

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1966-2018

Date of decision: 26.07.2018

Gurdial Singh

....Petitioner

Versus

Union of India & others

...Respondents

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

Present: Mr.Satbir Rathore, Advocate, for the petitioners.

Mr.Satish Singla, Advocate, for UOI.

Mr.D.K.Singhal, Advocate

Mr.Rishi Kaushal, Advocate

Mr.Ish Puneet Singh, Advocate

Ms.Sonia Madan, Advocate, for

Mr.R.S.Madan, Advocate, for NHAI.

Mr.P.S.Bajwa, Addl.A.G., Punjab.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 14 writ petitions, bearing CWP-1966, 290, 296, 310, 362, 1967, 1968, 1969, 1970, 1971, 1973, 1992, 4786 & 4788-2018, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-1966-2018 titled *Gurdial Singh Vs. Union of India & others*.

Prayer in the present writ petitions is for grant of solatium and interest as per provisions of Section 23 (1-A), 23 (2) and 28 of the Land Acquisition Act, 1894 (for short, the 'Act'). Said claim is primarily based upon the judgment of the Division Bench of this Court in **M/s Golden Iron & Steel Forgings Vs. Union of India & others 2011 (4) RCR (Civil) 375.**

The pleaded case of the petitioners is that land measuring 30 acres 6 kanals

CWP-1966-2018 & others connected cases

and 4 marlas falling in Sub-Division Dasuya District Hoshiarpur, was sought to be acquired, for widening and four-laning of Jalandhar-Pathankot National Highway. Notification under Section 3-A of the National Highway Act, 1956 (in short, the 'Act') was issued on 24.12.2004 and under Section 3-D on 11.07.2005. Compensation was determined vide award dated 08.05.2007 under Section 3-G of the Act. Respondent No.2-National Highway Authority of India (NHAI) approached the Arbitrator by moving an application under Section 3-G(5) for reducing/setting aside/reassessing the compensation of the acquired land, which was pertaining to claim of 629 affected persons. The Arbitrator, thereafter, passed an award on 28.01.2009 (Annexure P-1) and in pursuance to the same, the landowners received compensation. Their grouse is, thus, that no solatium and interest, as such, had been received by them under Sections 23 & 28 of the Act and therefore, they cannot be deprived the benefit of the judgment of the Division Bench. Reliance has also been placed upon similarly situated landowners who had approached this Court in CWP-7457-2012 titled *Bhag Singh & another Vs. Commissioner, Jalandhar Division, Jalandhar & others*, in which directions had been issued to pay interest and solatium in terms of the Act, within a period of 3 months.

In the reply filed by respondents No.1 and No.2 (NHAI), the plea taken is that the competent authority or the Arbitrator has not been approached and the amount is only to be paid on the determination by the competent authority or by the Arbitrator. Reliance has further been

placed upon the judgment of the Apex Court in **Sunita Mehra Vs. Union of India 2016 (8) Scale 582**, to aver that only in pending proceedings on 28.03.2008, i.e., the date of the decision in **M/s Golden Iron & Steel Forgings** (supra) were to be taken into consideration and therefore, petitioners would not be entitled for the benefits as the award was before the cut off date i.e., 08.05.2007.

Counsel for the petitioners has submitted that in similar circumstances, in CWP-17010-2017 titled *Vinod Kumar Vs. The State of Haryana & others*, decided on 06.09.2017 (Annexure P-9), the Coordinate Bench has also relegated landowners of both the State of Punjab & Haryana, to the competent authorities-cum-Land Acquisition Collectors, for fresh determination and to pass a self-speaking supplementary award, keeping in view the Division Bench judgment in **M/s Golden Iron & Steel Forgings** (supra).

Per contra, counsels for NHAI have submitted that the award had been passed on 08.05.2007 and therefore, there were no proceedings pending, as such, on 28.03.2008 and therefore, the claim is belated and the writ petitions are liable to be dismissed on this ground.

It is not disputed that the award of the competent authority under Section 3-G was itself subject matter of challenge by NHAI before the Arbitrator, who eventually decided the matter on 28.01.2009. It is the specific case of the landowners that the amounts were paid in pursuance of the said award passed by the Arbitrator. The writ petition is, thus, based upon the Division Bench judgment and the proceedings, thus, were

CWP-1966-2018 & others connected cases

pending, as held in **Sunita Mehra** (supra) on 28.03.2008. The argument, thus, raised by counsels for NHAI is not justified, in any manner as it is not disputed that the payment was made post 28.03.2009. In such circumstances, this Court is *ex facie* of the opinion that the petitioners are entitled for consideration of their case, in view of the judgment of Division Bench.

Counsels for both sides also do not dispute that similarly situated landowners, pertaining to the same acquisition are affected and some of the 629 affected persons have also been relegated to the competent authority, by this Court vide various orders, including orders passed in CWP-25846-2016 titled *Joginder Singh & another Vs. Union of India & others*, decided on 14.12.2016 (Annexure P-8).

Resultantly, this Court is of the opinion that it would be appropriate, in such circumstances, to relegate the petitioners to their remedy before the competent authority-cum-Land Acquisition Collector, so that the interest of both the sides are protected, regarding their right of appeal etc. and in view of the fact that in other connected matters, similar orders have been passed. Accordingly, the present writ petitions are disposed of, in the following terms:

- (i) The petitioners may apply to the Competent Authority-cum-Land Acquisition Collector within a period of one month for the grant of aforesaid benefits;
- (ii) The said Competent Authority will issue notice and call for the records/reply from the National Highway Authority

of India;

(iii) The Competent Authority shall thereafter determine the petitioners' claim for the aforesaid benefits, especially in view of the decisions of this Court and the Hon'ble Supreme Court, cited above;

(iv) If the petitioners are found entitled to the said relief, a self speaking supplementary Award to this effect shall be passed within a period of four months from the date of filing of the application;

(v) In case the petitioners are found entitled to be disbursed the requisite amount on pronouncement of the supplementary award, the same shall be paid not later than 2 months from the date of pronouncement of the award.

26.07.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*