IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

221 **CWP No.10222 of 2017**
Date of Decision:23.08.2017

Surjit Singh Saini and others ....Petitioners

Versus

Union of India and others .....Respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr.Raj Karan Singh Verka, Advocate
for the petitioners

Ms.Ruksaar Sandhu, AAG Punjab

Mr.Harkaran Singh, Advocate for
Mr.B.S.Bhalla, Advocate
for respondent No.3-NHAI

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ARUN PALLI, J. (ORAL):

This is a petition under Articles 226/227 of the Constitution of India, praying for a writ in the nature of mandamus directing the respondents to pay the statutory benefits to the petitioners under Sections 23 (1)(A), 28 and 34 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act').

The facts that are required to be noticed are limited.

Vide notification dated 23.05.2008 issued under Section 3(A) of the National Highways Act, 1956 (for short, 'the 1956 Act'), a land situated in village Mugrala, District Gurdaspur, was sought to be acquired for four laning of Pathankot-Amritsar Highway. A final declaration under Section 3(D) of the 1956 Act was published on 13.05.2009. Vide award No.1 dated 24.12.2009, the competent authority assessed the value of the acquired land at ₹ 12,500/- per marla. For, the petitioners were denied the statutory benefits under Section 23(1)(A), 28 and 34 of the 1894 Act, they approached this Court, vide CWP No.10092 of 2013. And, vide order dated May 10, 2013, a Division Bench of this Court disposed of the said petition, with a direction to the respondents to consider the representation/notice served by the petitioners, within a specified time. Resultantly, respondent No.2 i.e. Sub-Divisional Magistrate-cum-Land Acquisition Collector, Gurdaspur, on a consideration of the claim of the petitioners, vide order dated 23.07.2013 (Annexure P2), found them entitled to solatium and interest. Particularly, for, even the National Highway Authority of India, had expressed no objection to award such benefit to the petitioners. However, subsequently, the order dated 23.07.2013 (Annexure P2), was withdrawn by respondent No.2, for, the requisite details under Section 23(2) and Section 28 were not furnished. However, vide another order dated 11.02.2014 (Annexure P3), the petitioners were held entitled to solatium @ 30% and interest, as per rules. Accordingly, a supplementary award dated 28.02.2014 (Annexure P7) was rendered by respondent No.2. But, once again, the petitioners approached this Court, vide CWP No.15518 of 2014, for, they had still not been awarded the additional benefit, in terms of Section 23(1)(A) of the 1894 Act. Even, the said writ petition was disposed of, by this Court, vide order dated 06.08.2014, directing respondent No.2 to consider and decide the representation of the petitioners, that was alleged to be pending. Resultantly, respondent No.2, vide yet another order dated 19.02.2015 (Annexure P5), arrived at a conclusion that the benefit of solatium under Section 23(2) of the 1894 Act, has since been granted to the petitioners. But, as the compensation awarded by the competent authority, vide award dated 24.12.2009 was not enhanced, the claim of the petitioners for interest under Section 28 of the 1894 Act, was misconceived. Likewise, as there was no delay in payment of solatium to the petitioners, they were not entitled to any interest either. And, the benefit under Section 23(1)(A) could also not be awarded, for, the said provision would apply only if the compensation awarded by the competent authority was further enhanced. This is how, as indicated above, the petitioners are before this Court.

Learned counsel for the petitioners submits that the requisite amount in terms of Section 23(2) of the 1894 Act, i.e. the solatium has since been disbursed to the petitioners. Further, the petitioners were/are not seeking any interest upon solatium. As regards the provisions of Section 28 of the 1894 Act, it is conceded that since the compensation awarded by the competent authority was not enhanced, the petitioners shall also not be entitled to any interest, in terms of the said provision. However, he submits that in terms of the decision of the Division Bench of this Court in **"M/s Golden Iron and Steel Forgings Versus Union of India and others" 2011 (4) RCR (Civil) 375**, the petitioners shall be entitled to the benefit of additional compensation in terms of Section 23(1) (A), as also the interest, in terms of Section 34 of the 1894 Act.

In response, the argument advanced by learned counsel for the petitioners is not controverted by the learned counsel for the respondents. Rather, respondent No.1 i.e.Union of India and respondent No.3 i.e.National Highway Authority of India, have not even chosen to file the written statement and contest the petition. And, even in the written statement filed on behalf of respondent No.2, it is not disputed either that the petitioners are entitled to the benefit under Section 23(1)(A) and Section 34 of the 1894

Act.

I have heard learned counsel for the parties and perused the records.

Before, I proceed further, it would be apposite to refer to the conclusion arrived at by respondent No.2 in support of his order dated 19.02.2015 (Annexure P5), which reads thus:

> **"The petitioners have been paid the benefit of solatium under Section 23(2) and in this case the compensation was not enhanced by any Land Acquisition Collector, so the petitioners are not entitled to any interest u/s 28 of the Act. In the similar way the respondents have stated in para No.5 that there is no delay in paying the solatium so the petitioners are not entitled for interest @ 12%.**
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> **From the reply and statement of both the parties the following order is passed that the provision of Section 23(1A) of Land Acquisition Act,1894 is applicable on the cases where the compensation is enhanced by the competent authority. In the instant case the compensation is not enhanced by any competent authority so the petitioners are not entitled for benefits under Section 23 (1A) of the Act.**

As indicated above, all that is being claimed by the petitioners is the benefit under Section 23(1A) and interest under Section 34 of the 1894 Act. Ex facie, the order dated 19.02.2015, rendered by respondent No.2, extracted here-in-before, is based on a complete misconstruction and/or misreading of the two provisions i.e. 23(1)(A) and Section 28 of the 1894 Act. Section 23(1)(A) postulates; **"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 publication of the notification under section 4, sub-section (1), in respect of such land to the date of award of the Collector or the date of taking possession of the land, whichever is earlier."** Meaning thereby, a claimant-landowner in addition to the market value of his land holding, is also entitled to an additional benefit or an amount that is calculated @ 12% per annum upon the assessed value of his land with effect from the date of notification under Section 4 to the date of award, or the date of taking possession, whichever is earlier. Whereas, the provisions of Section 28, being set out heither-to-below, entitles the claim/landowners for interest upon the enhanced amount awarded by the reference Court.

> **Collector may be directed to pay interest on excess compensation. - If the sum, which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court:**
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> **[Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one**

year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.]

Thus, the observations recorded by respondent No.2, in his order dated 19.02.2015 (Annexure P5); **"that the provision of Section 23 (1)(a) of Land Acquisition Act, 1894 is applicable on the cases where the compensation is enhanced by the competent authority. In the instant case, the compensation is not enhanced by any competent authority so the petitioners are not entitled for benefits under Section 23(1)(a) of the Act",** are wholly perverse. Even otherwise, it is neither the reasons assigned in the order dated 19.02.2015 (Annexure P5) nor the case set out on behalf of respondent No.2 that provisions of Section 23(1A) are inapplicable or the petitioners are not entitled to the benefits thereunder.

Likewise, it is not disputed either that the respondents had obtained possession of the acquired land on 24.12.2009, i.e. at the time of pronouncement of award. In reference to the supplementary award dated 28.02.2014 (Annexure P7), learned counsel for the petitioners would submit that for the first time, the cheques towards disbursement of part of the compensation were issued to the petitioners between 14.08.2010 to 15.10.2011. Thus, the petitioners shall also be entitled to interest in terms of Section 34 of 1894 Act.

That being so, the only and inevitable conclusion that could be reached; the petitioners are entitled to the benefit of provisions of Section 23(1)(A) as also Section 34 of the 1894 Act.

Accordingly, the writ petition is allowed.

Respondent No.2 is directed to re-consider the claim of the petitioners in accordance with law. Needless to assert, the necessary calculations and the amount, the petitioners are entitled to, in terms of Section 23(1)(A) and Section 34 of the 1894 Act, shall be duly worked out. And, the amount, the petitioners are found entitled to, shall accordingly be disbursed. The necessary exercise and the order in this regard shall be passed within eight weeks from the date of receipt of the certified copy of this order. Parties through their respective counsel are directed to appear before respondent No.2 on 04.09.2017.

August 23, 2017 **(ARUN PALLI)**
neenu **JUDGE**

Whether speaking/reasoned Yes/No.
Whether reportable- Yes/No