

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.2648 of 2016
Date of decision : 16.08.2017

Punjab Small Industries & Export Corporation

...Petitioner

Versus

Ramesh Dutt and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mrs. Munisha Gandhi, Sr. Advocate with
Ms. Salina Chalana, Advocate and
Ms. Sukhmani Kang, Advocate for the petitioner.

Mr. B.S. Guliani, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Punjab Small Industries & Export Corporation, Chandigarh is
in revision petition against the order passed by the Executing Court dated
07.12.2015.

Major part of the order is in tabulated form. The complete order
passed by the Executing Court is extracted as under:-

*“Heard, the learned counsel for the decree-holder and JD.
The calculation is verified as under:-*

(I) Value of acquired land:-

a)	Compensation @ Rs.4,50,000/- per acre for 19 Kanal 9 Marlas	Rs.10,94,062/-
b)	Amount already received by the decree- holder as per order dated 7.6.2004	Rs.4,55,625/-
c)	Enhanced amount of compensation	Rs.6,38,437/-
d)	Solatium @ 30%	Rs.1,91,531/-

a)	Compensation @ Rs.4,50,000/- per acre for 19 Kanal 9 Marlas	Rs.10,94,062/-
e)	Additional price @ 12%	Rs.76,612/-

Total Rs.9,06,580 (A)

(ii) Compensation for loss of business:-

a)	Loss of business as assessed in document Ex.R11 for a period of 1 ½ years	Rs.91,18,685.00
b)	Solatum @ 30%	Rs.27,35,605.00
c)	Additional price @ 12% w.e.f. 6.4.1992 to 20.4.1993	Rs.11,39,211.00
	Total	Rs.1,29,93,502.00 (B)

iii) Value of Superstructure:-

a)	Value of Superstructure assessed by the Hon'ble High Court	Rs.25,80,000.00
b)	Amount already received	Rs.17,20,000.00
c)	Difference of amount	Rs.8,60,000.00
d)	Solatum @ 30%	Rs.2,58,000.00
e)	Additional price @ 12% w.e.f. 6.4.1992 to 20.4.1993	Rs.1,07,500.00
	Total	Rs.12,25,500.00 (C)

(iv) Compensation for Electrical Fittings:-

a)	Value of Superstructure assessed by the Hon'ble High Court	Rs.25,80,000.00
b)	Compensation for electrical fittings @ 5% of super structure	Rs.1,29,000.00
c)	Solatum @ 30%	Rs.38,700.00
d)	Additional price @ 12%	Rs.16,116.00
	Total	Rs.1,83,816.00 (D)

v) Compensation of trees:-

a)	Value of trees assessed	Rs.33,500.00
b)	Solatum @ 30%	Rs.10,050.00
c)	Additional price @ 12% w.e.f. 6.4.1992 to 20.4.1993	Rs.4,185.00
	Total	Rs.47,735.00 (E)

	Grand total of principal amount due to the decree holder against JD	Rs.1,53,57,133.00
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Interest @ 9% per annum on the said amount of Rs.1,53,57,133.00 w.e.f. 21.4.1993 to 20.4.1994	Rs.13,82,142
Interest @ 15 % per annum on the said amount of Rs.1,53,57,133.00 w.e.f. 21.4.1994 to 4.3.2005	Rs.2,51,47,305/-
Total	Rs.2,65,29,447/-
Amount paid by JD on 4.3.2005	Rs.1,00,00,000/-
Balance Amount	Rs.1,65,29,447/-
Interest @ 15% per annum on the said amount of Rs.1,53,57,133.00 w.e.f. 5.3.2005 to 23.2.2014	Rs.2,07,32,129/-
Total as on 23.2.2014	Rs.3,72,61,576/-
Amount received on	Rs.3,36,97,605/-
Balance amount	Rs.35,63,971/-
Interest @ 15% per annum on the said amount of Rs.1,53,57,133.00 w.e.f. 24.2.2014 to 23.8.2015	Rs.34,55,354/-
Interest @ 15 per annum on the said amount of Rs.1,53,57,133.00 w.e.f. 24.8.2015 to 23.12.2015	Rs.7,67,856/-
Grand Total	Rs.2,31,44,314/-

Now case is adjourned to 7.1.2016 for making payment as per abovesaid calculations.”

Learned counsel for the Corporation has submitted that the Executing Court has committed material illegality in calculating the solatium and additional price payable on item Nos.(ii), (iii), (iv), (v). She submits that solatium and additional amount is payable only with respect to the market value of the land and not with respect to loss of business, value of superstructure, compensation for electric fittings and compensation for trees.

Additional amount and solatium is payable under Section 23 of the Land Acquisition Act, 1894. Section 23 is extracted as under:-

“23 Matters to be considered in determining compensation.

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration--

first, the market value of the land at the date of the publication of the ⁵⁷ [notification under section 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date

of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of ⁵⁹ [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition.”

A careful reading of Section 23 would prove that under first clause of Sub-Section 1 of Section 23, the market value of the land is determined at the date of publication of the notification under Section 4(1). Section 23(1A) provides for payment of additional amount on the market value of the land. It is provided that while calculating the compensation payable, the additional amount will be calculated at the rate of 12 per centum per annum on such market value of the land for a period commencing on and from the date of the publication of the notification under Section 4, Sub-Section (1) to the date of award of the collector or the date of taking possession of the land whichever is earlier. It is thus clear that the additional amount is payable only with respect to the market value of the land under Clause 1 of Section 23(1) of the Act.

Similarly, solatium is payable as per the provisions of Sub-Section 2 of Section 23. Sub-Section 2 of Section 23 also provides the solatium to be payable on such market value. Sub-Section 2 of Section 23 is also dealing with the market value of the land and not the compensation.

Factor (ii), (iii), (iv), (v) and (vi) are for assessment of the damages suffered by the person interested which must be taken care of by the Court while determining the compensation. Factor (ii) deals with the damages sustained to the standing crops or the trees. Factor (iii) deals with damages on account of severance of the land of the person interested. Factor (iv) deals with the damages to other property movable or immovable or to the earnings of the person interested. Similarly, Factor (v) deals with the damages on account of change of residence or place of business of the person interested and Factor (vi) deals with damages resulting from diminution of the profits of the land between the date of publication of declaration under Section 6 and the time of Collector's taking possession of the land.

This interpretation has also been taken by the Hon'ble Supreme Court of India in the judgment reported as *2011(4) SCC 734 titled as State of Punjab Vs. Amarjit Singh and another*. Para No.7 of the judgment is extracted as under:-

“7. Thus a person whose land is acquired is entitled to the following amounts under the Act.

(a) Compensation determined under Section 23(1) of the Act (comprising the market value of the land referred to as the first factor and any damages/expenses referred to as the second to sixth factors under the said sub-section).

(b) Solatium at 30% on the market value determined as the first factor under section 23(1) of the Act.

(c) Additional amount at 12% per annum of the market value of the land referred to as the first factor under Section 23(1) of the Act, for the period specified in

Section 23(2).

(d) Interest on the aggregate of (a), (b) and (c) above for the period between the date of taking possession to date of payment/deposit at the rate of 9% per annum for the first year and 15% per annum for the remaining period.

Payments made are to be adjusted and accounted in the manner set out in Gurpreet Singh v. Union of India (2006) 8 SCC 457.”

In view of the above, the order passed by the Executing Court while adding solatium and additional price with respect to item (ii), (iii), (iv), (v) are set aside.

Learned counsel for the parties have submitted that the issue of payment of interest be kept open as the Executing Court has not adjudicated upon the issue.

Since both the parties are agreed, the issue of determination of the interest payable is left open.

Revision petition is allowed.

16.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No