

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.20024 of 2018
Decided on : 14.11.2018

Kulbhushan Singh & another

... Petitioners

Versus

Union of India & others

... Respondents

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

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

Mr.R.S.Madan, Advocate, for respondent No.2.

Mr.Ayush Sarna, AAG, Punjab, for respondent No.3.

G.S. Sandhawalia, J. (Oral)

Present writ petition, filed under Articles 226/227 of the Constitution of India, seeks the benefit of solatium and interest as per the provisions of Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894 (for short, the 'Act'), for the land measuring 16 marlas, acquired under the National Highways Act, 1956 (for short, the '1956 Act'). The claim is primarily on the strength of the judgment of the Division Bench in **M/s Golden Iron & Steel Forgings Vs. Union of India & others 2011 (4) RCR (Civil) 375.**

The land of the petitioners, measuring 16 marlas, was acquired under the 1956 Act and notification under Section 3-A was issued on 24.12.2004 and the award was passed by the competent authority on 14.12.2007. The petitioners approached the Arbitrator under Section 3-G(5) of the Act, for enhancement, on 13.02.2009, in which the benefit of solatium @ 30% and interest @ 12% was asked. It is pertinent to notice that the Division Bench judgment was pronounced on

28.03.2008, i.e., before the institution of the petition before the Arbitrator. However, the Arbitrator, vide his award dated 17.02.2011 (Annexure P-1) has chosen not to grant the benefit of solatium and interest on the same while passing the impugned award. The petitioners had a remedy available, as such, to approach the Civil Court of Original Jurisdiction under Section 34 of the Arbitration & Conciliation Act, 1996, but they have chosen to file the present writ petition, after more than 7 years from the date when the award was pronounced.

The written statement, filed by respondent No.2, thus, raises the plea of alternative remedy, as such and apart from that, Mr.R.S.Madan has also placed reliance upon the judgment of this Court in CWP-29431-2017 titled *Phool Singh Vs. National Highway Authority of India & others*, decided on 12.03.2018, to contend that the alternative remedy was available to the petitioners and therefore, the Writ Court would not exercise its jurisdiction, especially keeping in view the long delay. It is further pointed out that the authority-NHAI cannot, as such, be foisted with the claim of interest on account of the lapse of the landowners and therefore, the writ petition was liable to be dismissed.

After hearing arguments of the counsels for the parties, this Court is of the opinion that once the Division Bench had laid down the principle that solatium was an entitlement and the issue was raised before the Arbitrator, the said authority was bound to take into consideration this aspect which he has failed to do so. It is not disputed that in **Sunita Mehra Vs. Union of India 2016 (8) Scale 582** also, the Apex Court held

that in cases where proceedings are still pending, the benefit, as such, be granted. Relevant portion of the judgment reads as under:

“6. The only point agitated before us by the learned Solicitor General is that in paragraph 23 of the impugned judgment of the High Court, it has been held that land-owners would “henceforth” be entitled to solatium and interest as envisaged by the provisions of Sections 23 and 28 of the Land Acquisition Act, 1894. In the ultimate paragraph of the impugned judgment it has, however, been mentioned that in respect of all acquisitions made under the National Highways Act, 1956, solatium and interest in terms similar to those contained in Sections 23(2) and 28 of the Land Acquisition Act, 1894 will have to be paid.

7. Learned Solicitor General has pointed out that there is an apparent inconsistency in the judgment, which needs to be clarified. It has also been submitted by the learned Solicitor General that the order of the High Court should be clarified to mean that the issue of grant of interest and solatium should not be allowed to be reopened without any restriction or reference to time. Learned Solicitor General has particularly submitted that to understand the order of the High Court in any other manner would not only seriously burden the public exchequer but would also amount to overlooking the delay that may have occurred on the part of the land-owner(s) in approaching the Court and may open floodgates for en masse litigation on the issue.

8. We have considered the submissions advanced.

In Gurpreet Singh v. Union of India, (2006) 8 SCC 457, this Court, though in a different context, had restricted the operation of the judgment of this Court in Sunder v. Union of India, (2001) 7 SCC 211 and had granted the benefit of interest on solatium only in respect of pending proceedings. We are of the view that a similar course should be adopted in the present case also. Accordingly, it is directed that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in Golden Iron & Steel Forgings v. Union of India & Ors. i.e. 28.03.2008. Concluded cases should not be opened. As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (came into force on 01.01.2014), which Act has been made applicable to acquisitions under the National Highways Act, 1956 by virtue of notification/order issued under the provisions of the Act of 2013.”

The contest has been raised by the NHAI on the ground that no objection has been raised from 2011 to 2018 and petition has been filed after 7 years and the same is not maintainable on the ground of delay and laches. Thus the fall back as such has been made on the ground of alternative remedy and also the judgment delivered by this Court in **CWP No.29431 of 2017 titled as Phool Singh vs. National Highway Authority of India & Ors.** decided on 12.03.2018.

The writ petition has been preferred on 08.08.2018, around 7

years after the award by the Arbitrator was passed.

The issue of delay as such which has now been sought to be raised by NHAI, to not entertain the petition, in such circumstances, is not tenable especially keeping in view the principle of “*eminent domain*” where the landowners have lost their land on account of which they have no right as such to contest for the land which is being acquired for the purpose of building of national infrastructure. The interest of the respondents as such can be protected by denying the benefit of interest on the amount of *solatium* and interest for the period of delay they have taken in approaching the writ Court.

In similar circumstances, the Supreme Court in acquisition pertaining to the Land Acquisition Act, 1894, where the appeals had been filed after a long delay, condoned the delay on the same principle. Reference can be made to the judgment of the Apex Court in **Samiyathal and others Versus Special Tehsildar and others, 2015 (2) RCR (Civil) 441**, wherein it was held that the landowners, who on account of ignorance, poverty and other similar handicaps, were not able to approach the Reference Court or have not contested the matter before the High Court or the Apex Court, would be given the same amount of compensation to the other landowners whose land was acquired, while allowing the appeals and restoring the order of the Reference Court.

In **Imrat Lal & others Vs. Land Acquisition Collector & others (2014) 14 SCC 133**, the handicap that the illiterate villagers faced and the land being acquired was noticed while setting aside the order

whereby the application for condonation of delay of 1110 days had been dismissed by this Court. Resultantly, by noticing the concession made by the State counsel, the landowners were held entitled to the same amount of compensation while excluding the benefit of interest for the above mentioned days. The relevant portion reads as under:-

“We can take judicial notice of the fact that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in the Courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half baked information made available by the affected person. Therefore, in the acquisition matters involving claim for award of just compensation, the Court should adopt a liberal approach and either grant time to the party to file better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court have been granted relief.”

Thereafter in **Dhiraj Singh (D) Tr.Lrs. etc. etc. Vs. Haryana State & others 2015 (2) RCR (Civil) 507**, the delay of 12 years in filing the appeal on account of weak financial conditions was condoned on the

ground that in matters of compensation for land acquisition, the approach of the Court had to be pragmatic and not pedantic.

In *K.Subbarayudu & Ors. vs. Special Deputy Collector (Land Acquisition), (2017) 8 SCALE 61*, the delay of 3671 days in filing the appeal was condoned by noticing that with the acquisition of land, the lifeline of the agriculturist was lost.

Resultantly, this Court is of the opinion that the delay as such would not come in the way and the alternative remedy issue also would not be a bar as such in these sets of cases. Once the matter stands settled by the Apex Court in holding that where the proceedings are pending on the date of order of the Division Bench, the benefit would accrue to the landowners. In the present case the proceedings were pending till February, 2011 and this Court is of the opinion that the petitioner(s) would also be entitled to the benefit of *solatium* and interest on the amount awarded. The same would be payable till February, 2011 when the award dated 17.02.2011 was passed. Interest thereafter is being denied till the payment in view of the above facts and circumstances.

The judgment in *Phool Singh's* case would not be applicable in the facts and circumstances since in that case, it has been noticed that the landowners had been repeatedly getting the award of the Arbitrator set aside before the Additional District Judge. Therefore they could not be permitted to change track and forum and approach this Court and in the facts and circumstances, they were relegated to the alternative remedy which is not the case herein.

In such circumstances, the present writ petition is allowed and the respondents are directed to deposit the enhanced amount of solatium and interest on the amount of compensation awarded to the petitioners along with solatium and interest, within a period of 3 months from the receipt of a certified copy of this order, in the accounts of the landowners, which will be provided within a period of one month from today. However, they shall not be entitled for the interest for the delayed period, as specified above.

November 14th, 2018
sailesh

(G.S.SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>