

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 11.09.2018
LPA No. 1384 of 2018 (O&M)

Hindustan Petroleum Corporation Limited ... Appellant
Versus

Surjit Singh and others ... Respondents

LPA No. 1386 of 2018 (O&M)

Hindustan Petroleum Corporation Limited ... Appellant
Versus

Lakhvir Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Raman Sharma Advocate, for the appellant(s).

These are intra-court appeals, under Clause X of the Letters Patent, assailing the order and judgment dated 27.07.2018, rendered by the learned Single Judge vide which the writ petitions preferred by the claimants/landowners have since been allowed.

The facts that are required to be noticed are limited.

Vide notification dated 25.06.1996, issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'), a land measuring 13 acres 4 kanals and 2 marlas, situated in the revenue estate of village Suchi Pind, Tehsil and District Jalandhar, was sought to be acquired for the construction of Bulk Petroleum Installation for the storage and distribution

appellant: Hindustan Petroleum Corporation Ltd. was/is the beneficiary of the acquisition. Final declaration under Section 6 read with Section 17 of the Act was published on 7.1.1997. For, urgency provisions were invoked and the State had obtained possession, 80% of the compensation, at an estimated value of acquired land @ Rs. 16 lacs per acre was deposited by the beneficiaries of the acquisition. The Sub Divisional Magistrate (Civil)-cum-Land Acquisition Collector, Jalandhar, rendered an award dated 6.1.1999, and assessed the market value of the acquired land at Rs.27 lacs per acre. The claimants were also awarded all statutory benefits as admissible in law. A few of the claimants-landowners, aggrieved by the compensation awarded by the Collector sought a reference under Section 18 of the Act, but vide award dated 17.01.2003, the reference Court dismissed their claims and affirmed the assessment. The appellant, however, aggrieved by the assessment or the rate, at which the compensation was assessed, assailed the award rendered by the Collector vide CWP No.16750 of 1999. And, this Court vide an interim order dated 3.12.1999, stayed the disbursement of compensation to the claimants beyond Rs.16 lacs per acre. But since the appellant had already deposited the entire awarded amount with the Collector, the balance amount was ordered to be deposited in a non-operative account with a Nationalized Bank. However, eventually, the said petition was dismissed by the learned Single Judge vide order and judgment dated 6.9.2006. The appellants questioned the said decision vide an intra Court appeal which too was dismissed on 19.12.2006. And finally even the Supreme Court, vide order dated 17.11.2015, dismissed the appeal filed by the appellant against the decisions rendered by this Court, referred to above.

But, in the wake of the above, and despite having approached the Sub Divisional Officer (Civil)-cum-Land Acquisition Collector , Jalandhar to claim the balance compensation and interest under Section 34 of the Act, no result was insight, the claimants/landowners were constrained to approach this Court, vide writ petitions, and prayed for: **“writ in the nature of mandamus directing respondent No.1 to grant interest on total amount of compensation as initial compensation was paid on 21.12.1999 instead of 06.01.1999 (the date of award) and for grant of interest at the rate of 15% per annum in accordance with award on the total compensation for the period the award dated 06.01.1999 (Annexure P-1) beyond Rs.16 Lacs per acres was stayed in CWP No.16750 of 1999 filed by respondent No.1 on 03.12.1999 till its realization”**.

However, the appellant resisted the claim of the landowners on the ground that 80% of the estimated compensation was deposited vide demand draft dated 5.3.1997, and subsequently in terms of the award dated 6.1.1999, rendered by the Collector, a further amount @ Rs.27 lacs per acre, were also deposited on 16.11.1999: **“the answering respondent had however challenged determination of compensation by the Collector at the rate of Rs.27 lacs per acre by filing CWP No.16750 of 1999 and vide order dated 3.12.1999, a Division Bench of this Hon'ble Court was pleased to notice the fact that entire awarded amount of compensation stood deposited with the Land Acquisition Collector. However, disbursement of compensation beyond the rate of Rs.16 lacs per acre was stayed with a further direction that the amount deposited by the answering respondent shall be put in a non-operative account with a**

nationalized bank so as to earn maximum rate of interest so that the party found entitled to the same can recover, the said amount. That even though CWP No.16750 of 1999 was dismissed by this Hon'ble Court on 6.09.2006; LPA No.226 of 2006 dismissed on 19.12.2006 and finally SLP © No.3965 of 2007 in which initially status quo order was passed on 9.03.2007 was finally dismissed on 17.11.2015 yet such interim orders passed by this Hon'ble Court and by the Hon'ble Apex Court only delayed the release of amount already deposited by the answering respondent in the year 1999 itself. Thus, the question of claiming interest now at this stage does not arise”.

Thus, the short question that was required to be determined by the learned Single Judge was: whether in the given facts and circumstances and in terms of the order dated 3.12.1999, the claimants/landowners were only entitled to the balance compensation deposited in the Bank, and interest that had accrued thereupon or the landowners were entitled to claim the balance compensation, that was not disbursed owing to the interim stay either granted by this Court or the Supreme Court, with interest in terms of Section 34 of the Act.

And upon a consideration of the matter and the material on record, the learned Single Judge reached a conclusion: **“The issue as to whether the amount which was deposited by the respondent No.1-Corporation with the nationalized bank on the maximum rate of interest so that party found entitled to the same could recover it, is to be decided against respondent No.1-Corporation as it only protected the interest of Corporation that they have been saved from paying the full amount of compensation along with statutory interest at that point of**

time which it would have been liable to pay under the Statute. The interim order dated 3.12.1999 would necessarily come to an end the writ petition was decided on 6.9.2006 and therefore, the Corporation cannot hide behind the said order to contend that the Division Bench had protected its interest and it is not liable to pay interest over and above the amount thereafter since they had deposited the amount with the nationalized bank. Respondent No.1-Corporation continued to get the benefit of interim order thereafter by approaching the Apex Court on 9.3.2007 also when status quo order in the SLP was passed and therefore, landowners were denied the benefit of usage of the amount which the Corporation had deposited but not paid to the petitioners.

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The possession having been taken on 20.05.1997, the Collector had also rightly granted 9% interest from the first year as per the award itself and therefore, interest as such would continue to run as it was not paid as per provisions of Sections 31 and 34 of the Act”.

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“Resultantly, issue No.1 is decided in favour of the petitioners. Similarly on the issue of principle that no act of the Court would harm no any party, the order dated 3.12.1999 was only mandated that the amount was deposited. Rather it is in the interest of the Corporation as it would get the benefit of the fact that from the date of deposit of the amount till the date of payment, it will only have to pay the difference of the interest and would be

saved of the higher rate of interest and therefore, it cannot be said that the order as such would protect them to the extent that they are not liable to pay the interest on statutory rate. It is settled principle that no act of Court would harm any litigant. Reliance can also be placed upon South Eastern Coalfields Ltd. Vs. State of M.P. (2003) 8 SCC 648 and Mohammed Gazi Vs. State of M.P. 2000(4) SCC 342 apart from the celebrated judgment of the Apex Court in Karnataka Rare Earth and another Vs. Senior Geologist, Department of Mines & Geology and another (2004) 2 Supreme Court Cases 783. The relevant portion reads as under:-

“10. In South Eastern Coalfields Ltd. (Supra), this Court dealt with the effect on the rights of the parties who have acted bona fide, protected by interim orders of the Court and incurred rights and obligations while the interim orders stood vacated or reversed at the end. The Court referred to the doctrine of *actus curiae neminem gravabit* and held that the doctrine was not confined in its application only to such acts of the Court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has

resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost.”

Resultantly, the argument raised by Mr. Raman Sharma, counsel for respondent No.1 is rejected”.

Learned counsel for the appellant simply seeks to reiterate the submission that were advanced before the learned Single Judge and were repelled upon due consideration and analysis: It is urged that once the entire compensation was deposited with the Land Acquisition Collector then how could the appellant be still liable to pay interest in terms of Section 34, for the post deposit period. Secondly, in reference to the interim order dated 3.12.1999, he submits that Division Bench had ordered that compensation beyond 16 lacs be deposited with the bank so that the party found entitled to could recover the same, thus, all what the claimants/landowners were/are entitled to is the amount deposited in the Bank and interest that accrued thereupon. Therefore, he asserts that claimants/landowners could not claim

interest in terms of Section 34 of the Act. Lastly, it is submitted that if the claimants/landowners were unable to withdraw or realize the compensation, they were found entitled to, owing to the stay order dated 03.12.1999, they could always assail the same but they never choose to, or rather accepted it, and thus, now could not claim interest under Section 34, for the period it remained in operation.

We have heard learned counsel for the appellant and perused the records.

Before we proceed further, it indeed would be apposite to refer to the provisions of Section 34 of the Act, which reads thus:-

“34. Payment of Interest:- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry”.

Ex facie, a bare reading of the provisions of Section 34 of the Act, referred to above, reveals that if the compensation awarded by the Collector is neither paid nor deposited on or before the possession of the

acquired land was obtained the Collector is required to pay the amount awarded with interest @ 9% per annum from the date of obtaining possession until it is paid or deposited. And a proviso thereto postulates that if such compensation or any part thereof is not paid or deposited within one year from the date possession is obtained, interest @ 15% per annum shall be payable from the expiry of the period of one year on the compensation or part thereof which has not been paid or deposited before the expiry of the said period.

As demonstrated above, the Collector being conscious of the fact that possession of the acquired land was obtained on 20.05.1997, without awarding the full compensation, the claimants were awarded interest @ 9% for the first year i.e. from 21.05.1997 to 20.05.1998 and thereafter, @ 15% per annum 21.05.1998 till the date of award i.e. 6.1.1999. Undoubtedly, post award the appellant had deposited the entire compensation with the Collector on 28.01.1999 @ Rs.27 lacs per acre. But it is equally true that appellant Corporation assailed the said award, vide CWP No. 16750 of 1999, and also prayed for stay of disbursement of compensation to the claimants/landowners. The Division Bench granted the prayer of the appellant and vide order dated 3.12.1999, stayed disbursement of compensation, beyond Rs. 16 lacs per acre, to the claimants:-

“C.M. Allowed.

Contents that the Land Acquisition Collector did not hold an inquiry as enjoined by Section 11 and determined the compensation merely on the basis of the price fixed by the District Lands Price Fixation Committee.

Notice of motion for 25.04.2000.

Petitioner had deposited the entire awarded amount with the Land Acquisition Collector, Disbursement of compensation beyond Rs.Sixteen lacs per acre will remain stayed. Meanwhile, the amount deposited by the petitioner shall be put in a non-operative account with a Nationalized Bank so as to earn maximum rate of interest so that the party found entitled to the same can recover. Dasti”.

In the wake of the above, there cannot be any dispute that it was owing to the order dated 3.12.1999, granted in favour of the appellant-Corporation, the landowners were deprived of the balance compensation. Thus, the argument that since the appellant had deposited the entire compensation no interest in terms of Section 34 of the Act for the post deposit period could be claimed, lacks conviction and cannot be countenanced. Significantly, in the given situation, the deposit was as good as non-deposit, for the claimants/landowners could not withdraw the compensation. Further, if the Division Bench had directed the compensation to be kept in a bank deposit so that it could earn interest; the only or the sole beneficiary of the said order dated 3.12.1999, was none other than the appellant. For, in the event, the writ petition was allowed the appellant would have withdrawn the entire amount with interest that had accrued upon in the interregnum. And, on the contrary if the writ petition was dismissed, as it indeed was, the appellant was only required to pay the difference in interest earned upon deposits and the statutory interest which the claimants/landowners were/are entitled to in terms of Section 34 of the Act. In either of the situation the interest of the appellant was secured and

protected. Likewise, even the argument: that since the claimants/landowners never questioned the order dated 3.12.1999, they were bound thereby, and thus, could not demand interest in terms of Section 34, is equally erroneous. The matter can be viewed from another perspective. Apparently, it was the appellant who despite having deposited the compensation choose to assail the award and prayed for stay of disbursement of compensation. The Division Bench having found a *prima facie* case stayed disbursal of compensation beyond Rs.16 lacs per acre. To avert any liability in terms of interest, under Section 34, the appellant could always maintain that let the compensation be released subject to the result of the writ petition against surety or bank guarantee. But that is not something the appellant opted for. Thus, the claimants/landowners had every right to claim interest, in terms of Section 34, for the period they were deprived of the compensation they were found entitled to. Further, notwithstanding the order dated 3.12.1999, the rights of the claimants/landowners to claim interest under Section 34 could never be affected, for, those stem from the statute.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions recorded by the learned Single Judge were either contrary to the record or suffered from any material illegality. And that being so, we are dissuaded to interfere with the impugned order and judgment.

Thus, the appeals being devoid of merit and are accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

11.09.2018

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:
Whether Reportable:

YES
YES