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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Civil Writ Petition No.23956 of 2016
Date of decision: 27.07.2018

Surjit Singh and others **...Petitioners**

Versus

Hindustan Petroleum Corporation Limited and others **...Respondents**

2. Civil Writ Petition No.26997 of 2016

Lakhvir Singh and others **...Petitioners**

Versus

Hindustan Petroleum Corporation Limited and others **...Respondents**

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

Present: Mr. M.S.Khaira, Senior Advocate with
Mr. D.S.Randhawa, Advocate for the petitioners.

Mr. Raman Sharma, Advocate for respondent no.1.

Mr. P.S.Bajwa, Addl. Advocate General, Punjab.

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G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of Civil Writ Petition Nos.23956 and 26997 of 2016 as common questions of fact and law are involved in these petitions. However, for dictating this order, the facts have been taken from Civil Writ Petition No.23956 of 2016.

The present writ petitions filed by the landowners under Articles 226/227 of the Constitution of India are for issuance of directions to respondent no.1 to pay interest on the total amount of compensation as the initial compensation was paid on 21.12.1999 instead of 6.1.1999 (the date of award) and for grant of interest at the rate of 15% per annum in

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accordance with the award on the total compensation beyond ₹16 lakh per acre till its realization as the same was stayed in CWP No.16750 of 1999 filed by the respondent no.1-Corporation.

The first legal issue which arises is to whether the petitioners are entitled for the benefit of statutory interest as per the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") and whether on account of interim order the landowners could be put to any disadvantage and that they would only be entitled to interest at the rate given by the bank in view of interim order dated 3.12.1999.

The secondary question which would arise would be whether the principle of maxim "Actus curiae neminem gravabit" would come into play pertaining to that no act of Court would harm any party. To decide the said issue, the facts will have to be culled out to answer the above said questions which this Court is inclined to decide in favour of the the landowners.

It is not disputed that on account of the acquisition of land falling in village Suchi Pind District Jalandhar for the purpose of benefit of respondent no.1, notification was issued on 25.6.1996 under Section 4 which was followed by notification dated 7.1.1997 under Section 6 & 17 of the Act since urgency provisions were invoked and possession was given on 20.5.1997. Resultantly, 80% of the amount of average of costs at the rate of ₹ 16 lakh per acre was deposited by respondent no.1. However, vide award dated 6.1.1999 (Annexure P/1) the market value was fixed at ₹ 27 lakhs per acre by the Land Acquisition Collector-cum-Sub Divisional Magistrate (Civil), Jalandhar-I-respondent no.3.

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Some landowners filed land reference petitions under Section 18 of the Act claiming additional compensation and the said reference petitions were dismissed on 17.1.2003. Respondent no.1, however, challenged the fixation of amount at ₹ 27 lakhs per acre before this Court by filing Civil Writ Petition No.16750 of 1999 and on 3.12.1999 following exparte order was passed:-

> "C.M. Allowed.
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> Contends that the Land Acquisition Collector did not hold an inquiry as enjoined by Section 11 and determined the compensation merely on the basis of the price fixed by the District Lands Price Fixation Committee.
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> Notice of motion for 25.4.2000.
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> Petitioner has deposited the entire awarded amount with the Land Acquisition Collector, Disbursement of compensation beyond Rs. Sixteen lacs per acre will remain stayed. Meanwhile, the amount deposited by the petitioner shall be put in a non-operative account with a Nationalized Bank so as to earn maximum rate of interest so that the party found entitled to the same can recover.
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> *Dasti.*"

Eventually the said writ petition was dismissed on 6.9.2006 (Annexure P/2) with the direction that the amount deposited be remitted to the Reference Court for disbursing the same to the concerned landowners as per award dated 6.1.1999 (Annexure P/1). Relevant part reads as under:-

> "Moreover, the award passed by the Additional District Judge-cum-Land Acquisition Tribunal on 17.1.2003 upholding the market value of the acquired land at the rate of Rs.27 lacs per killa has become final. Therefore, the chapter is closed. It cannot be reopened in these proceedings as this order has not been challenged.
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> For the reasons discussed above, I find no legal

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> infirmity in the award dated 6.1.1999 passed by the Land Acquisition Collector-cum-Sub Divisional Magistrate (Civil), Jalandhar, respondent no.2 and it is held that the compensation has been properly assessed at the rate of Rs.27 lacs per acre.`
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> This petition is accordingly dismissed.
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> The amount deposited by the petitioner be remitted to the Land Acquisition Tribunal for disbursing the same to the concerned land owners/respondents as per the award dated 6.1.1999."

Aggrieved by the aforesaid order, respondent no.1-Corporation filed LPA No.226 of 2006 which was dismissed by the Division Bench in limine on 19.12.2006. Relevant part reads as under:-

> "......It has also been noticed that the claimants had sought reference under Section 18 of the Act before the Reference Court for seeking enhancement of the compensation from Rs.27 lacs per acre to Rs. 50,000/- per marla. However, the Reference Court upheld the compensation assessed by the learned Acquisition Collector @ Rs.27 lacs per acre. No doubt, right to appeal lay against the award but none had been filed by anyone as nothing has been point out or referred to in the petition or before us. Considering the totality of the factual status disclosed and the matter having been considered deeply by the learned Single Judge, we find no reason to interfere in the judgment dated 6.9.2006 rendered in CWP No.16750 of 1999. It may also be noticed that the Financial Commissioner has exercised the power envisaged under the Act while re-appraising the value at Rs.16 lacs per acre and in his wisdom the value had been re-assessed @ Rs.27 lacs per acre. The power has been exercised correctly as no infirmity therein has been point out. We find no merit in the appeal and the same is dismissed."

Respondent no.1 thereafter challenged the said order before the Apex Court in SLP (Civil) No. 3965 of 2007 in which notice was issued on

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9.3.2007 and status quo as on that day was directed to be maintained. Eventually the Civil Appeal No.6029 of 2009 was dismissed on 17.11.2015 (Annexure P/3). Thus, the present writ petitions have been filed.

In the writ petitions, it has been pleaded that they had approached the Sub Divisional Officer (Civil)-cum-Land Acquisition Collector, Jalandhar claiming recovery of compensation amount along with interest for the delayed payment by filing applications under Section 34 of the Act but the matter had been kept pending and no proceedings had been initiated upon the said applications.

Respondent no.1 in its reply has submitted that the amount of compensation to the extent of 80% was deposited vide Demand Draft dated 5.3.1997 and in pursuance to the award dated 6.1.1999, further amount at the rate of ₹ 27 lakhs per acre to the tune of ₹ 4,05,14,199/- was deposited on 16.11.999 under protest. It is accordingly pleaded that on account of interim order passed the release of the amount had been delayed and question of claiming interest now did not arise. It was further submitted that the aspect of interest already stood settled and the petitioners were free to withdraw the entire amount along with interest thereon as the interim order of the Division Bench dated 3.12.1999 had never been challenged. Therefore right to claim interest as such as per the Statute has been denied.

The other issue which would also arise apart from the two questions which have been formulated that the petitioners would necessarily have to be relegated to their remedy before the Executing Court since admittedly award of the Collector had been upheld by the Reference Court which would clear from the order of the Division Bench reproduced

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above. However, since the issue regarding non payment of interest or liability to pay interest has been raised by the Corporation on account of orders passed by this Court, it would be necessary to decide this aspect firstly.

The issue as to whether the amount which was deposited by the respondent no.1-Corporation with the nationalized bank on the maximum rate of interest so that party found entitled to the same could recover it, is to be decided against respondent no.1-Corporation as it only protected the interest of Corporation that they have been saved from paying the full amount of compensation along with statutory interest at that point of time which it would have been liable to pay under the Statute. The interim order dated 3.12.1999 would necessarily come to an end the writ petition was decided on 6.9.2006 and therefore, the Corporation cannot hide behind the said order to contend that the Division Bench had protected its interest and it is not liable to pay interest over and above the amount thereafter since they had deposited the amount with the nationalized bank. Respondent no.1-Corporation continued to get the benefit of interim order thereafter by approaching the Apex Court on 9.3.2007 also when status quo order in the SLP was passed and therefore, landowners were denied the benefit of usage of the amount which the Corporation had deposited but not paid to the petitioners. Sections 31(1) & (2) and 34 of the Act reads as under:-

> **"31. Payment of compensation or deposit of same in Court.**
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> (1) 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,

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and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

xxx xxx xxx

34. Payment of interest:- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within 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 compensation or part thereof which has not been paid or deposited before the date of such expiry."

The possession having been taken on 20.5.1997, the Collector had also rightly granted 9% interest from the first year as per the award itself and therefore, interest as such would continue to run as it was not paid

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as per provisions of Sections 31 and 34 of the Act. The interim order dated 3.12.1999 of the Division Bench no longer stands as it would be vacated at the final stage when the writ petition was dismissed. For precedent to be binding, there has to be final decision and interim directions, issued in a pending case, would go with the final decision and cannot be taken into consideration by this Court. The said principle of as to what is the "*ratio decidendi"* and the authoritative and binding element of the final judgment, laying down the precedent is to be taken into consideration and not the interim orders. Reference can be made to the observations made by the Apex court in **State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha (2009) 5 SCC 694.** Relevant observations of the judgment read as under:

> "21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing.
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> 22. The observations and directions in Kapil Hingorani (I) and (II) being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non- payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extra-

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> ordinary power under Article 142 of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human right violations and seeking a mandamus requiring the state, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of Kapila Hingorani (I) and Kapila Hingorani (II)."

Resultantly, issue no.1 is decided in favour of the petitioners. Similarly on the issue of principle that no act of the Court would harm no any party, the order dated 3.12.1999 was only mandated that the amount was deposited. Rather it is in the interest of the Corporation as it would get the benefit of the fact that from the date of deposit of the amount till the date of payment, it will only have to pay the difference of the interest and would be saved of the higher rate of interest and therefore, it cannot be said that the order as such would protect them to the extent that they are not liable to pay the interest on statutory rate. It is settled principle that no act of Court would harm any litigant. Reliance can also be placed upon **South Eastern Coalfields Ltd. Vs. State of M.P. (2003) 8 SCC 648** and **Mohammed Gazi Vs. State of M.P. 2000(4) SCC 342** apart from the celebrated judgment of the Apex Court in **Karnataka Rare Earth and another Vs. Senior Geologist, Department of Mines & Geology and another (2004) 2 Supreme Court Cases 783.** The relevant portion reads as under:-

> "10. In South Eastern Coalfields Ltd. (supra), this Court

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> dealt with the effect on the rights of the parties who have acted bona fide, protected by interim orders of the Court and incurred rights and obligations while the interim orders stood vacated or reversed at the end. The Court referred to the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the Court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost."

Resultantly, the argument raised by Mr. Raman Sharma, counsel for respondent no.1 is rejected.

The question of laws having been decided in favour of the petitioners, regarding legal issue as such, the present writ petitions are accordingly decided with liberty to the petitioners to seek their remedy for recovery of their dues amount before the Executing Court as per award in question since various factual aspects would arise as to when they received the balance amount after dismissal of the writ petition/Civil Appeal and rate

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of interest which they received from the bank during the intervening period. The same would necessarily have to be adjusted against the statutory rate of interest which they are entitled to as has been held above. It is expected that the Executing Court would keep in mind of the fact that Section 4 notification is of 1996 and take steps to decide the Execution Petition at the earliest.

A photocopy of this order be placed on record of connected case file.

July 27, 2018 **(G.S.SANDHAWALIA)**
Pka **Judge**

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No