to be resumed. The aforesaid plot/shed shall be liable to be resumed inter-alia on the ground for breach of any of the terms and conditions stipulated in the agreement referred to hereinabove."

In terms of the conditions of the conditions of the letter of allotment, an agreement was executed. The same is appended by the petitioners as Annexure P.4. The relevant clause from the agreement reads as under:-

> "2. That any additional price of the aforesaid plot/shed as consequence of enhancement in compensation that may be awarded by the Court(s) in the matters/cases arising out of the acquisition proceedings as any incidental or connected matter thereto, shall be payable by the allottee, in lump sum, within 30 days from the date of issuance of demand notice, failing which penal interest @ 14% shall be charged on the due amount from the date of notice till the date of payment. In the event of non payment of such enhanced compensation within a period of three months from the date of notice, the aforesaid plot/shed shall also become liable to be resumed."

It was on 30.08.2012 (Annexure P.5), a demand was raised to pay the additional/enhanced cost as a consequence of enhancement of compensation of the land acquired. Vide communication dated 30.11.2012, one of the petitioners was informed that the enhanced charges are @ Rs.2134.21 per square metre. The said action was challenged by the petitioners by way of CWP No.19886 of 2013. Said writ petition was disposed of vide order dated 09.10.2013 with a direction to support their claim by submitting documents and judgments and thereafter the respondents were directed to take a decision thereon within a period of three months. It is thereafter, an order was passed by the Managing Director of the Corporation on 17.01.2014 to the effect that Rs.1860.15 per square metre was found to be payable as calculated as on 30.09.2012 with interest @ 12% per annum with effect from 01.10.2012. It is thereafter the demands were raised for the payment of the additional price, which has been challenged in the present writ petition.

The petitioners have challenged the demand on the ground that the Corporation has calculated the interest on the amount of compensation though the compensation was deposited late by it, therefore, for its delay, the liability cannot be fastened on the petitioners. It is also pointed out that the interest and solatium is not payable to the land owners and the Corporation has wrongly paid the said amount. It is also submitted that the Corporation is illegally burdening the petitioners with the interest paid by the land owners by issuing the demand notices.

The sole argument raised by the learned counsel for the petitioners is that the interest for the post award period cannot be claimed from the petitioners as it is the delay or inaction is that of the Corporation, therefore, the amount demanded is not tenable. He relies upon the judgment in Charanjit Bajaj and others v. The State of Haryana, 1986 PLJ 601 and another judgment in CWP No. 24857 of 2012-IMT Industrial Association and others v. Haryana State Industrial and Infrastructure Development Corporation and others decided on 11.11.2014.

On the other hand, the stand of the respondent-Corporation is that the petitioners are liable to pay interest with effect from the date of the compensation amount was deposited alongwith interest till the issuance of the notice to them for such payment. It is pointed out that the liability which was passed on to 130 allottees with interest upto 30.09.2012 was Rs.34,44,09,678/-. The demand was raised after assessing the saleable area of the estate. It is pointed out that the petitioners are liable to pay the enhanced compensation in terms of the conditions of the letter of allotment and the agreement executed. Learned counsel relied upon the two Division Benches judgments i.e. LPA No. 216 of 2012 titled as Haryana Urban Development Authority and others v. Friends Sector 13, Plot Holder

Society, decided on 14.08.2012 and CWP No. 9202 of 2014 titled as Hindustan Marble and Tile Industries and Others v. Haryana State Industrial and Infrastructure Development Corporation and others, decided on 06.11.2015.

We have heard learned counsel for the parties and find no merit in the present writ petition.

The letter of allotment was issued on the basis of tentative price of Rs.1800/- per square metre. In the letter of allotment, there was a clear stipulation that any additional price as a consequence of enhancement of compensation that may be awarded by the Court shall be payable in lump sum within 30 days from the date of issuance of notice, failing which penal interest @ 14% on the due amount shall be charged from the date of notice till the date of payment. Such condition in the letter of allotment was accepted when the petitioners deposited 15% of the tentative price in terms of Condition No.(ii) of the letter of allotment. The clause in the agreement is also clear and categorical that any additional price as a consequence of enhancement of compensation arising out of acquisition proceedings as any incidental or connected matter thereto, shall be payable by the allottee. It has also come on record that the allotment of the land was made when the award of the Land Acquisition Collector was announced. It was on 31.07.2010, the Reference Court enhanced the amount of compensation to Rs.475/- per square yard along with other statutory benefits. It is thereafter, the amount of compensation was deposited in July-September, 2011 and March/April, 2012, though the Corporation filed appeals against the said determination of the amount of compensation by the learned Reference Court. It is soon thereafter, after deposit of the amount, the demand notices were issued. It is pointed out that not only the amount of compensation, but also the interest thereon is a liability, which is required to be passed on to the allottees in terms of the letter of allotment and the agreement. It s contemplated therein that any additional price as a consequence of enhancement in compensation or any incidental or connected matters thereto, shall be payable by the allottees. The payment of interest is incidental to the amount of compensation and thus, it is liable to be paid by the allottees.

In Charanjit Bajaj's case (supra), this Court accepted the argument that interest charged for the intervening period between the date of deposit of compensation and issuance of notice to the allottees, is not proper. The said judgment has been made basis to partly quash the demand in IMT Industrial Association's case (supra). We find that in IMT Industrial Association's case (supra) the attention of the Court was not brought to the development of law after the judgment in Charanjit Bajaj's case (supra), such as Preeta Singh v. Haryana Urban Development Authority, (1996)8 SCC 756 and also a Division Bench judgment of this Court in Friends Sector 13, Plot Holder Society's case (supra).

In Preeta Singh' case supra, the Hon'ble Supreme Court held that the entire expenditure incurred in connection with the acquisition of land and development thereon is required to be borne by the allottees when the sites or buildings sold after development are offered on the date of sale in accordance with the regulations and also the condition of sale. It was held to the following effect:-

> "7. .... It is to be remembered that the respondent-HUDA is only a statutory body for catering to the housing requirement of the persons eligible to claim for allotment. They acquire the land, develop it and construct buildings and allot the buildings or the sites, as the case may be. Under these circumstances, the entire expenditure incurred in connection with the acquisition of the land and development therein is required to be borne by the allottees when the sites or the buildings sold after the development are offered on

> the date of the sale in accordance with the regulations and also conditions of sale. It is seen that in the notice dated August 9, 1990, the total area, net area, the payable amount for the gross acreage and acreage left for the development purpose, balance recoverable from the plot holders, plottable area have been given for each of the area and recovery rate also has been mentioned under the said notice. Under these circumstances, there is no ambiguity left in the calculations. If, at all, the appellants had got any doubt, they would have approached the authority and sought for further information. It is not the case that they had sought the information and the same was withheld. Under these circumstances, we do not find any illegality in the action taken by the respondents. The High Court, therefore, was right in refusing to interfere with the order."

The said judgment has been followed in Fuljit Kaur v. State of Punjab and others, (2010)11 SCC 455, wherein the interest calculated while calculating the amount of additional price was not interfered with.

In Friends Sector 13, Plot Holder Society's case (supra), this Court followed the judgment in Preeta Singh's case (supra) to return the following finding:-

> "The additional price on account of payment of enhanced compensation has been calculated as payable on the day, when previous demand notices were issued. There is another method of calculation that is to calculate the amount due including the amount of interest as part of the additional price, on the date of issuance of fresh demand notice. But the authority cannot be made to bear the burden of payment of interest when the amount of compensation has been paid by the Authority, but not realized from the allottees. The entire amount due and payable has to be apportioned amongst the allottees alone. Therefore, the association of the allottees and residents are liable to pay interest for non deposit of such amount from the date of issuance of earlier demand notices.
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> Even if the argument of the writ petitioner is to be accepted, the amount of additional price has to be re-determined before the issuance of the demand notices and in such demand notices, the interest component can very well be part of the additional price. In either way, the writ petitioners who have been allotted plot have to pay for the cost of acquisition and the interest thereon. Such interest liability cannot be fastened upon the appellant as the interest has been paid on the amount of compensation by the appellant as well.
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> In view of the above discussion, we find that the order passed by the learned Single Judge on 25.08.2011 holding that the interest liability cannot be fastened on the allottees is not sustainable and consequently appeal is allowed and the order passed by the learned Single Judge is set aside."

Another Division Bench of this Court in Hindustan Marble and Tiles Industries' case (supra), has considered the conditions of letter of allotment and held to the following effect:-

> "14. The submission is based on the erroneous premise that the enhancement in compensation referred to in clause (2) of the agreement refers to the rate payable for the land under the award and not to the interest payable thereon. Clause (2) expressly requires the allottee to pay "any additional price of the aforesaid plot/shed, as a consequence of enhancement in compensation that may be awarded by the Court(s)......". Thus it is not merely the compensation that is awarded and payable by the allottee. The allottee is bound to pay any additional price as a consequence of the enhancement in compensation. The interest constitutes an additional price as a consequence of enhancement in compensation that is awarded by a Court. When the compensation is enhanced, the consequence is not merely an increase in the price based on the rate at which the land is computed but also the liability to pay interest thereon.
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> 15. Even in equity the interest must be paid by the allottee. It is difficult to appreciate the contention that the demand for interest is unfair. The interest is payable

> under the Act by the State Government/Acquiring Body. It is but fair that the acquiring body recovers the same from the allottees. There is nothing unfair about that. It would be infact unfair and unjust for the allottees not to pay the interest that is paid by the State Government/Acquiring Body to the owners of the land which is subsequently allotted to the allottees.
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> 16. There is no reason why the respondents should not claim interest on the amount deposited by it pursuant to the order dated 04.11.1999. The respondents paid the amount as compensation/ enhanced compensation under the Act. This interest also falls within the ambit of the words "any additional price" within the meaning of clause (2) for it is as a consequence of the enhancement. Had the amount not been deposited, the liability to pay the interest would have continued. That liability would certainly have constituted additional price as a consequence of enhancement in compensation. In that event the interest would have to be paid to the landowners. We see no reason why the respondents ought not to be reimbursed the interest on account of their having deposited the amount. A view to the contrary would be grossly unfair to the respondents. It would infact result in the Court compelling the respondents to finance the purchase of the plots by the allottees to the extent of the loss of interest by the respondents."

The judgment in Charanjit Bajaj's case (supra) was considered and the condition therein was found to be distinguishable. The Court held to the following effect:-

> "21. The reliance placed on behalf of the petitioners upon the judgment of a Division Bench of this Court in Charanjit Bajaj and others v. The State of Haryana and others, 1986 P.L.J. 601, is not well founded. Condition No. 4 in that case reads as under:-
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> > "The above price of the plot is subject to variation with reference to the actual measurement of the plot as well as in case of enhancement of compensation of acquisition cost of land of this

> sector by the Court or otherwise and you shall have to pay this additional price of the plot, if any, as determined by the Department within 30 days from the date of demand".

> It was contended on behalf of the petitioners that the interest charged by HUDA for the period intervening between the deposit of compensation and the issue of notices to the plot holders was not sustainable as the petitioners could not be held liable to pay interest and suffer for the lapses on the part of HUDA not depositing the amount of compensation. Condition No.4, however, in that case was not similar to clause (2) of the agreement in the case before us. Clause (2) is much wider. The plain language entitles the respondents to interest. Moreover, it appears that in that case the HUDA had not even challenged the enhancement granted by the Reference Court. The demand notices were issued by the HUDA in that case on the basis of the enhancement granted by the Reference Court. The demand could therefore have been made forthwith in that case. In the case before us the respondents had filed a First Appeal."

In Tamil Nadu Housing Board v. Service Society and another, (2011)11 SCC 13, the Hon'ble Supreme Court directed the allottees to pay interest @ 9% since the demand of interest @ 13% or 14% was found to be contrary to the provisions of the contract. However, in the present case, the letter of allotment itself contains the condition for charging of interest @ 14% whereas interest @ 12% has been claimed.

After going through the judgments referred to above, we find that the allotment in question is a non statutory allotment as in the case of Haryana Urban Development Authority, which allotment is under the Haryana Urban Development Authority Act, 1977. In the absence of a statutory allotment, the parties are bound by the terms of the contract which is evidenced by the issuance of letter of allotment and the agreement executed. Both the documents contain a clause of payment of additional price on account of enhanced compensation or any incidental or connected matters thereto. Therefore, payment of interest to the landowners after determination of enhanced compensation till its deposit forms part of the additional price.

The judgment in Charanjit Bajaj's case (supra), relates to the provisions of the HUDA Act, which was considered by a Division Bench of this Court in Friends Sector 13, Plot Holder Society's case (supra). Whereas in respect of the non statutory contracts such as by the respondent-Corporation, the matter was considred by another Division Bench of this Court in Hindustan Marble and Tile Industries' case (supra). The conditions in the letter of allotment and the agreement clearly empower the Corporation to recover the enhanced amount of compensation and also the matters incidental or connected thereto. Therefore, the demand of interest is within the prerogative of the respondent-Corporation. As per the petitioners themselves, the respondent-Corporation works on no profit-no loss basis. If such is the situation, who is to pay interest payable on the amount of compensation? The burden has to be passed to the allottees, such as the present petitioners.

In view of the above, we do not find any illegality in the order passed by the Managing Director of the Corporation demanding interest on the enhanced amount of compensation. Hence, the present writ petition is dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

December 19, 2015
Ds/Vimal