

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 27572 of 2017
Date of decision: 08.05.2018

M/s. Krishan Murari Infrastructure & Developers Pvt. Ltd.

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. S.P. Khatri, Advocate,
for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks directions to the respondents not to charge the penal interest @12% per annum on the amount of Rs.2,95,86,863/- refunded against 3.75 acres of exchanged land alongwith other amount which was received by the petitioner as compensation for 112 kanals 15 marlas of land which was acquired vide notification dated 18.10.2002. Further directions are sought that respondent no. 4 should announce the award regarding damages under Section 48(2) of the Land Acquisition Act, 1894 (in short 'the 1894 Act') on account of release of the land.

The case of the petitioner is that the land situated in village Shahjanpur, Tehsil and District Sonapat was acquired vide notification dated 18.10.2002 and an award was passed on 05.09.2005 for development of residential and commercial Sector 16, Sonapat. Since the amount of compensation had not been paid, CWP No. 10915 of 2014 was filed wherein, directions were issued on 21.11.2014 (Annexure P-1) that the

authorities would redetermine the petitioner's claim for compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the 2013 Act').

It is the case of the respondent-State that a sum of Rs.9,50,43,945/- was paid to the petitioner for 107-18 marlas of land out of the acquired land of 112-15 marlas (14.09 acres). A contempt petition was thereafter filed bearing COCP No. 2649 of 2015 wherein, it was noticed on 05.09.2016 (Annexure P-2) on account of the stand of the State that they would give the land back except a portion which had been utilized for carving out a road. That portion of land could be exchanged or compensated, which offer was accepted by the petitioner with a condition that he would refund the amount of compensation, if any, received by him within a period of 4 months and on doing so, the land would be released to him. The same reads as under:-

“Counsel for the respondents states that an offer is made to the petitioner that in case the petitioner wants its amount as has been assessed as compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 or wants its land back that can also be done so but by saying that there is a difficulty as some of the land is utilized for the purpose of carving out a road and that land would be exchanged or compensated for in congruity thereof.

This offer is accepted by the learned counsel for the petitioner with regard to the exchange of the land.

Let the petitioner approach the respondents-Authorities in this regard and refund the amount of

compensation, if any, received by it within a period of four months.

On doing so, the land be released to the petitioner.

List on 28.11.2016.”

Vide communication dated 25.11.2016 (Annexure R-1), condition was put that the compensation which was to be refunded should be paid alongwith 12% interest till the date of deposit and an exchange agreement had to be done regarding 12144 square meters which fell in the alignment of the sector dividing road. That on 29.05.2017 (Annexure P-4), the Estate Officer, HUDA Sonapat wrote to the Administrator, HUDA regarding the exchange agreement duly signed and submitted and to take further necessary action. Thereafter, notice dated 20.09.2017 (Annexure P-3) was issued to the petitioner to pay interest @ 12% as per letter dated 25.11.2016. Resultantly, legal notice dated 06.10.2017 (Annexure P-5) was served upon the respondents saying that the issue of interest was illegal and arbitrary.

It is not disputed that the amount of Rs.2,96,00,000/- has also been refunded by the petitioner to the respondents vide demand drafts dated 13.10.2017 and 13.11.2017 (Annexures P-6 and P-7). The grouse of the petitioner is accordingly that the possession of the land had been taken by the respondents after passing of the award on 05.09.2005 and, therefore, if the Government is to withdraw from the acquisition, the Collector has to determine the amount of compensation for the damage suffered by the owner in consequence of the notice or any proceedings as per Section 48(2) of the 1894 Act. The said Section reads thus:-

“48. Completion of acquisition not compulsory,

but compensation to be awarded when not completed

xxx

xxx

xxx

(2) Whenever the government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to other person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.”

Accordingly, it is the case of the petitioner that the interest element which is now being asked for is not justified and no action is also being taken to assess the amount of compensation by respondent no. 4 for the land which has remained in occupation. It is further the case of the petitioner that the sum of Rs.9.5 crores which was paid in January, 2016 (Annexure R-2) was not as per the 2013 Act but was at a lesser rate and inclusive of the other statutory benefits and the State has chosen to back out of the undertaking given before the Division Bench. It is the case of the petitioner accordingly that while not adjudicating on the right of damages on one hand, the demand for interest cannot be justified and is liable to be adjusted.

Keeping in view the above facts, this Court is of the opinion that the competent authority is under a bounden duty as such to pass a detailed order keeping in view the background of the case and as to the liability to pay damages in view of the occupation of the land. The order dated 25.11.2016 (Annexure R-1) whereby, the release has been done is also conditional and as noticed above, the formal agreement has been executed by the petitioner, which has been forwarded by respondent no. 5 to

respondent no. 3 vide Annexure P-4 but the issue as such still remains to be finalized.

Ex facie, this Court is of the opinion that the State is to take a composite decision on the whole issue as such and cannot as such on one hand ask for interest @ 12% on the amount which has been refunded of Rs.2.96 crores and not take a decision on the issue of damages regarding the use and occupation of the land from the year 2005.

Accordingly, the writ petition is disposed of with a direction to the competent authority/respondent no. 1 to take appropriate action in accordance with law, as noticed above and pass an appropriate speaking order on all issues regarding the liability of payment of interest and the damages for use and occupation of the petitioner's land and to finalize the terms of the release. The order dated 25.11.2016 (Annexure R-1) will not lapse as it has been passed in view of the stand taken by the authorities themselves, as mentioned above. The respondent no. 1 will pass an order in continuation of the same within a period of 2 months from the date of receipt of certified copy of the order.

08.05.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

