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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22848 of 2014
Date of decision:22.12.2015

Amar Nath ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rohit Rana, Advocate, for
Mr. Kunal Dawar, Advocate, and
Mr. Mansur Ali, advocate, for the petitioner(s).

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Mr. Sanjeev Sharma, Advocate,
for respondent Nos.5 and 6.

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Rakesh Kumar Jain, J.

This order shall dispose of 16 writ petitions bearing CWP Nos.22848, 26334, 26606, 26765, 26768, 26809, 26830, 26832, 26839, 26862, 26868, 26871, 26873, 26903 and 26905 of 2014 and 561 of 2015. However, for the sake of convenience, the facts are being extracted from CWP No.22848 of 2014.

In brief, the petitioners in all the cases are in the business of truck/bus body building, having their workshop(s) on the G.T. Road starting from Patiala to Sirhind. In the year 1980, the State of Punjab, vide notification issued under Section 4 of the Land Acquisition Act, 1894, acquired the land of the petitioners for the public purpose of setting up the Grain Market at Sirhind. The said acquisition was challenged by the members of the Association, namely, M/s. Sirhind Truck and Bus Body Builders Association (Regd.) in CWP No.4207 of 1984 titled as "Joginder Singh etc. vs. State of Punjab etc.". The said writ petition was dismissed so also the LPA No.886 of 1985. The petitioner(s) filed Civil Appeal No.4129 of 1985 in the Supreme Court, which was disposed of on 12.12.1991 with the following order:-

> "After the close of the arguments in this appeal, this Court made the following order on 29.03.1990:-
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> > "Arguments have been heard and concluded. The learned counsel for the appellants has made statement that if the respondents-authorities allot 9 acres of land to them, they are ready to pay the price which may have been obtained by the respondents for similar land at the last auction plus reasonable premium thereon.
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> > The learned counsel for the respondents prays for and is granted three weeks time to obtain instructions in this regard."
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> It is now stated by counsel for the respondents that they have no objection to allot 9 acres of land to the appellant, but the latter has to pay the prevailing market price. Counsel for the appellant, however, states that they are prepared to pay the price that was prevalent as on the date of this Court's order that is 29.03.1990. The submission made by counsel for the appellants appears to be reasonable. We accept the submission and direct the respondent-State to allot 9 acres of land to the appellants. The appellants shall pay the price of such land at market rates as prevalent as on 29.03.1990. The petitioners shall pay the price of such land at market rates as prevalent as on 29.03.1990. The market price shall be determined by the Financial Commissioner (Development), Punjab. The price determined by him shall be accepted as final and binding on the appellants.

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> It is made clear that if the appellants are still in occupation of the premises, they shall not be evicted for three months from the date of allotment of 9 acres of land as directed herein before.
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> The appeal is disposed of accordingly but in the facts and circumstances of the case we make no order as to costs."

Pursuant to the aforesaid order passed by the Supreme Court, the petitioners were informed by the Director, Colonization, Punjab, that the market value of the 9 acres of land is fixed @ ₹4.28 crores which was asked to be paid by way of bank draft drawn in favour of the Administrator, New Mandi Township, Punjab, within 30 days from the date of issuance of the letter.

According to the petitioners, on 06.10.2006, the Director, Department of Colonization, Punjab, threatened them that since they have not taken any action in terms of the letter dated 09.07.1998, therefore, legal action would be taken against them. The petitioners filed reply to the letter dated 09.07.1998/06.10.2006 on 23.10.2006. The respondents, however, sent another notice on 17.04.2007 that the amount of ₹4.28 crores has not been deposited so far and asked the petitioner to appear before them on 04.05.2007. The petitioners kept on disputing the amount assessed by the respondents and even filed the suit seeking direction to the effect that the market price so assessed by the authorities was bad and sought the mandatory injunction to re-assess the market price and permanent injunction not to interfere in their possession but the said suit was dismissed in default on 19.09.2014. Respondent No.5 then initiated proceedings under Sections 4 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as the "Act"), which was allowed by respondent No.4 vide its order dated 28.01.2014. The appeal filed by the petitioners was dismissed by respondent No.3 on 01.08.2014 and a notice was given to them on 26.11.2014 to deposit a sum of ₹12,15,00,405/- including 12% per annum interest from 09.07.1998 to 31.10.2013. The writ petition bearing CWP No.6569 of 2007 filed by M/s Sirhind Truck and Bus Body Builder Association (Regd.) to challenge the letters dated 17.04.2007 and 04.10.2006 was also dismissed on 03.11.2008.

Counsel for the petitioners has argued that the respondents could not have passed the order of eviction without allotment of 9 acres of land in terms of the order of the Supreme Court dated 12.12.1991 and hence, the impugned orders are patently illegal and liable to be set aside.

Counsel for the respondents has submitted that the petitioners had unsuccessfully challenged the acquisition proceedings in CWP No.4207 of 1984 followed by LPA No.886 of 1985. The said orders were upheld in Civil Appeal No.4129 of 1985 before the Apex Court in which it was agreed that the respondents shall allot 9 acres of land to the petitioners, who shall pay the price of such land at the market rate prevalent as on 29.03.1990. It is alleged that as per the directions of the Supreme Court, the market price of the land was to be determined by the Financial Commissioner (Development), Punjab which shall have to be accepted as final and binding on the petitioners. The possession of the petitioners was protected only for three months from the date of allotment of 9 acres of land and keeping in view the direction of the Supreme Court, the Financial

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Commissioner (Development), Punjab, while taking into consideration the price fetched in the last auction held on 11.11.1988 plus 12% interest thereon on average basis, determined the price of the land @ ₹844/- per sq. yard. The said price was to be treated as final and binding in view of the order of the Supreme Court which comes to a total amount of ₹4,28,44,403/-. It is submitted that the petitioners were called upon to attend the meeting dated 20.04.1998 vide communication dated 24.03.1998 for giving their point of view in order to arrive at the price of the land in terms of the order of the Supreme Court dated 12.12.1991. In the said meeting, only 7 occupants were present, who were asked to give their suggestions about the prevailing price as on 29.03.1990. The persons, who had attended the meeting, asked for 5-10 days' time to submit their views regarding market rate but they did not come forward and rather sat quiet over the matter and made a representation dated 12.05.1998 with a request to de-notify the acquisition. Thus, after waiting for sufficient long time, a communication dated 09.07.1998 was sent to the petitioners that though they have been given time to give their suggestions but since no suggestion has been given, therefore, the price of 9 acres of land was determined @ ₹4.28 crores which was ordered to be paid within 30 days. Thus, the petitioners, with their dillydallying tactics, remained in possession and are not willing to vacate the land in their occupation nor they were willing to pay the market rate of the land, as assessed by the Financial Commissioner, in compliance of the order passed by the Supreme Court.

Counsel for the petitioners has argued that in the letter dated

09.07.1998, the respondents did not disclose about the 9 acres of land which was to be allotted to them, which is strongly opposed by the respondents with reference to para 2 of the said order in which it was specifically mentioned that the said land is in the reserved area of Sirhind, which is to be allotted.

During the course of hearing, the controversy boiled down to the rate of interest and the date from which it has to be charged, otherwise counsel for the petitioners has submitted that the petitioners are ready to pay the amount of ₹4.28 crores.

In this regard, counsel for the respondents has submitted that the value of the land is now more than ₹45 crores, which cannot be given to the petitioners @ ₹4.28 crores. According to the respondents, the amount of ₹4.28 crores is being charged @ 12% simple interest to which the petitioners have submitted that the respondents could have only charged the interest at the current rate in terms of Section 3 of the Interest Act, 1978 and in support of his submission, he has relied upon various decisions in the cases of **U.P. Cooperative Federation Ltd. vs. M/s Three Circles,** 2009(4) R.C.R. (Civil) 546, **H.U.D.A. vs. Raj Singh Rana,** 2009(1) R.C.R. (Civil) 129, **Sushil Kumar and another vs. Haryana Urban Development Authority and another,** 2009(2) R.C.R. (Civil) 342 and **Brij Lal Garg vs. Haryana Urban Development Authority and another,** 2009(2) R.C.R. (Civil) 248.

It is also submitted that the respondents are not entitled to the interest from 09.07.1998 but only from 06.10.2006 because after issuing notice on 09.07.1998, they did not make any effort to take the possession.

Counsel for the respondents has submitted that so for as the date of interest is concerned, it has to be from 09.07.1998 because the petitioners were duly informed about 9 acres of land which was to be allotted to them and the amount to be paid against it and were called upon to deposit the said amount within 30 days so that the allotment could be made in their favour. The letter dated 06.10.2006 was only issued when it was found that the petitioners were not interested in making the payment and that the threat was given to them for taking suitable legal action. In this regard, he has relied upon a judgment of this Court in the case of **Dev Raj Katyal vs. Haryana Urban Development Authority through its Chief Administrator and another,** 2004(3) R.C.R. (Civil) 694 in which it has been held that if the defaulter does not make the payment within the time stipulated in the notice, then he is liable to pay the interest from the date of the notice. In this regard, he has also relied upon a judgment of this Court in the case of **Pawan Kumar vs. State of Haryana and another,** 2009(3) PLR 529. As regards the rate of interest, it is submitted that Section 3 of the Interest Act, 1978 would not apply as it applies in the proceedings for the recovery of any debt or damages and not in a case where it is being charged on the delayed payment of the goods sold.

I have heard learned counsel for the parties and perused the available record.

There is no dispute that the land in question, in possession of the petitioners, has already been acquired. It was only an arrangement made

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by the Supreme Court, where the petitioners made a statement that if they are allotted 9 acres of land by the respondents, they would pay the price which may have been obtained by the respondents from the last auction plus reasonable premium thereon. On the question of market rate of the 9 acres of land, the Supreme Court had directed that the respondents would allot 9 acres of land to the petitioners, who would pay the price of such land at the market rate as prevalent as on 29.03.1990, which shall be determined by the Financial Commissioner (Development), Punjab and his decision to be accepted as final and binding. The petitioners' possession was protected only for a period of three months from the date of allotment of 9 acres of land. The petitioners did not cooperate in the determination of the price of the said 9 acres of land which was to be allotted to them though it was calculated on the basis of the auction dated 11.11.1988 @ ₹844/- per sq. yard with 12% interest to the tune of ₹4,28,44,403/-, whereas the similar land auctioned in the year 2006 fetched a sum of ₹5,110/- per sq. yards as against ₹844/- per sq. yard. It is also not disputed that the amount of ₹4.28 crores for 9 acres of land was settled by associating the petitioners by the Financial Commissioner (Development), Punjab, whose order was to be treated as final and binding as per the order of the Supreme Court and the petitioners were duly informed/asked to deposit the amount within 30 days vide letter dated 09.07.1998 but the petitioners did not pay any heed to it and kept quiet for a long time, filing unnecessary petitions/suits involving the respondents in the litigation regarding the determination of the price of the land. Ultimately, in the year 2006, the respondents served a notice of

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taking legal action for not depositing the amount as the petitioners have retained the possession of the acquired land all throughout and when the amount was not paid, the respondents had to file the petitions under Sections 4 and 7 of the Act, which has now been allowed by both the Courts below and when the possession of the petitioners was threatened, the present writ petitions have been filed.

As a matter of fact, there is no equity in favour of the petitioners because of their own act and conduct and there is no illegality in the order of eviction passed under the Act. Insofar as the date and rate of interest are concerned, the petitioners are liable to pay interest from the date when the notice dated 09.07.1998 was served upon them and cannot take the shelter of Section 3 of the Interest Act, 1978 in order to pay the current rate of interest as it would not apply in the facts and circumstances of the present case and the respondents have rightly determined the rate of interest @ 12% per annum, charged on the amount determined of the value of the 9 acres of land which is now being sold at the collector rate of ₹3,20,000/- per marla, which comes to ₹5,12,00,000/- per acre and the total costs of 9 acres of land comes to ₹46,08,00,000/-.

In view of the aforesaid facts and circumstances, all the writ petitions are hereby dismissed being denuded of any merit.

December 22, 2015 **(Rakesh Kumar Jain)**
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