

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.8035 of 2016 (O&M)
Date of decision:24.07.2018

Balbir Singh (deceased) through LR

... Petitioner

Vs.

Union of India and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Ms. Rakhi Sharma, Advocate
for the petitioner.

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

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

Amit Rawal, J.

Petitioner has invoked the jurisdiction of this Court for issuance of writ in the nature of certiorari, for quashing the order dated 21.07.2015 (Annexure P-12) passed by respondent No.4 - Sub-Divisional Magistrate, Derabassi (Competent Authority under National Highways Act, 1956), whereby the interest upto date on the amount of compensation awarded to the petitioner has been declined.

In pursuance to the notification issued under the provisions of National Highways Act, 1956 (for short, '1956 Act'), land of the petitioner was acquired for widening of the National Highway 21 and 22, Ambala-

Chandigarh. The petitioner is stated to have handed over the possession to the National Highway Authority of India (for short 'NHAI') of land measuring 1 bigha 16 biswas but had been paid compensation only for 1 bigha 12 biswas and 2 biswasi.

It has been averred that the Arbitrator, vide award dated 22.02.2011 fixed the compensation at the rate of ₹2,45,00,000/- per acre. The possession had been taken in May 2007 but no compensation as stated above had been paid. In this regard, petitioner approached this Court, vide CWP No.7245 of 2015 for issuance of appropriate direction or order to the authorities for taking decision on the representation dated 14.03.2015 (Annexure P-9). This Court, vide order dated 21.04.2015 (Annexur P-10) directed the respondents to take the decision thereon. The competent authority erroneously passed the order dated 21.07.2015 (Annexure P-12) by declining the interest for delayed amount of compensation.

During the pendency of the proceedings before the competent authority, respondent no.1-NHAI in reply dated 29.06.2015 (Annexure P-11) stated that entire amount of compensation had been deposited with the competent authority in May 2007 and it was duty of competent authority to disburse the compensation.

The competent authority, vide impugned order dated 21.07.2015 (Annexure P-12) declined the interest on the delayed payment of compensation.

In pursuance to the notice of motion order, respondents No.2

and 4 have filed separate replies. In reply of respondent No.2, it has been stated that as per the provisions of Section 3-H of 1956 Act, the entire amount of compensation was deposited with the competent authority vide cheque no.298943 dated 30.05.2007 in the joint account of NHAI and Land Acquisition Punjab, thus, it is the competent authority, who is responsible to assess and pay the amount deposited by the NHAI to claimants.

Respondent no.4 in para 7 of the reply did not dispute the deposit of compensation on behalf of respondent No.2-NHAI, vide aforementioned cheque but averred that the amount could not be released to the petitioner on account of the petitioner's failure to submit 'No Objection Certificate' (NOC) to be issued by the Municipal Council Zirakpur in view of the letter dated 18.12.2009 of Executive Officer, Municipal Council, Zirakpur. The NOC bearing No.1884 dated 27.08.2014 was issued by the Municipal Council Zirakpur and accordingly, as per the award, a sum of ₹50,15,625/- including the TDS amounting to ₹5,01,563/- was paid to the petitioner, vide cheque no.350412 dated 13.11.2014.

Learned counsel appearing on behalf of the petitioner did not dispute the receipt of payment of aforementioned amount but stated that the petitioner has been denied interest on the delayed payment. In support of the aforementioned claim, placed reliance upon the directions issued by this Court in the order dated 25.01.2018 passed in CWP No.13170 of 2016 titled as “Ramesh Kumar and others Vs. Union of India and others” and various other writ petitions, wherein, in such circumstance, liability of respondent

no.3-Competent Authority-cum-Land Acquisition Collector-Sub Divisional Magistrate to pay the interest on account of delay @ 9% per annum has been fixed. It was further submitted that petitioner may be given liberty to approach the competent authority for claiming the relief in tandem with 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 has been made applicable to acquisitions under 1956 Act by virtue of notification/order issued under the provisions of 2013 Act.

In support of aforementioned submissions, reliance has also been laid to the judgment dated 06.09.2017 rendered in bunch of writ petitions including **CWP No.17010 of 2017 titled as Vinod Kumar Vs. The State of Haryana and others.**

Learned counsel appearing on behalf of respondent No.2 submitted that petitioner is at liberty to approach the competent authority for claiming interest in terms of the directions issued by this Court in Vinod Kumar's case (supra).

We have heard the learned counsel for the parties and appraised the paper book.

This Court in Ramesh Kumar's case (supra) while noticing the fact that award was passed long time back and the compensation had not been paid to the affected landowners despite the possession having been handed over, awarded the interest @9% per annum. For the sake of brevity, the relevant findings read as under:-

“It is, thus, apparent that the State Government was in receipt of the amount of compensation from 15.12.2014 onwards till the date of payments as noticed above, whereas the petitioners were deprived of the benefits of the award for over a period of 1½ years approximately in CWP Nos.13170 and 16213 of 2016 and for a period of 2 years 1 month in CWP No.23701 of 2016.

In such circumstances, the liability of respondent No.3 to pay the interest @ 9% would arise, as the petitioners for no fault on their part have been denied their legitimate rights. Section 3H of the National Highways Act, 1956 provides that the amount determined under Section 3G is to be deposited by the Central Government in such manner as laid down by the rules with the competent authority before taking possession of the land. Under sub-Clause 2 of the said section, the amount deposited under sub-Section (1) with the competent authority is to be paid as soon as may be to the person or persons entitled thereto. Sub-Clause 5 further provides that where the arbitrator grants any amount in excess of the amount determined by the competent authority, interest is liable to be paid on such excess amount.”

Concededly, in the instant case also, the amount of compensation had been deposited by the NHAI in the account of competent authority on 30.05.2007 in pursuance to the award dated 22.02.2011, vide cheque referred to above but the amount was disbursed to the landowners

only in 2014 without any interest, thus, in our view, the competent authority is saddled with the liability to pay the interest @9% per annum on the delayed payment.

Ordered accordingly.

In the judgment rendered in Vinod Kumar' case (supra), genesis of the order of this Court had been the order dated **14.12.2016 passed in CWP No.25846 of 2016 titled as Joginder Singh and another Vs. Union of India and others** and as well as Division Bench judgment of this Court in **M/s Golden Iron & Steel Forging Vs. Union of India and others 2011 (4) RCR (Civil) 375**. The order dated 14.12.2016 has been extracted in Vinod Kumar's case (supra), wherein the liberty has been granted to the landowners to approach the competent authority. The operative part of the order reads as under:-

“Learned counsel for the petitioners have also brought on record and referred to numerous orders passed by the Division Bench of this Court, post decision in **M/s Golden Iron & Steel Forging (supra)**, wherein directions were issued to the competent authority to consider the claims of the landowners in terms of the said judgment. And, vide another order dated 14.12.2016, rendered in CWP No.25846 of 2016 (**Joginder Singh and another Vs. Union of India and others**), the Division Bench, in addition to **M/s Golden Iron & Steel Forging (supra)**, referred to an order passed by the Supreme Court, dated 11.08.2016, in Civil Appeal No.10553 of 2011 (**Sunita Mehra and others Vs.**

Union of India (UOI) and others), and directed the authorities to determine the claim of the landowners, in the wake of the decision of this Court and the order passed by the Supreme Court referred to above. Further, if the petitioners, therein, were found entitled to their claims, to pass a supplementary award. But, the amount payable was required to be deposited in a nationalized bank to be disbursed subject to the final decision in the pending appeal before the Supreme Court against the decision in **M/s Golden Iron & Steel Forging (supra)**. The operative part of the order dated 14.12.2016 reads thus:-

“The principles laid down by this Court in Golden Iron and Steel Forgings's case (supra), are undisputable. The fact that the benefit of solatium and interest has been extended to other similarly situated landowners vide order dated 27.09.2012 in Bhag Singh's case (supra), can be hardly denied. In these circumstances, it appears imperative upon respondent Nos.3 & 4 to consider the petitioners' claim for the grant of solatium and interest in accordance with the decision of this Court in Golden Iron and Steel Forgings's case (supra).

While considering the claim of the petitioners in the light of the above-cited decision, the respondents shall be required to follow the recent directions dated 11.08.2016 issued by the Hon'ble Supreme Court in Civil

Appeal No.10533 of 2011 (Sunita Mehra and another versus Union of India and others), to the following effect:-

“.....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 vs. Union of India and others, 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.

With the aforesaid modification and clarification in the order of the High Court, these civil appeals are disposed of.....”

The writ petition is accordingly 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, 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) The National Highways Authority of India is directed to deposit the amount payable in terms of the supplementary award, in interest-bearing fixed deposit account(s) in any nationalized bank which shall be disbursed subject to attaining finality of the litigation in the Golden Iron and Steel Forgings's case (supra).

The writ petition stands disposed of accordingly”.

It is not disputed that the respondents authorities never questioned the order dated 14.12.2016, any further, and rather complied therewith. But, there has indeed been a turn of events, for, the parties to the lis in **M/s Golden Iron & Steel Forging (supra)** settled the dispute and the appeals filed by them were

disposed of by the Supreme Court in terms of the settlement arrived at. Meaning thereby, not only that the judgment in **M/s Golden Iron & Steel Forging (supra)** is no longer under challenge, but had rather been accepted by the respondents.

In conspectus of the above, the writ petitions are disposed of with a direction to the respective parties in this bunch of petitions, to resort to necessary measures in terms of clause **(i) to (iv)** set out in the order dated 14.12.2016, passed by the Division Bench in **Joginder Singh and another (Supra)**. Needless to assert that the petitioners/landowners who are found entitled to relief being claimed, shall be disbursed the requisite amount on pronouncement of the supplementary award, but not later than two months after it is pronounced. Learned counsel for the parties apprised this Court that in few of the writ petitions, the claimants/landowners had even earlier approached this Court. Petitions filed by them to award solatium and interest were disposed of with a directions to consider their claims. And in compliance thereto they have even been disbursed the requisite amount in terms of Section 23 (2) and 28 of the Act. And, now in the wake of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 they are claiming 100% solatium. Suffice it to say that this Court has not

examined the claim of any of the petitioners on merits, for, the competent authority shall determine their entitlements/claims in accordance with law. However, if certain landowners are not held entitled to any relief the competent authority shall pass comprehensive orders assigning reasons in support thereof.

The writ petitions are accordingly disposed of.”

We dispose of the writ petition vis-a-vis other claim of the petitioner as per the directions issued by this Court in Vinod Kumar's case (*supra*).

We cannot remain unmindful of the fact that during the pendency of the writ petition, an application under Order 22 Rule 3 read with Section 151 of Code of Civil Procedure, bearing No.2780 of 2018 has been filed. As per the contents of the application, petitioner-Balbir Singh is stated to have died on 11.10.2017 as per the death certificate dated 16.10.2017 (Annexure A-1). The application is accompanied by an affidavit of Swaranjit Kaur, widow of late Balbir Singh to be his heir. The application is bereft of particulars of other heirs which is essential requirement of law.

Thus, we allow the application by impleading the applicant-Swaranjit Kaur to be legal heir of petitioner only for purpose of making representation before the competent authority in terms of the directions, *ibid*.

This order should not be construed as according status of legal heir in the absence of disclosure of particulars of other legal heirs.

Writ petition stands disposed of in above terms.

(Rajesh Bindal)
Judge

(Amit Rawal)
Judge

24.07.2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No