IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

X Objections No. 33-CI of 1995 in
RFA No. 2903 of 1994
Date of decision: 11.01.2018

State of Punjab and another ....Petitioner(s)

Versus

Ramji Dass (deceased) through L.Rs. and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Karan Gupta, Advocate,
for the cross objectors/respondents.

Ms. Jasleen Kaur Sidhu, AAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The present order shall dispose of 3 cross objections i.e. X Objections Nos. 33-CI, 34-CI and 35-CI of 1995 in RFA Nos. 2903, 2904 and 2906 of 1994 as common questions of facts and law are involved. For reference, X Objection No. 33-CI of 1995 in RFA No. 2903 of 1994 is being taken up.

The landowners have filed the present cross objections against the order of the reference dated 01.06.1994 passed by the Additional District Judge, Patiala wherein, while allowing the reference under Section 18 of the Land Acquisition Act, 1894 (in short 'the Act'), compensation was awarded at a flat rate of Rs.70,000/- per acre for the acquired land falling in village Bosar Kalan alongwith the solatium and interest and compensation for severance of the land. However, it was held that the claimants were not entitled to solatium under Section 23(2) and 23(1-A) of the Act on the amount of compensation on account of severance. It is this denial that the land owners-cross objectors challenge and which raises the interesting question of law under Section 23 of the Act. It is also to be noticed that the award has otherwise been upheld and the State appeals have also been dismissed vide order dated 08.10.2010 in the present RFA No. 2903 of 1994. The cross objections had also been dismissed on the same date on account of the absence of the counsel for the land owners. However, the same order was recalled on 17.08.2012 and in such circumstances, the cross objections are before this Court again. Section 23 reads as under:-

> ***"23. Matters to be considered on 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 [notification under section 4, sub-section (1)];*
> *secondly, the damage sustained by the person interested, by reason of the taking of any standing crops 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 serving 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, 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 [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition.

The acquisition in question vide notification dated 02.02.1989 under Section 4 of the Act was for the construction and extension of the Balamgarh Minor and the Section 6 notification was dated 26.09.1989. The Collector had already awarded a sum of Rs.50,000/- for both *Chahi* and *Gair Mumkin Land* and also awarded an amount of Rs.5,312.50 as severance damages to the claimants besides awarding solatium @ 30% and interest. The Reference Court had enhanced the compensation to Rs.70,000/- per acre as noticed on the basis of an award Ex.A-3 dated 20.04.1993 in the Case of ***Baldev Singh and others vs. State of Punjab*** since the land in that case had also been acquired under the same notification for the same purpose for village Balori. While deciding the issue of severance of the holdings and in view of the statement of Ajay Kumar Patwari-AW-2 and while noticing the shares of the land owners, they were held entitled to compensation on account of severance in accordance with the observations made in the judgment impugned.

Mr. Karan Gupta, Advocate, for the cross objectors has accordingly submitted that under Sections 23(1) and under the third clause, if any person sustains any damage on account of the severance, the same is to be considered as part of the market value which is to be assessed under the first clause at the date of the publication of the notification under Section 4(1). He has accordingly brought to the notice of the Court judgments on both sides i.e. ***Punjab State vs. Virsa Singh, 1986 (1) CurLJ 113*** wherein, it was held that on compensation for severance, no solatium would be payable. Similarly, it has been pointed out that in ***State of Punjab vs. Gurbachan Singh and others, 1988 (2) PLR 695,*** the argument raised that payments to be made in terms of Section 23(1-A), 23(2) and 28 are to be worked out on the basis of the entire amount of compensation payable i.e. market value of the acquired land and the damage assessed under the third clause of Section 23 (1) was held not acceptable. It was held that the amount of damages could not possibly be treated as part of market value while placing reliance upon two Division Bench judgments of Madras High Court Patna High Court. Accordingly, only the interest as envisaged under

Section 23 of the Act was held payable on the entire amount of compensation. The relevant portion in *Gurbachan Singh's case* reads thus:-

> *"7. Lastly, it is maintained by Mr. Aggarwal that the payments to be made to the claimants in terms of Sections 23(1-A), 23(2) and 28 of the Act are to be worked out on the basis of the entire amount of compensation payable to them, i.e., the market value of their acquired land and the damages assessed under clause thirdly of Section 23 of the Act. This, however, appears untenable. So far as the claims under Section 23 (1-A) and sub-section (2) of this section are concerned, the learned counsel appears to ignore the distinction between the market value as permissible under clause first of sub-section (1) and the amount of damages payable under clause thirdly or this sub-section. <u>The amount of damages cannot possibly be treated as part of the market value.</u> The distinction in the two phrases has clearly been noticed by the two Division Benches in the State of Madras represented by* ***Collector of Madras v. Mohamed Mustafa, AIR 1971 Madras 213*** *and* ***State of Bihar v. Rameshwar Singh, AIR 1973 Patna 123****.*
>
> *8. I, therefore, hold that the additional amount and solatium as envisaged by Section 23 (1-A) and sub-section (2) respectively are payable only on the market value, as determined under clause first of sub-section (1) of Section 23 and not on the amount as determined under clause thirdly of this sub-section. The interest as envisaged by Section 23 of the Act is, of course, payable on the entire amount of compensation, i.e., the market value and the damages assessed under clause thirdly of sub-section (1) of Section 23, as compensation essentially includes market value and the damages payable to a landowner on account of the acquisition of*

his land."

The view taken by the Division Bench in ***Sewa Singh vs. State of Punjab, 2001 (2) PLR 49*** was, however, that market value of the acquired land was not only the item which was payable to a person whose land was acquired but was the same payable on all factors as enumerated under clause nos. 1 to 6 of Section 23 which demonstrate compensation payable to a claimant. Resultantly, it was held as under:-

> *"10. Even though the contentions of the learned counsel as noted above, with regard to grant of further compensation, have met with no success, the one with regard to non-grant of statutory benefits on compensation assessed for severance of land under clause thirdly of Section 23, has some substance and deserves to be partly allowed. It may be recalled that even though the reference Court had not allowed any compensation to the claimants on account of severance of their land, learned Single Judge allowed Rs. 5000/- per acre for the same. The claimants were, however, not allowed statutory benefits as admissible to them under the provisions of the Act. As would be clear from the provisions contained in Section 23 of the Act, in determining the amount of compensation to be awarded for land so acquired, the Court has to take into consideration all factors, as enumerated in the said Section. Whereas, first clause of Section 23 deals with the market value of land at the date of publication of the notification under Section 4(1), the second clause deals with 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. The third clause deals with 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. Fourth clause deals with damage, if any, sustained by the person interested, at the time of Collector's taking possession of land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, whereas fifth clause deals with grant of compensation for loss of business and clause sixth deals with damages resulting from diminution of the profits of the land between the time of publication of declaration under Section 6 and the time of Collector's taking possession of the land. Market value of the acquired land at the date of notification under Section 4 of the Act is, thus, not the only item which is payable to a person whose land has been acquired. It is the sum payable on all factors, as enumerated in clauses 1 to 6 of Section 23 that determines the compensation payable to a claimant. However, a claimant is entitled to the benefits provided under Section 23(1-A) only on market value of the land, i.e., the compensation assessed under clause (1) of Section 23 of the Act. The same is also true with regard to sub-section (2) of Section 23. But, insofar as Section 28 is concerned, the benefit under the said Section has to be on the compensation. Section 28 of the Act reads thus:-

> *"28. 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 centum per annum from the date on which he took possession of the land to the date of*

payment of such excess into Court :

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.

11. It is clear from reading of Section 23(1-A), 23(2) as also Section 28 of the Act that the additional benefits are available on market value of the acquired land under Section 23(1-A) and 23(2) whereas the same is available to the entire compensation, i.e., the sum payable on all six clauses of Section 23 of the Act. Once the claimants are held entitled compensation on account of severance, it has to be held that the Collector ought to have awarded the said compensation in excess of the sum which was granted by him while giving the award. The claimants are, thus, held entitled to interest @ 9% per annum from the date on which possession was taken for a period of one year and @ 15% thereafter till the same is paid.

12. In view of discussion made above, these appeals are partly allowed, i.e. that the claimants shall be entitled to statutory benefits as admissible to them under Section 28 of the Act and has been fully detailed above. To this extent, thus, the judgment of the learned Single Judge is modified.

Appeal partly allowed."

Another Division Bench in ***Brij Mohan and another vs. State of Haryana and another, 2005 (2) PLR 439,*** while deciding the issue of interest on severance charges, came to the conclusion that the same was payable if not paid in time while placing reliance upon the judgment of the Constitution Bench in ***Sunder vs. Union of India, 2001 (7) SCC 211.***

The Constitution Bench was dealing with the issue as to whether State was liable to pay interest on the amount as envisaged under Section 23(2) of the Act which is better known as solatium. The issue was accordingly thrashed out while referring to Section 26, 31 and 34 that it was not permissible to split compensation in components for the purpose of payment of interest and it was accordingly held that person entitled to compensation awarded is also entitled to interest on the aggregate amount which also included solatium. Thus, the solatium aspect was also included as an integral and statutory part of the compensation. In such circumstances, counsel for the appellant is well justified in submitting that under the third clause of Section 23(1) on account of severance, the same amount is also to be assessed as market value and is part of the compensation which is liable to be paid to the appellants. The relevant observations of the Constitution Bench in *Sunder's case* read thus:-

> *"19. Section 26 does not say that the award would contain only the amounts granted under sub-section (1) of Section 23. The special mention of that sub-section in Section 26 is only for the purpose of directing that the grounds or reasons for awarding the amount under each of the clauses in the sub-section shall be specified in the award. It is unnecessary to mention any reason or ground in any award as to why the sums indicated in sub-section (1-A) and sub-section*

(2) of Section 23 of the Act were granted, because they are only the sequels or concomitant adjuncts of the determination of the total amount indicated in sub-section (1). No judicial exercise is required to quantify the sums mentioned in sub-section (1-A) or subsection (2) because the section itself specifies the percentage to be worked out for the purpose of adding to the total amount arrived at under sub-section (1). Otherwise Section 26 is not intended to show that the compensation awarded would be bereft of the additional amount and the solatium envisaged under sub-section (1-A) or sub-section (2). This can be clearly discerned from the commencing words of Section 26 itself. They are: "Every award under this Part shall be in writing signed by the Judge". What is referred to therein is Part III of the Act which comprises of a fasciculus of twelve provisions starting with Section 18 and ending with Section 28A of the Act. There can be no doubt that all the three heads specified in the three sub-sections in Section 23 are the sums to be "awarded by the court". Hence the words "every award under this Part" cannot be treated as the award after delinking the amounts awarded under sub-section (1-A) or sub-section (2) of Section 23.

20. We may now see whether exclusion of the factor "any disinclination of the person interested to part with the land acquired" from being considered as part of the compensation indicated in Section 24 of the Act would be of any aid for excluding solatium from the purview of interest accrual process. No doubt what is intended under Section 23(2) is additional to the market value of the land and "in consideration of the compulsory nature of the acquisition". But it cannot be equated with any damage caused on account of "any *disinclination of the person to part with the land acquired."*

21. It is apposite in this context to point out that during the enquiry contemplated under Section 11 of the Act the Collector has to consider the objections which any person interested has stated pursuant to the notice given to him. It may be possible that a person so interested would advance objections for highlighting their disinclination to part with the land acquired on account of a variety of grounds, such as sentimental or religious or psychological or traditional etc. Section 24 emphasises that no amount on account of any disinclination of the person interested to part with the land shall be granted as compensation. That aspect is qualitatively different from the solatium which the legislature wanted to provide "in consideration of the compulsory nature of the acquisition".

22. Compulsory nature of acquisition is to be distinguished from voluntary sale or transfer. In the latter, the landowner has the widest advantage in finding out a would-be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time when he would be receiving consideration and parting with his title and possession over the land. But in the compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the Court fixes as per the provisions of the

Act. The solatium envisaged in sub-section (2) "in consideration of the compulsory nature of the acquisition" is thus not the same as damages on account of the disinclination to part with the land acquired.

23. In deciding the question as to what amount would bear interest under Section 34 of the Act a peep into Section 31(1) of the Act would be advantageous. That sub-section says: "On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next subsection." The remaining sub-sections in that provision only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. <u>We make it clear that the compensation awarded would include not only the total sum arrived at as per subsection (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof.</u>

24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid *or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. <u>Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted."</u>*

Resultantly, it is apparent that the restriction which was imposed by the Reference Court denying the benefit of solatium and interest on the part of the severance amount cannot be held to be justified in any manner keeping in mind the observations made above by the Apex Court. Accordingly, cross objections are allowed to that extent and it is held that the appellant shall be entitled to all statutory benefits under Section 23(1-A) and Section 23(2) of the Act.

11.01.2018 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No