

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10501 of 2017
Date of Decision: 13.03.2019

Amrik Singh & Ors.

... Petitioners

VS.

State of Punjab & Ors.

... Respondents

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

Present: Mr. Anish Garg, Advocate for the petitioners

Ms. Simran Grewal Randhawa, AAG Punjab

Mr. Karan Gupta, Advocate for respondent No.4

G.S. SANDHAWALIA, J. (Oral)

(1) This writ petition under Articles 226/227 of the Constitution of India seeks a direction in the nature of mandamus to pay interest of ₹ 8,38,373/- to petitioner No.1 and ₹ 5,20,854/- to petitioners No.2&3 each @ 15% per annum due to delayed period from 13.12.2011 till 23.01.2015 as the respondents are stated to have wrongly calculated the compensation amount of the land.

(2) The brief facts of the case are that vide notifications dated 22.12.2010 and 25.08.2011 issued under Sections 4&6 of the Land Acquisition Act, 1894, respectively followed by award dated 13.12.2011 land was acquired which fell within the jurisdiction of village Rurka. As such petitioner No.1 was paid compensation of ₹ 73,39,440/- on 09.01.2012 and petitioners No.2&3 were paid compensation of ₹ 12,36,535/- on 27.01.2012. It is the case of the petitioners that the amounts paid were not as per the terms of the award and there was calculation mistake and therefore they had approached the respondents by way of legal notice and as such balance amount to the tune of ₹ 18,12,698/- (petitioner No.1) and

₹ 11,26,170/- (petitioners No.2&3) were paid on 23.01.2015. It is on this account that they seek benefit of statutory interest as such.

(3) The defence in the reply is that the petitioners had been given two options either to claim land pooling under the Land Pooling Policy or claim cash compensation. The petitioners had opted for cash compensation as per the payment form submitted by them in the month of December, 2011 *qua* petitioner No.1 and *qua* petitioner No.2&3 on 16.01.2012. Resultantly, the amounts were disbursed to them. Thereafter they had kept mum and in the year 2014 they again approached the office of Land Acquisition Collector contesting that some more amount was payable and resultantly the balance amount was paid to them as detailed above. The defence as such taken was that the petitioners while receiving major portion of cash compensation on 09.01.2012 and 27.01.2012 never protested regarding non-payment of compensation of their additional land nor for all this period between 09.01.2012 to 02.07.2014, they ever approached the office of deponent for any additional payment.

(4) Thus the factual matrix is clear that the total amount of compensation was not paid at the first instance and therefore in view of Section 34 of the 1894 Act, the petitioners would be liable to be paid interest. Section 34 reads as under:-

“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 or 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.”

(5) A perusal of the above Section would show that the compensation is to be paid or deposited on or before taking possession of the land failing which 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 and @ 15% after a period of one year.

(6) The Division Bench of this Court in **P.C.Wadhwa and another Vs. State of Haryana and others 2008(4) R.C.R.(Civil) 538** while keeping in view the provisions of Section 34 of the 1894 Act held as under:-

“7. The question which has arisen for our consideration is whether the petitioners are entitled to interest on account of delay in making of compensation under [Section 34](#) of the Act. It is mandatory for the respondents to pay interest for any delayed payment. [Section 34](#) of the Act, reads thus:

xxxx

xxxx

xxxx

A perusal of [Section 34](#) of the Act makes it evident that if the amount of compensation is not paid or deposited on or before taking possession of the land, then the Collector is under obligation to pay the amount awarded with interest at the rate of 9% per annum from the time the possession was taken till it has been paid or deposited. It is further pertinent to notice that under [Section 31](#) of the Act, it is also mandatory that the Collector on making an award under [Section 11](#) is required to tender the payment of compensation awarded by him to those who are interested persons and are entitled to such payment according to the award. It is further obligation imposed on him to pay the amount unless he is prevented by some contingencies. In cases where the interested person refuses to receive the compensation or if there is any dispute as to title, the Collector is required to deposit the amount of Compensation in the Court to which a reference under [Section 18](#) of the Act would be submitted.

8. In [Gurpreet Singh v. Union of India](#) , 2008(2) RCR (Civil) 207 : 2008(2) RAJ 197 : (2006) 8 SCC 457 it has been held by the Constitution Bench of Hon'ble the

Supreme Court that the first stage in the whole process is when the award is passed under [Section 11](#) of the Act. It has been observed that award takes into consideration all the amount contemplated by [Sections 23\(1\), 23\(1A\) and 23\(2\)](#) and interest contemplated by [Section 34](#) of the Act. The whole of that amount is required to be paid or deposited by the Collector in terms of [Section 31](#) of the Act. The judgment in unmistakable terms states that at this stage no short fall in deposit is contemplated because the Collector is under obligation to pay or deposit the amount awarded by him. In case there is no short fall, the claimant cannot thereafter claim any interest on that part of the compensation paid to him or deposited for payment to him once notice of the deposits is given. The first stage, thus, comes to an end when the amount is deposited by the Collector under [Section 31](#) of the Act subject to the right of the claimant to notice of the deposit, withdrawal or acceptance of the amount with or without protest. Likewise, in [Rakesh Kumar Jain and Anr. v. State of U.P.](#) (2007) 2 SCC 461 interest on delayed payment in respect of compulsory acquisition of land was awarded from the date of taking forcible possession till the date of actual payment.

9. In the present case, there is apparent delay in making the payment of compensation to the petitioners in respect of their land which has been acquired. In respect of Khasra Nos. 576 and 585, award No. 9 was announced on 25.6.2004 but compensation has been paid on 18.8.2004 in respect of Khasra No. 576 whereas in respect of Khasra No. 585, the amount appears to have been deposited, which has been paid in September, 2005. Be that as it may. The petitioners are entitled to interest from the date when possession was taken till the date of actual payment. According to [Section 34](#) of the Act, in a case where amount of compensation has not been paid or deposited on or before taking possession of the land, interest at the rate of 9% per annum is payable by the Collector on the awarded amount till the date of payment. It has further been clarified that if the amount of compensation or any part thereof has not been paid or deposited within a period of one year from the date on which possession is taken then interest at the rate of 15% per annum must be paid from the date of expiry of the said period of one year on the amount of compensation or any part thereof. The aforementioned aspect has been considered by the Constitution Bench of Hon'ble the Supreme Court in the case of [Sunder v. Union of India](#) 2001(4) RCR (Civil) 727 (2001) 7 S.C.C. 211. In para 14 of the judgment it has been observed as under:

“Question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession of the land. It is inequitable that the person who is deprived of the possession of the land on account of acquisition proceedings is not given the amount

which law demands to be paid to him; any delay thereafter would only be to his detriment. There must be a provision to buffet such iniquity. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made under [Section 34](#) of the Act.”

10. As a sequel to the above discussion, the instant petition succeeds. Respondent No. 3 is directed to calculate the amount of interest from the date the possession is taken till the date of payment of amount to the petitioners and pay the same to them. It is however, made clear that if any excess amount has been paid to the petitioners, as claimed by the respondent, the same may be set off and adjusted in making the payment of interest. However, the set off or adjustment must be made after confronting the petitioners the factual position.

The needful shall be done within a period of two months from the date of receipt of certified copy of this order.

Petition allowed.”

(7) Similarly in **Delhi Development Authority Vs. Sukhbir Singh & others 2016 (16) SCC 258**, it was noticed by the Apex Court that the Collector has to have the amount of compensation available with him which is payable to the persons interested as soon as the award is made. It is the duty of the Collector to make the payment as soon as possible after making the award. It is only in a situation where the persons interested refuse consent to receive monies payable, or there be no person competent to alienate the land, or if there be any dispute as to title to receive compensation or its apportionment, the Collector is to deposit the amount of compensation in Reference Court since the ownership vests absolutely in the Government after passing of the award. Relevant portion reads as under:-

10. The scheme of the [Land Acquisition Act](#), in so far as the making of award and the payment of compensation to persons interested, is as follows. On the day fixed, the Collector after the inquiry that is contemplated under [Section 11](#), has to make an award which must contain the necessary ingredients mentioned in [Section 11](#). As soon as the award is made, under [Section 12\(2\)](#) of the Act, the Collector is

to give immediate notice of the award to such of the persons interested as are not present personally. This provision, when read with [Section 31](#) of the Act, makes it clear that the statutory scheme is that the Collector is to tender payment of compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. It is therefore, clear that under the statutory scheme, the Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Such persons have to be paid the sum mentioned in the award, it being well settled that the award is only an offer which may be accepted or rejected by the claimants. If accepted, whether under protest or otherwise, it is the duty of the Collector to make payment as soon as possible after making the award. It is only in a situation where the persons interested refuse consent to receive monies payable, or there be no person competent to alienate the land, or if there be any dispute as to title to receive compensation or its apportionment, is the Collector to deposit the amount of compensation in the reference court. It is only after these steps have been taken that the Collector may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. [The Act](#) further makes it clear, on a reading of [Section 34](#), that where such compensation is neither paid or deposited on or before taking possession of the land, interest is payable at the rate of 9 per cent per annum for one year and 15 per cent per annum thereafter. This is because a person becomes divested of both possession and title to his property without compensation having been paid or deposited, as the case may be. This statutory scheme has been adverted to in some of the decisions of this Court.”

(8) Resultantly, the dispute in the present case is also squarely covered by the observation of the Division Bench judgment in **P.C.Wadhawa's case** (supra).

(9) The excuse pleaded by the respondents is that the payment forms which had been submitted had as such been prepared by the landowners thereafter and the fault liability is sought to be shifted is

without any basis. It is the duty of the respondents to calculate and deposit the amount of compensation. The onus as such cannot be shifted upon the landowners to calculate the amount. Admittedly, the State itself has paid the amount subsequently and there was shortfall of the compensation and therefore the statutory interest is liable to be paid @ 9% for the delayed period for the first year and beyond that 15% interest is to be paid. The Apex Court in **Union of India & Anr. vs. Pushpavathi & Ors. 2018 AIR (SC) 1032** has also held that the writ court would have jurisdiction as the payment of interest is statutory in character and mandatory once the conditions under Section 34 are fulfilled. The relevant portion reads as under:-

“36. In our considered opinion, the dispute relating to non-award of the interest to the landowners, whether under [Section 28](#) or [Section 34](#) is not a dispute, which falls under [Section 18](#) or/and 28A(3) of the Act. In other words, a reference under [Section 18](#) can only be made by the Collector in respect of those issues, which are specified under [Section 18](#).

37. A dispute relating to non-award of interest payable to the landowners under [Section 28](#) or/and [Section 34](#) of the Act is not specified under [Section 18](#) and hence it is not capable of being referred by the Collector to the Civil Court under [Section 18](#) of the Act. It is also for the reason that payment of interest is statutory in character and being statutory, it is mandatory for payment once conditions specified under [Sections 28](#) or/and 34 are fulfilled.

38. It is true that once the interest is awarded by the Court under [section 28](#) or by the Collector under [Section 34](#) of the Act, it becomes the part of the award. However, it is hardly of any significance and has no bearing for deciding the question

of remedy to challenge issue relating to the non-award of interest.

39. As mentioned above, such issue is required to be decided keeping in view the wording of [Section 18](#) of the Act, which specifies the issues on which the reference can be made to the Court and non-award of interest is not the issue specified in [Section 18](#) of the Act. In this view of the matter, no reference can be made to the Court to decide the issue of non-award of interest under [Section 18](#) of the Act.”

(10) Resultantly, the present writ petition is allowed and the respondents are directed to pay interest to the petitioners at the statutory rate for the delayed payment within three months from the date of receipt of certified copy of this order. In case the same is not done the amount of interest shall further carry 9% interest to be paid to the landowners on account of the default.

(11) Ordered accordingly.

13.03.2019

vvishal

(G.S. Sandhawalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No