

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

1. **Civil Revision No.886 of 2019 (O&M)**
Date of Decision: 19.09.2019

Krishan Kumar (deceased) through LRs
.....Petitioner(s)

Vs

**Land Acquisition Collector, Improvement Trust, Batala and
others**
....Respondents

2. **Civil Revision No.887 of 2019 (O&M)**

Kanwal Raj Puri and others **.....Petitioner(s)**

Vs

**Land Acquisition Collector, Improvement Trust, Batala and
others**
....Respondents

3. **Civil Revision No.888 of 2019 (O&M)**

Ashok Puri **.....Petitioner(s)**

Vs

**Land Acquisition Collector, Improvement Trust, Batala and
others**
....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Puneet Bali, Sr. Advocate with
Mr. Vibhav Jain, Advocate and
Mr. R.P. Saini, Advocate
for the petitioner(s).

Mr. Rupinder Khosla, Sr. Advocate with
Mr. Raj Partap Singh Brar, Advocate
for respondent No.2.

Ms. Maloo Chahal, D.A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, Civil Revision Nos.886, 887

and 888 of 2019 (O&M) are being decided. Since all the petitions involve common controversy, therefore, for brevity the facts are being culled out from CR No.886 of 2019.

[2]. This revision petition has been preferred by the petitioner through his legal representatives against the order dated 31.10.2018 passed by the executing Court vide which the execution filed by the petitioner(s) for recovery of compensation on the basis of awards dated 08.08.1992 and 30.10.1998 was dismissed as being fully satisfied.

[3]. Perusal of the record would show that earlier a bunch of six Execution First Appeals were decided by this Court vide order dated 23.12.2015. The order was passed in lead case i.e. EFA No.19 of 2015. Some incriminating facts were noticed in the said EFA while deciding the same. Para nos.4 to 17 are necessary to be quoted hereasunder:-

“[4]. In sum and substance the objection raised by the judgment-debtor/Trust is that the judgment-debtor could not collect the details of the amount realised or paid by it to the decree-holders from time to time in the execution filed in the past. Since the amount has been enhanced by the Courts in hierarchy, therefore, exact details are to be brought on record by the decree-holders. Judgment-debtor/Trust showed its difficulty to calculate the exact amount payable to the decree-holders on account of enhanced payment awarded by the Courts.

[5]. Prayer was made for issuance of directions to the decree-holders to furnish the exact details of amounts received

by them from the judgment-debtors.

[6]. *Learned counsel for the appellant has contended that the decree-holders have realised huge amounts along with interest and, therefore, it is very difficult for the appellant to calculate the necessary details of payments given to the decree-holders from time to time. Besides the aforesaid claim, the compound interest is not payable to the decree-holders.*

[7]. *The claim of the objector has been resisted by the decree-holders on the ground that similar application was dismissed on 28.08.2010 and that order has become final as no appeal was filed against the said order. Even the judgment-debtors filed appeals against the order dated 17.10.2002 and 02.03.2006 passed by the Land Acquisition Tribunal. Those appeals were dismissed by this Court.*

[8]. *Apparently land acquisition proceedings were initiated in the year 1974 and since then more than 41 years have elapsed, most of the original land owners have expired but the judgment-debtors have been filing applications and objections repeatedly just to delay the proceedings for one reason or the other.*

[9]. *The decree-holders have already submitted their details of payments received by them from time to time. The objections of such like nature filed by the judgment-debtors have already been dismissed on 28.08.2010 and said order having become final creates estoppel against judgment-debtors to rake up the issue again.*

[10]. *Vide order dated 17.10.2002, the Land Acquisition Tribunal, Gurdaspur disposed of number of applications for amendment or correction in the award. The applicants were held entitled to interest @ 9% per annum from the date of taking possession over the land acquired or the award whichever is earlier for the first year and for period subsequent thereto till realisation @ 15% per annum.*

[11]. *Learned counsel for the appellant/Trust refers that the*

parties were directed to submit fresh calculation chart of compensation in the light of aforesaid order.

[12]. Order dated 02.08.2003, further reveals that rate of interest was adjudicated as per order dated 17.10.2002, interest is payable on the solatium and the claimants are entitled to 30% solatium on account of compulsory acquisition on the enhanced compensation. For the first year interest is to be calculated @ 9% per annum from the date of taking of possession and for subsequent years it is @ 15% per annum till realisation of the amount. In this way everything has been adjudicated and it is only the judgment-debtor who has to make good the payment.

[13]. Under the garb of furnishing calculations, judgment-debtors cannot stall the proceedings, even otherwise judgment-debtor being the Improvement-Trust is expected to maintain the record of credit and debit payments in official record.

[14]. Keeping in view the pendency of acquisition proceedings for the last more than 41 years, it is not expected from the land owners that they would maintain the record of each and every payment paid to number of co-sharers and after their death to number of legal heirs. If at this juncture, decree-holders are compelled to file calculations, it may prove to be of serious consequences and also keeping in view the number of deaths having taken place in the span of 41 years, number of persons would have come into fray in the capacity of legal heirs as well as vendees under the original owners, therefore, the collection of information from such a lot would rather be an impossible task for the claimants.

[15]. In considered opinion of this Court, the filing of application for seeking direction to the decree-holders to furnish details of payment seems to be a calculated move to delay the proceedings which have already been delayed substantially. It is easy for the judgment-debtor to cull out the entries from their own record maintained by the Trust. The amount already paid under two different executions can be set off and the amount so enhanced by the Courts below can be paid by the judgment-

debtor with reference to necessary calculations and relief clause in view of judgments rendered by the Courts.

[16]. I am of the considered opinion that decree-holders cannot be compelled to furnish calculations at this juncture, particularly when the acquisition started about 41 years ago and different awards have been passed. Number of executions have been filed and payments have been made therein.

[17]. At this juncture, where enhanced payments of compensation are to be made, issuance of direction to the decree-holders would be totally unjustified particularly when the necessary calculations can be furnished by the judgment-debtor from the record maintained by the Trust in due course of business. Moreover the similar prayer has already been declined by the Land Acquisition Tribunal vide order dated 28.08.2010. The said order having attained finality debars the judgment-debtor to rake up the issue once again in the form of filing present petition in execution.”

[4]. Perusal of the aforesaid paragraphs would show that the controversy was in respect of calculations *qua* amount payable to the decree holders on account of enhanced compensation awarded by the Courts. Judgment-debtors/Trust showed its difficulty to calculate the exact amount payable to the decree holders. Judgment debtors/Trust sought directions to the decree holders to furnish exact details of amount received by them from the judgment debtors as the decree holders had realized the amount along with interest and, therefore, the judgment debtors/Trust felt difficulty in calculating the necessary details of payment made to the decree holders from time to time. This was so in order to avoid any payment of compound

interest. The prayer of the judgment debtor/Trust was resisted by the decree holders on the ground that similar application was dismissed on 28.08.2010 and the said order had attained finality in the absence of any further challenge made by the judgment debtors. Even the appeals filed by the judgment-debtors against the orders dated 17.10.2002 and 02.03.2006 passed by the Land Acquisition Tribunal were dismissed by this Court.

[5]. This Court took notice of land acquisition proceedings which were initiated in the year 1974 and even after lapse of 41 years, the execution in terms of payment of enhanced amount could not be done. Most of the original land owners have already expired and the judgment debtors have been filing different applications and objections repeatedly just to delay the proceedings for one reason or the other. The decree holders have also submitted their details of payment received by them from time to time. The objections filed by judgment debtors were dismissed on 28.08.2010 and the said order had attained finality. Vide order dated 17.10.2012 the number of applications for correction of award were disposed of by the Land Acquisition Tribunal, Gurdaspur and the decree holders were held entitled to interest @9% per annum from the date of taking possession over the acquired land or the award whichever was earlier for the first year and for the period subsequent thereto till

realisation of the amount @ 15% per month.

[6]. It was further noticed in the aforesaid EFAs that on 02.08.2003, the order was passed that the rate of interest was adjudicated as per order dated 17.10.2002. Interest was payable on the solatium and the claimants were held entitled to 30% solatium on account of compulsory acquisition on the enhanced compensation. For the first year interest was calculated @ 9% per annum from the date of taking of possession and for subsequent years, it was @ 15% per annum till realization of the amount. Everything was adjudicated and it was only the judgment debtor, who was to make the payment. It was also observed that on account of furnishing calculations, the judgment debtors cannot stall the proceedings. Judgment debtor being a Trust was expected to maintain the record of credit and debit payments in official record. In a span of more than 41 years, it was not expected from the land owners to maintain the record of each and every payment as many of them have already expired. There may be some transactions of sale or many persons would have come in the fray in the capacity of legal heirs and subsequent vendees of the original owners. All these things would make the task of calculations by the decree holders to be an impossible one.

[7]. This Court while deciding the aforesaid EFAs, observed

that the filing of application for seeking direction to the decree holders to furnish details of payment was a calculated move by the judgment debtors to delay the proceedings which had already been delayed for a number of years. The appeals i.e. all six EFAs filed by the Trust were dismissed by this Court vide order dated 23.12.2015 for the reasons recorded hereinabove.

[8]. Thereafter in one of the case i.e. EFA No.23 of 2015 i.e. the case of Dev Raj Puri (deceased) through LRs and others, the objections filed by the judgment debtor No.2 in the execution were dismissed by the Civil Judge (Sr. Divn.) Gurdaspur vide order dated 18.02.2016 by taking note of order dated 23.12.2015 passed by this Court. It was observed that the High Court in the aforesaid order has specifically stated that everything has been adjudicated. The executing Court found no merits in the objections filed by judgment debtor No.2 and dismissed the same. The amount calculated by the decree holders was ordered to be released to the decree holders. However, it was made clear that the excess amount, if any received by the decree holders would be deemed to be returned to the judgment debtor.

[9]. Again an effort was made by the judgment debtors in the aforesaid Dev Raj Puri's case by moving an application dated 07.01.2016 for referring the calculations to some

government auditor. The said objections were also dismissed by the executing Court on 18.02.2016 on the ground that the acquisition proceedings were initiated in the year 1974 and since then more than 41 years have elapsed and most of the original land owners have expired. The judgment debtors have been filing applications and objections repeatedly just to delay the proceedings for one reason or the other. It was observed by the executing Court that it was not the stage to get the calculations verified from the government auditor. Thereafter EFA No.8 of 2016 titled '*The Batala Improvement Trust, Batala vs. Dev Raj Puri deceased through his LRs and others*' was filed against the said order in the High Court and the same was dismissed as withdrawn vide order dated 12.07.2016 with a liberty to file revision petition in the High Court.

[10]. Thereafter CR No.4980 of 2016 was filed in case of Krishan Kumar Puri through LRs Veena Puri and others. The said revision petition was allowed to be dismissed as withdrawn vide order dated 05.08.2016 with a liberty to file fresh revision petition with better particulars. Thereafter **CR No.7462 of 2016** titled '*The Batala Improvement Trust, Batala through its Chairman vs. Krishan Kumar Puri (since deceased) through his LRs and others, **CR No.1397 of 2017** titled '*The Batala Improvement Trust, Batala through its Chairman vs. Kanwal Raj**

Puri and others' and **CR No.1392 of 2017** *The Batala Improvement Trust, Batala through its Chairman vs. Ashok Puri and others* were filed. Those revision petitions were dismissed vide common order dated 31.10.2017 after noticing incriminating facts on record. Reference was made to the earlier order dated 23.12.2015 passed by this Court in six EFAs.

[11]. In case of one of the decree holder namely Dev Raj Puri, the executing Court passed the order dated 18.02.2016 to the following effect:-

*“Present:- Sh. B.S. Thakur, Advocate
for decree holders/applicants.*

Decree holder has moved an application to call the attached amount of JD and for issuance of refund voucher in favour of DH. Heard. Keeping in view the order dated 18.02.2016 passed in the execution application, application under consideration is hereby allowed. Refund voucher in the sum of Rs.2989959.67 paise as per calculations submitted by the DH be issued in favour of decree holder against proper receipt and after due identification. Papers be tagged with the main file after due compliance.

Madan Lal,

CJ/SD/GSP/18.02.2016”

[12]. Learned Senior counsel for the petitioner(s) submitted that the decree in case of Dev Raj Puri's case has been satisfied as the amount was deposited in the Treasury. All the cases have arisen from a common acquisition and the remaining cases are also covered by the ratio and facts of Dev

Raj Puri's case. At the time of disposal of aforesaid revision petitions i.e. CR No.7462 of 2016, CR No.1397 of 2017 and CR No.1392 of 2017 on 31.10.2017, this Court directed the executing Court to strictly adhere to the observations made by this Court in EFA No.19 of 2015 and other connected cases and to disburse the amount without being influenced by any calculation of higher interest by the land owners. The word 'higher interest' was referable to the interest over and above the interest granted in Dev Raj Puri's case. Thereafter the learned executing Court has passed the impugned order re-opening the case at the execution stage. The learned executing Court was only supposed to ascertain whether the cases of decree holders were covered by the dictum of Dev Raj Puri's case or not. It appears from the impugned order that learned executing Court has undertaken fresh exercise of calculating the amount of compensation and interest paid thereon on the basis of definition of market value.

[13]. I have considered the submissions made by learned Senior counsel for the parties and learned State counsel.

[14]. On 21.08.2019, this Court after taking note of background of case passed an order directing the Chairman-cum-Executing Officer of the Improvement Trust to be present in Court with a specific affidavit to show that deviation can be

made in the present case from the ratio which was applied in Dev Raj Puri's case. Instead of showing any deviation on lawful grounds, affidavit of Manoj Kumar, Executive Officer, Batala has been submitted primarily on the basis of observations recorded in the impugned order. In para nos.7 & 8 of the affidavit, the factum of dismissal of objections filed by the judgment debtor in Dev Raj Puri's case has been pleaded and it has been further stated that the amount has not been released in favour of Dev Raj Puri in execution, but the Court of District & Sessions Judge, Gurdaspur has issued a letter dated 15.01.2007 to attach the amount of Rs.1,21,69,583.53 from the Bank account of Chairman Improvement Trust, Batala and further directed him to send compliance report of order dated 25.01.2017. The affidavit in question is found to be wanting on the parameters as to how the deviation can be made in the present case from the ratio which was applied in Dev Raj Puri's case. The same is also found to be wanting on material information which was sought by this Court. However, keeping in view the facts and circumstances of the case, I do not wish to initiate any proceedings against the Executive Officer, Batala Improvement Trust, Batala.

[15]. During course of arguments, it was not disputed that the amount in the case of Dev Raj Puri has been deposited in

the Treasury. This Court vide order dated 31.10.2017 passed in the aforesaid three revision petitions i.e. **CR No.7462 of 2016**, **CR No.1397 of 2017** and **CR No.1392 of 2017** has directed the executing Court to strictly adhere to the observations made by this Court in EFA No.19 of 2015 and disburse the amount without being influenced by any calculation of higher interest by the land owners. Obviously the direction was to pay as per entitlement of the land owners in Dev Raj Puri's case and the higher interest was only referable to the fact that the interest may not be over and above the interest which has been calculated in Dev Raj Puri's case. Vide order dated 23.12.2015 passed in EFA Nos.19, 20, 21, 22, 23 and 25 of 2015, it was observed by this Court that the judgment debtors cannot stall the proceedings and everything has already been adjudicated and it is only the judgment debtor, who has to make the payment of due amount to the decree holders.

[16]. During course of arguments, learned Senior counsel for respondent No.2 submitted that market value has been wrongly claimed by the decree holders at the time of giving calculations. Learned Senior counsel referred to the calculations made on the basis of increase from the date of notification till the date of award @ 12% per annum for 2424 days and thereafter addition of 30% solatium thereby making a sum of Rs.2,55,1739.80.

[17]. I failed to understand as to how this objection is available to the respondents at this stage, particularly when this Court has already decided a bunch of six EFAs i.e. **EFA Nos.19, 20, 21, 22, 23 and 24 of 2015** as well as bunch of three revision petitions i.e. **CR No.7462 of 2016, CR No.1397 of 2017 and CR No1392 of 2017**. Specific directions were issued in the context of applicability of Dev Raj Puri's case which has already been accepted by the respondents-Trust by depositing the due amount in the Treasury. Even otherwise, I find that the market value of the acquired land at the time of issuance of notification under Section 4 of the Land Acquisition Act to which increase of 12% has to be applied on the market value under Section 23(1-A) of the 1894 Act from the date of notification till the date of award or the date of taking possession whichever is earlier. Under Section 23(2) of the 1894 Act, 30% solatium on the market value has to be applied and thereafter calculations are to be made. The total calculations of compensation are to be made in respect of entire land to which proportionate calculations are to be made. 12% increase on the market value has to be calculated for a particular period according to facts of the case and thereafter 30% solatium has to be separately assessed on market value of the acquired land on the date of issuance of notification under Section 4 of the Land Acquisition

Act. 30% solatium and 12% increase under Section 23(1-A) of the 1894 Act are the sub-components of Section 23 of the 1894 Act which in totality has to be considered as an expression 'awarded amount'.

[18]. In view of **Sunder vs. Union of India, 2001(4) R.C.R. (Civil) 727**, interest has to accrue as per Section 34 of the 1894 Act. In the aforecited case, the Hon'ble Apex Court has considered the question of payment of interest as would arise only when the compensation is not paid or deposited on or before taking possession of the land. It is inequitable that the person who is deprived of the possession of the land, on account of the acquisition proceedings is not given the amount which law demands to be paid to him. Any delay thereafter, would only be to his detriment. The provisions in terms of Section 34 of the Act was made to meet out the said exigency, where 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 @ 9% per annum from the time of so taking possession until it shall have been so paid or deposited. Provided further that if such a compensation or any part therein is not paid or deposited within a period of one year from the date on which possession is taken, the interest @15% per annum shall be payable from the

date of expiry of 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.

[19]. It is the legal obligation of the Collector to pay the compensation awarded by him to the party entitled thereto. The compensation awarded would include not only the total sum arrived at as per sub-Section (1) of Section 23 of the 1894 Act, but the remaining sub-sections thereof as well. The language of Section 34 of the 1894 Act would show that the expression '*awarded amount*' would mean the amount of compensation worked out in accordance with the provisions contained in Section 23 of the 1894 Act including all the sub-Sections thereof. The Hon'ble Apex Court in para No.24 of the **Sunder 's** case (supra) held as as under:-

“24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum 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". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as

he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted.”

[20]. In **Commissioner of Income Tax, Faridabad vs. Ghanshyam (HUF), (2009) 8 SCC 412**, the Hon'ble Apex Court in para nos.29 and 30 of its judgment has held in the following manner:-

“29. Section 23(1A) was introduced in the 1894 Act to mitigate the hardship caused to the owner of the land who is deprived of its enjoyment by taking possession from him and using it for public purpose, because of considerable delay in making the award and offering payment thereof [See : Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa and others - AIR 1995 SC 2492]. To obviate such hardship, Section 23(1A) was introduced and the Legislature envisaged that the owner is entitled to 12% per annum additional amount on the market value for a period commencing on or from the date of publication of the notification under Section 4(1) of the 1894 Act upto the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

30. The additional amount payable under Section 23(1A) of the 1894 Act is neither interest nor solatium. It is an additional compensation designed to compensate the owner of the land, for the rise in price during the pendency of the land acquisition proceedings. It is a measure to offset the effect of inflation and the continuous rise in the value of properties. [See: State of Tamil Nadu and others etc. v. L. Krishnan and others etc. - AIR

1996 SC 497]. Therefore, the amount payable under Section 23(1A) of the 1894 Act is an additional compensation in respect to the acquisition and has to be reckoned as part of the market value of the land.

[21]. Thereafter in view of **Bhanushankar Oghadbhai Mehta (D) by LRs vs. Gujarat Industrial Development Corporation Limited & Anr., 2016(7) Scale 521** and **Chimanlal Kuberdas Modi (dead) by LRs vs. Gujarat Industrial Development Corporation and others, 2010(10) SCC 635**, it can be seen that the interest has to be paid on the amount of solatium. The market value of the acquired land has to be assessed on the date of issuance of Notification under Section 4 of the Land Acquisition Act. 30% solatium and 12% increase being sub-components of Section 23 of the 1894 Act have to be added up in order to satisfy the expression 'awarded amount'. As per ratio in **Sunder's** case (supra) the amount towards solatium would accrue along with the market value of the acquired land and till the possession is taken or the amount is deposited, the award towards solatium shall also accrue interest at the rate prescribed under the Act. Solatium and statutory interest are part of compensation and interest is payable thereon.

[22]. In view of above, it can be seen that the amount payable under Section 23(1-A) of the 1894 Act is an additional

compensation in respect of acquisition and the same has to be reckoned as part of market value of the land so as the amount of solatium under Section 23(2) of the 1894 Act and interest is payable thereon. All these components would come together to satisfy the expression 'awarded amount'.

[23]. For the reasons recorded hereinabove, I find that the impugned order is not only illegal, but the executing Court has exceeded its jurisdiction in undertaking *de novo* exercise for calculating the amount in question despite the fact that this Court has earlier directed the executing Court to disburse the amount of compensation as per the calculations admitted by the judgment debtors in Dev Raj Puri's case. Consequently, the revision petitions are accepted. The impugned order dated 31.10.2018 passed by the executing Court is set aside. The executing Court is again directed to adhere to the observations made by this Court in the bunch of six EFAs i.e. **EFA Nos.19, 20, 21, 22, 23 and 24 of 2015** decided on 23.12.2015 as well as bunch of three revision petitions i.e. **CR No.7462 of 2016, CR No.1397 of 2017** and **CR No1392 of 2017** decided on 31.10.2017.

September 19, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No