

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

COCP No.705 of 2019
Date of Decision: 17.5.2019

Surinder Kaur (deceased) through LRPetitioner

Versus

Yashpal Singh Jadon and anotherRespondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

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

Mr. Rishi Kaushal, Advocate, for NHAI.

Mr. Kanisth Ganeriwala, Assistant Advocate General, Punjab.

NIRMALJIT KAUR, J. (ORAL)

This order shall dispose of a bunch of contempt petitions bearing **COCP Nos.705 to 709, 945 to 948, 896, 897, 1290, 1387, 1610 and 1622 of 2019**, as well as applications for revival **CM-9525-CII-2019 in COCP-37-2019; CM-9526-CII-2019 in COCP-3950-2018; CM-9527-CII-2019 in COCP-3823-2018; CM-9528-CII-2019 in COCP-35-2019; CM-9529-CII-2019 in COCP-229-2019; CM-9531-CII-2019 in COCP-2805-2018 and CM-9576-CII-2019 in COCP-2696-2018**, as common question of law and facts are involved therein. However, the facts have been taken from **CM-9526-CII-2019 in COCP-3950-2018**.

The contempt petitions, in which the present civil miscellaneous application have been filed, were disposed of vide order dated 23.1.2019 in view of the admitted position that the amount towards interest had been kept in the shape of FDR and taking into account that there was no stay of the order passed by this Court directing payment of the

same in CWP No.22804 of 2013 and other similar connected petitions with the following directions:-

“In view of the above, the contempt petitions are disposed of with a direction to the NHAI to pay interest to the petitioners within a period of two months from today, in case, the said award is not stayed meanwhile by any competent Court of jurisdiction qua the present petitioners.

However, in case, the amount of interest is not deposited/paid within two months in the absence of the stay of award, the petitioners will be at liberty to revive the present contempt petitions by way of filing applications. If the petitioners are forced to revive the present contempt petition, the responsible officer shall be burdened with heavy penalty, which he/she shall be personally labile.”

Thereafter, the present applicant-petitioners are forced to file revival of the said contempt petitions, as the needful has not been done.

Upon notice in the revival applications, reply has been filed stating therein that as per the available legal remedy provided against the competent authority-cum-Land Acquisition Collector suitable application have been filed before the learned Arbitrator or the learned Additional Sessions Judge as the case may be along with application for stay and the matter was pending. It was further stated that they have right to avail the remedy available in law against the order of the Land Acquisition Collector. further, the present the contempt petitions are being used to get the orders of the competent authority instead of filing the execution petitions.

After hearing learned counsel for the NHAI at length, this Court is not convinced. The conduct of the NHAI-respondent shows that they are bent upon not complying the orders passed by the various Courts,

Single Bench, the Division Bench as well as Hon'ble the Apex Court. The very argument that the applicant-petitioners should file execution petition shows that they have no intention of making the payment especially taking into account that it is not disputed that the applicant-petitioners are admittedly entitled to the solatium and interest so granted to them. The argument that the respondents have filed their application before the learned Arbitrator too does not help. Filing of such application before the learned Arbitrator appears to have been done only to circumvent the orders passed by this Court. It is settled position of law as also observed by the Division Bench of this in CWP No.25464 of 2013, titled as Rejeshwar Singh and another vs Union of India and others, decided on 10.2.2014 that the Arbitrator under the National Highway Act, 1956 cannot go into the constitutionality of the provisions of the Act, under which the benefit of solatium and interest is admissible. Para no.5 of the aforesaid judgment reads as under:-

“the Arbitrator under the Act could not have gone into the Constitutionality of the provisions of the National Highway Act, 1956 under which the aforesaid benefits are inadmissible, therefore, merely because the petitioners firstly went to the Arbitrator would not disentitle them from claiming the benefit of solatium and interest.”

Special Leave Petitions have also dismissed as well as the review applications.

Similar observations are made by the Division Bench of this Court in CWP No.14642 of 2012 titled as Prem Kaur vs. Union of India and others, decided on 27.9.2012, which reads as under:-

“The learned counsel for respondent No. 1 argued that

the petitioner(s) have effective and alternative remedy of seeking reference of disputes to an arbitrator in terms of Section 3G of the National Highways Act, 1956.

We do not find any merit in the said argument raised by learned counsel for respondents. Reference is maintainable in respect of determination of market value of land acquired payable or claimed by the land owners but in respect of statutory solatium and interest, there is no dispute and in terms of the judgment of this Court, the non payment of solatium and interest is discriminatory act and not sustainable. Since, the respondents have failed to pay the statutory solatium and interest, we find that the petitioner(s) are entitled for a direction to respondents to pay such solatium and interest.”

It is evident that the respondents are simply evading the payment of the interest.

More so, when learned Division Bench of this Court vide its order dated 14.12.2016 passed in CWP No.25846 of 2016 (**Joginder Singh and another vs Union of India and others**) has already clarified and laid procedure for payment of the said solatium and interest, relevant direction for the payment of interest reads thus:-

“(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).”

Thus, this Court, therefore, was inclined to almost pass an order of punishment for not complying with the orders but learned counsel for NHAI coming to their rescue stated that the NHAI shall deposit the amount under protest before the competent authority-respondent No.2, which shall be released to the applicant-petitioners against the indemnity bonds within 15 days thereafter.

However, the prayer to release the amount against the indemnity bonds is unfair, as it is not disputed that the petitioners are entitled for solatium and interest.

Accordingly, the present revival applications bearing **CM-9525-CII-2019 in COCP-37-2019; CM-9526-CII-2019 in COCP-3950-2018; CM-9527-CII-2019 in COCP-3823-2018; CM-9528-CII-2019 in COCP-35-2019; CM-9529-CII-2019 in COCP-229-2019; CM-9531-CII-2019 in COCP-2805-2018 and CM-9576-CII-2019 in COCP-2696-2018**, are disposed of with a direction to the respondent-NHAI to deposit the amount of solatium and interest before the competent authority for within 15 days and respondent No.2 shall thereafter, release the same to the applicant-petitioners within 10 days. However, the direction to pay ₹50,000/- as costs, as imposed on 6.5.2019 is recalled in view of the consent of learned counsel for the applicant-petitioners that he does not wish to press the same.

In view of the above, the present contempt petitions bearing **COCP Nos.705 to 709, 945 to 948, 896, 897, 1290, 1387, 1610 and 1622 of 2019** are also disposed of in the same terms with a direction to the NHAI that solatium and interest be deposited with the competent authority within a period of two months and respondent No.2 thereafter, release the same to

the petitioners within 10 days. In case, the petitioners are forced to file the revival applications, a penalty of ₹1,00,000/- shall be imposed.

(NIRMALJIT KAUR)
JUDGE

17.5.2019
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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No