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

**RFA-1694-2007
& other connected cases
Date of decision: 17.07.2019**

Jarnail Singh & others ....Appellants

Versus

State of Punjab & others ...Respondents

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

Present: Mr.Surinder Garg, Advocate
Mr.D.S.Brar, Advocate, for the appellants.

Ms.J.K.Sidhu, AAG, Punjab.

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G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 42 appeals, out of which 17 appeals, bearing RFA Nos.1694, 1695, 3557 of 2007, RFA Nos. 1507 to 1514 of 2004, RFA No.1628 of 2005, RFA Nos.3618 to 3622 of 2008, have been filed by the landowners and remaining 25 appeals have been filed by the State bearing RFA Nos.1328 to 1339 of 2004, RFA Nos.1324 to 1331, 3889 to 3892 and 3894 of 2008, under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act'), against the Award of the Reference Court, Faridkot dated 31.01.2004, whereby 12 reference petitions were partly allowed. Civil Revisions, bearing CR Nos.5141 to 5152 of 2005, have also been filed by the State against the orders of the Executing Court, Faridkot dated 07.05.2005.

The Reference Court did not enhance the compensation, which had been awarded for the two villages in question, namely, Sibian and Dhilwan Kalan, whereby the Land Acquisition Collector (for short 'the

LAC') had awarded a sum of ₹2,80,000/- per acre vide Award dated 01.06.2001 of the land which was acquired vide Section 4 notification issued on 08.01.1999. The public purpose was for the New Canal Minor known as Jaitu Distributory. However, the Reference Court granted the benefit of the statutory benefits regarding the interest on solatium @ 9% for the first year from the date of taking possession and @ 15% for the subsequent period till realization. Similarly, regarding increase @ 12% per annum on the market value for the period commencing on and from the date of notification under Section 4 of the Act to the date of the award of the Collector or date of taking possession of the land, whichever is earlier, under Section 23 (1-A) of the Act.

The State is, thus, aggrieved on two accounts; firstly that interest has been granted on the amount of solatium @ 9% from the date of taking possession, which in the present case has come on record that it was on an earlier occasion way back in the year 1982. Secondly, that instead of 12% interest, which was required to be quantified under Section 23 (1A) of the Act, 12% increase of compensation was granted on the market value per year from the date of taking possession.

The landowners, on the other hand, are aggrieved that though it was categorically averred that possession had been taken in the year 1982 and the said factum has also not been denied, the damages, as such, should have been awarded for the period the State remained in possession without resorting to the acquisition proceedings.

Before adverting to the Section 18 petitions, it is necessary to note that on an earlier occasion, on 13.01.1995 (Ex.A-8), the landowners filed a civil suit for recovery of ₹1 lakh before the Court of Civil Judge (Junior Division), Moga, on account of the fact that the State was in illegal occupation of the land which they had come to know in the year 1993.

In evidence, the SDO of the Irrigation Department had appeared and admitted that Jaitu Rajbaha had been carved out in the year 1983 and compensation in that regard for the land acquired was under consideration of the Government, since acquisition proceedings were initiated under Section 4 of the Act on 08.03.1999. The Reference Court vide judgment and decree dated 11.10.1999, came to the conclusion that compensation is to be assessed as per the Land Acquisition Act, as proceedings were already pending and thus, in effect, relegated the landowners to their remedy before the Competent Authority. Relevant portion of the said judgment reads as under:-

> "9. In these circumstances, I am of the view that the land of the plaintiff was acquired by the defendants and they had carved out Rajbaha from the land of the plaintiffs. Since the plaintiffs have failed to show the loss suffered by them due to the construction of the Rajbaha and the statement suffered by Nareshwar Kumar, S.D.O DW1 that the land has been acquired by the Govt. and the compensation is to be paid as per the Land Acquisition Act for which the proceedings are already pending. Hence, I am of the view that it will be in the interest of justice that the Punjab State should pay the compensation under the Land Acquisition Act, assessed by the competent authority. So, this issue is decided accordingly."

The petitioners then filed reference petitions under Section 18 of the act, specifically taking the plea that their land had been taken by the respondents 15 years ago and a civil suit had been filed and the Award was only pronounced on 01.06.2001. Accordingly, they sought solatium and interest also, apart from enhancing the market value.

In the written statement filed, the said para No.4 of the petitioner was replied that it related to limitation and hence, no comment was required and therefore, the factum that possession had been taken in 1982 was not denied. Rather, a perusal of the Collector's award would go on to show that under the recording of the date of possession, under Column No.7, it was mentioned that the department has already taken the possession since 1982, as per the letter dated 31.03.2000, addressed to the Executive Engineer, Canal Irrigation Area, Division Ludhiana. The Reference Court, however, came to the conclusion that no material had been brought on record regarding the claim for higher compensation and, thus, maintained the market value but did not advert to record any findings as to when possession had been taken or that any damages were payable on this account.

Mr. Surinder Garg, could not also press, as such, regarding the claim for enhancement on this account, since no such material had been placed on record by way of relevant sale exemplars of the villages in question to show the correct market value.

It is, however, submitted that the objection of the State that interest on solatium was not liable to be paid, is without any basis, keeping in view the fact that the Reference Court had also relied upon the judgment of the Constitutional Bench passed in **Sunder Vs. Union of India, (2001) Suppl. 3 SCR 176**.

The said argument need not detain this Court further because the said issue has been reiterated by another Constitutional Bench judgment of the Apex Court, passed in **'Gurpreet Singh Vs. Union of India' 2006 (8) SCC 457**, whereby the said principle, as such, that interest is liable to be paid on the solatium, has been reiterated, though a cut-off date has been fixed from the date of the judgment passed in the case of **Sunder** (supra) from 19.09.2001, by holding that Executing Courts could not, as such, open up the proceedings and recovery could only be permitted in pending executions and not in closed executions and not for any prior period.

It is also to be noticed that the law already stood settled by a Division Bench of this Court on an earlier occasion in **State of Haryana Vs. Smt. Kailashwati & others AIR 1980 P&H 117** and therefore, there is no dispute qua this proposition and the claim for interest on solatium has rightly been granted and the State cannot, as such, object to the same.

Coming to the issue of State appeals that the benefit of 12% increase, as such, has wrongly been granted per annum on the market value and the same is based on apparent misreading of Section 23(1-A) which only provides that in addition to the market value, the amount calculated @ 12% per annum of such market value, for the period commencing on and from the date of the publication of Section 4 notification in respect of such land to the date of the award of the Collector, is to be commuted. There is no such provision of an increase on compensation which has been wrongly granted by the Reference Court and accordingly, this factor is clarified that the landowners will be entitled for 12% amount which is to be calculated for the difference between the date of Section 4 notification i.e. 08.01.1999 to the passing of the award i.e. 01.06.2001. Reference can be made to the judgment of the Apex Court in **State of Punjab Vs. Amarjit Singh & another (2011) 4 SCC 734**. Relevant portion of the judgment read as under:

> "4. Section 23 of the Act refers to four distinct amounts:
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> (i) Market value of the land on the date of publication of the notification under Section 4(1) of the Act is first and foremost of the six factors to be taken note of for determining the amount of compensation for the land acquired. It is the major component (and in most cases, the only component) of the compensation determined by the court under Section 23(1) of the Act.
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> (ii) Compensation to be awarded to a person for the acquired land, is to be determined under Section 23(1) of the Act by taking into consideration six factors - (i) the market value of the land, on the date of publication of the notification under section 4(1) of the Act; (ii to iv) damage sustained by the person interested by reason of the taking of any standing crops or trees in the lands, or severing such land from his other land/s, or the acquisition injuriously affecting his other property or earnings; (v) the reasonable expenses incidental to the person interested being compelled to change the residence or place of business as a consequence of acquisition; and (iv) the damage bonafide resulting from diminution of the profits of the land between the time of publication of declaration under section 6 and the time of the Collector's taking possession of the land.
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> (iii) Additional amount at the rate of 12% per annum on such market value (for the period commencing on and from the date of

publication of notification under Section 4(1) of the Act to date of award of the Collector or the date of taking possession of the land, whichever is earlier).

(iv) Solatium at 30% on such market value, in consideration of the compulsory nature of acquisition. While market value and compensation are factors to be assessed and determined by the court, no such judicial exercise is involved in regard to additional amount payable under Section 23(1A) and solatium payable under Section 23(2) as they are statutory benefits payable automatically at the rates specified in those sub-sections, qua the market price. No reasons need be assigned for grant of additional amount or solatium.

5. This court explained the object of granting additional amount under Section 23(1A) of the Act in Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa (1995) 6 SCC 355 and in State of Tamil Nadu v. L. Krishnan (1996) 1 SCC 250. In Mathapathi Basavannewwa (supra) this court observed:

> "The object of introducing Section 23(1-A) is to mitigate the hardship caused to the owner of the land, who has been deprived of the enjoyment of the land by taking possession from him and using it for the public purpose, because of considerable delay in making the award and offering payment thereof. To obviate such hardship, Section 23(1-A) was introduced and the Legislature envisaged that the owner of the land is entitled to 12 per cent per annum additional amount on the market value............."

In L.Krishnan (supra) this court observed:

> "The provisions in this Sub-section are designed to compensate the owners of the land for the rise in prices during the pendency of the land acquisition proceedings. It is a measure to off-set the effects of inflation and the continuous rise in the values of properties over the last few decades.........."

In P.Ram Reddy v. Land Acquisition Officer (1995) 2 SCC 305 this court held that additional amount under Section 23 (1A) of the Act was payable only on the market value determined under Section 23(1) of the Act, thereby clearly implying that it was not reckonable on any other amount: "The amount awardable under Sub-section (1-A) of Section 23 of the LA Act, therefore, would be an amount of 12 per centum per annum on the market value of the land determined under first Clause of Sub-section (1) of Section 23 for the period between the date of publication of Notification under Section 4(1) and to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier................In this context is has to be noted that the amount payable is 12 per centum per annum on the market value in the first Clause of Sub-section (1) of Section 23 of the LA Act. It has also to be noted that solatium under Sub-section (2) is not payable in respect of the amount awardable under Sub-section (1-A), in that, Sub- section (2) says that in addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition." (emphasis supplied)

In Sunder v. Union of India (2001) 7 SCC 211, a Constitution Bench of this court held that the terms `sum awarded' or `amount awarded' occurring in sections 34 and 28 of the Act would include not only the compensation determined by taking note of the six factors mentioned in Section 23(1) of the Act, but also amounts awarded under the remaining sub-sections of section 23 as well, for the purpose of calculating interest. The words `compensation to be awarded' used in Section 23(1) of the Act refers to the total of the sums awarded with reference to the six factors enumerated in Section 23(1). On the other hand, the words `amount awarded' or `sum awarded' in Sections 28 and 34 of the Act refers to the aggregate of the compensation determined by the court under Section 23(1), the additional amount payable under Section 23(1A) and the solatium payable under Section 23(2) of the Act.

6. Section 23(1) refers to market value of the land on the date

of publication of the notification under Section 4(1) of the Act as a relevant factor for determining the amount of compensation to be awarded for land acquired under the Act. Sub-section (2) provides that in addition to the market value of the land determined under Section 23(1), the Court shall, in every case, award a sum of 30% on such market value in consideration of the compulsory nature of acquisition. Sub-section (1A) of Section 23, inserted by Act 68 of 1984 provides that in addition to the market value of the land, as provided under Section 23(1), the Court shall, in every case, award an amount calculated at the rate of 12% per annum on such market value for the period commencing on or from the date of publication of the notification under Section 4(1) in respect of such land to the date of award of the collector or the date of taking possession of the land, whichever is earlier. The additional amount under Section 23(1A) and solatium under Section 23(2) are both payable only on the market value determined under Section 23(1) of the Act and not on any other amount. Solatium under Section 23(2) is not payable on the additional amount nor additional amount under Section 23 (1A) payable on solatium. Solatium and additional amount are also not payable on the damages/expenses that may be awarded under second to sixth factors under Section 23(1) of the Act.

7. Thus a person whose land is acquired is entitled to the following amounts under the Act.

(a) Compensation determined under Section 23(1) of the Act (comprising the market value of the land referred to as the first factor and any damages/expenses referred to as the second to sixth factors under the said sub-section).

(b) Solatium at 30% on the market value determined as the first factor under section 23(1) of the Act.

(c) Additional amount at 12% per annum of the market value of the land referred to as the first factor under Section 23(1) of the Act, for the period specified in Section 23(2).

> (d) Interest on the aggregate of (a), (b) and (c) above for the period between the date of taking possession to date of payment/deposit at the rate of 9% per annum for the first year and 15% per annum for the remaining period."

Lastly, the issue arises as to whether the landowners are entitled for damages on account of the possession of their land taken from the year 1982, as noticed in the civil proceedings and which is also clear from the reading of the award of the Land Acquisition Collector. It is also pertinent to notice that the Reference Court has not touched this aspect of the matter though the Civil Court had relegated the landowners to their remedy before the Competent Authority since the acquisition proceedings had then been initiated in the proceedings before the Civil Court.

State Counsel has vehemently opposed the grant of the amount on account of any damages on the ground of the judgment of the Apex Court in **R.L.Jain (D) by LRs Vs. DDA & others (2004) 4 SCC 79**, to submit that matter should be sent to the Collector for award of damages.

This issue need not detain this Court for long, keeping in view the fact that the matter has been hanging fire for very long and 37 years later, this Court is not inclined to relegate the landowners before the Collector, on the issue of damages. Reliance can be placed upon the judgment of the Apex Court in **Madishetti Bala Ramul (D) by LRs Vs. The Land Acquisition Officer 2007 (9) SCC 650**, **Tahera Khatoon & others Vs. Revenue Divisional Officer/Land Acquisition Officer &**

others 2014 (13) SCC 613 and **Balwan Singh & others Vs. Land Acquisition Collector & another 2016 (13) SCC 412**.

It is also pertinent to notice that the landowners had initially gone to the Civil Court for the relief which was declined and therefore, to put them before the Collector would be a travesty of justice. Similar view was taken in **CA-10665-2010** titled **M.Buggappa (D) th. LR & others Vs. Land Acquisition Officer-cum-Mandal Revenue Officer & another**, decided on 13.12.2010, while considering the judgment in **Madishetti Bala Ramul** (supra). In the said case, possession had also been taken in the year 1977 whereas the preliminary notification was issued in the year 1990. In the said case, the judgment of **R.L.Jain** (supra) and **Special Land Acquisition Officer Vs. Karigowda & others 2010 (5) SCC 708** were also kept in mind while granting 6% interest on the market value. It was further held that the Court may award damages from 8% to 10%, depending upon the facts and circumstances of the case. Relevant portion of the judgment read as under:

> "8. We are of the view that having regard to the fact that the possession of the land was taken as long back in 1977, that is 33 years ago, it would not be just and proper to remand the matter to the Collector at this stage for determination of compensation for wrongful use at this stage. Award of 6% per annum on the compensation amount, as damages for use and occupation from the date of dispossession (17.11.1977) to date of preliminary notification (3.7.1990) in addition to what has been awarded by the High Court would serve the interest of justice.
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> 9. Learned counsel for the appellant submitted that in

Madishetti Bala Ramul (supra) this Court had awarded damages at the rate of 15% per annum (on the market value determined) and, therefore, we should award damages at that rate. We find that award of damages at 15% on the compensation on the peculiar facts and circumstances of the case, and not on account of any principle evolved. Further, the market value as on 17.11.1977 when possession was taken would have been much less than the market value as on 3.7.1990. Therefore, if damages is awarded at 6% per annum on the market value determined as on 3.7.1990, the actual rate of damages with reference to the market value as on 17.11.1977 will be much more. In the circumstances, we are of the view that the damages for dispossession without initiating acquisition proceedings, when expressed in terms of a percentage of the compensation determined with reference to the market value more a decade later should not be more than 6% per annum. Where of course the preliminary notification is issued within one or two years from the date of taking possession, the court may award damages even at 8% to 10% of the market value determined depending upon the facts and circumstances.

10. We accordingly allow the appeal in part, and award in addition to what has been awarded by the High Court, damages at 6% per annum from 17.11.1977 to 3.7.1990, on the market value determined as on 3.7.1990. The amount so due as damages shall carry interest at 6% per annum from the date of award (21.3.1991) to date of payment. The amount awarded as damages shall not carry any additional amount or solatium."

Thereafter, in **Rahera Khatoon** (supra), same view was followed by adopting the principle to grant interest rather than remand the matter for assessing the damages, which view was also followed in **Balwan Singh** (supra).

Resultantly, keeping in view the above judgments, this Court is of the opinion that the landowners shall be entitled for the payment of interest @ 6% per annum from 01.06.1982 on the market value determined by the Collector, since the exact date of possession has not been clarified, till the date of Section 4 notification, i.e., 08.01.1999, to offset the period of illegal possession by the State, as sufficient material has come on record regarding this aspect.

Resultantly, the appeals filed by the landowners are allowed, to the above extent only. The appeals filed by the State are also disposed of, in view of the above reasons given regarding the clarification of the additional amount granted under Section 23 (1-A) and dismissed qua the relief of interest on solatium.

RFA-1324 to 1331, 3618 to 3622, 3889 to 3892 and 3894-2008 have been filed against the award of the Addl.District Judge, Faridkot under Section 28-A, for redetermination of compensation of the landowners. The said claims are based on the award of the Reference Court dated 31.01.2004, which has already been discussed above. It is settled principle that all the landowners are entitled for the same amount of compensation and therefore, no fault, as such, can be found in the orders of the Reference Court, Faridkot. Reliance can be placed upon the judgment of the Apex Court in **Narendra & others Vs. State of U.P. & others (2017) 9 SCC 426**. However, it is clarified that the landowners, in the present set of appeals will also be entitled for the same benefit as granted to the other landowners, as has been clarified in the main appeal.

Civil Revisions, bearing CR-5141 to 5152-2005, filed by the State, arise out of the order of the Executing Court, Faridkot dated 07.05.2005, whereby the landowners have been granted the benefit of the additional amount of compensation @ 12% under Section 23 (1-A) and interest @ 15% from the date of taking possession which was stated to be 1982.

Admittedly, the Reference Court had never adverted to the fact of possession of 1982 and therefore, granting of interest @ 15% by the Executing Court was not justified, in the facts and circumstances and therefore, it has exceeded its jurisdiction and the said order would necessarily have to be set aside and the same are hereby set aside. However, the clarification has already been given above of the additional amount which is to be paid under Section 23(1-A) which the State shall duly adhere to. Accordingly, the present revisions petitions, filed by the State, are allowed.

The present appeals and the revision petitions, are disposed of, in the above terms.

17.07.2019 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*