

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20048 of 2018

Date of Decision: 15.11.2018

Waryam Singh

... Petitioner

VS.

Union of India & Ors.

... Respondents

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

Present: Mr. Satbir Rathore, Advocate for the petitioner(s)

Mr. Rishi Kaushal, Advocate;
Mr. DK Prajapati, Advocate for
Mr. RS Madan, Advocate;
Mr. Ish Puneet Singh, Advocate for
Ms. JJ Kaur, Advocate for respondents No.1&2-NHAI

Mr. Ayush Sarna, AAG Punjab

G.S. SANDHAWALIA, J. (Oral)

(1) This judgment shall dispose of CWP Nos.3383, 20048, 20050, 20072, 20081, 27868, 27869, 27871 of 2018 as the issue involved is common. For the purpose of this order, the facts are being taken from CWP No.20048 of 2018 titled as "Waryam Singh vs. Union of India & Ors."

(2) The petitioner claims the benefit of *solatium* and interest under Article 226/227 of the Constitution of India as per the provisions of Section 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894 for the land which was acquired under the National Highway Authority Act, 1956 (in short the Act). The claim for the said benefit is on account of the judgment of the Division Bench in **M/s Golden Iron and Steel Forgings Vs. Union of India and others, 2011 (4) RCR (Civil) 375.**

(3) The land had been acquired vide notification dated 24.12.2004 under Section 3-A of the Act for the purposes of widening of KM 26.00 to KM 117.750 of Jalandhar Pathankot Section of NH-I A and KM 4.000 to KM

16.350 of Pathankot Jammu Section in the State of Punjab. Respondent No.3 the Competent Authority determined the amount of compensation of the acquired land vide common award dated 23.04.2008 (P1).

(4) The land is miniscule in all sets of cases and in the present case, land of the petitioner acquired is only 2 marla 5 sarsahi in *abadi* area situated in village Chak Alabaksh, Tehsil Mukerian, District Hoshiarpur. The petitioner had been awarded ₹ 4,85,555/- and the payment of which was made by cheque on 27.07.2009. On account of non-payment of *solatium* and interest and by virtue of the judgment of Division Bench which was decided on 28.03.2008 in **M/s Golden Iron and Steel Forgings** case (supra), the claim as such has been made.

(5) It is not disputed that the said proposition of law has been upheld by the Apex Court in **Sunita Mehra vs. Union of India (2016) 8 SCALE 582**, wherein it has been held that where the proceedings are pending on the date of order of the Division Bench, the benefit would accrue to the landowners. The relevant portion of the said 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.”*

(6) As noticed above, the payment herein was made in July 2009 and therefore, the cases would fall *ex facie* within the ambit of directions of the Apex Court, as proceedings are pending.

(7) The contest has been raised by the NHAI on the ground that no objection has been raised from 2008 to 2018 and petitions have been filed after 10 years and the same is not maintainable on the ground of delay and laches. It is further averred that the petitioner had not approached the Arbitrator under Section 3-G(5) of the Act for enhancement of the compensation which they have admittedly pleaded in paragraph 3 of the writ petition. 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.

(8) The writ petitions have been preferred on 12.02.2018, 26.02.2018, 08.08.2018 and 29.10.2018 around 9 years after the payments had been made.

(9) Counsel for the petitioner(s) also raised the argument that similar writ petitions had been allowed by a Division Bench of this Court in **CWP No.27190 of 2013 (Raghubir Singh vs. Union of India & Ors.)** decided on 11.12.2013 wherein it was directed that the claim regarding grant of *solatium* and interest be determined within a period of three months from the date of receipt of certified copy of the order. It is to be noticed that even in that case, the writ petitions were of the year 2013 pertaining to the award dated 23.04.2008 whereas in the present case the petitioner(s) have approached this Court after a period of another 5 years though belonging to the same village.

(10) 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.

(11) 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) page 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.

(12) 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.”

(13) 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.

(14) 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.

(15) 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. Since the petitioners have chosen not to further agitate for enhancement before the Arbitrator and have categorically averred in para-3 of the writ petition and 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 on July 2009 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 July, 2009 when the payments were disbursed on the main amount. Interest thereafter is being denied till the payment in view of the above facts and circumstances.

(16) 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.

(17) Accordingly the present writ petitions are allowed and the competent authority is directed to pay the amount of *solatium* and interest in terms of the provisions of Sections 23(2) and 28 of the 1894 Act within three months from the date of receipt of certified copy of this order. The said NHAI shall then disburse the amount into the bank accounts of the landowners expeditiously thereafter.

(18) Ordered accordingly.

15.11.2018

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(G.S. Sandhawalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No