

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23712 of 2016

Decided on 08.05.2019

Narinder Kumar & Ors.

...Petitioners

Versus

State of Haryana & Ors.

...Respondents

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

Present: Mr. Navmohit Singh, Advocate for the petitioners

Mr. Shivendra Swaroop, AAG Haryana

G.S. SANDHAWALIA, J. (Oral)

The petitioner has filed the present writ petition under Articles 226/227 of the Constitution seeking the benefit of statutory interest under Section 34 of the Land Acquisition Act, 1894 on the amount of ₹ 26,94,141/- of compensation which was deposited on 20.08.2010 after 3 years and 8 months of the award and taking of possession on 10.01.2007 vide rapat roznamcha No.814.

At the outset, it is pertinent to mention that respondent No.2-HUDA has chosen not to put in appearance in spite of service effected upon it.

The case of the petitioner is that the land falling in village Gobindpura, HB No.407, Tehsil Jagadhari, District Yamuna Nagar was sought to be acquired by the State on 16.11.2004 under Section 4 which was followed by notification under Section 6 on 21.10.2005. The award No.17 was passed on 10.01.2007 (P1). A Civil Suit was filed on 13.01.2007 for declaration, permanent injunction and mandatory injunction seeking ownership and possession on the basis of oral partition etc. and restraining the official respondents from releasing payment. The suit was decreed on

dismissed on 27.05.2015 (P3) affirming the title of the petitioners. It is submitted that petition under Section 30 was filed during the pendency of the suit on 21.08.2010 which was allowed on 03.11.2015 (P4). Resultantly, the demand as such was raised for payment of the interest element by serving legal notice dated 10.05.2016/26.08.2016 (P5).

The stand of the respondents No.1&3 is that since there was dispute between the parties and it was decided that reference under Section 30 has been filed in the Court therefore payment could not be released to the person entitled for the same. The amount had been disbursed vide bank draft No.065539-065540 dated 18.08.2010 amounting to Rs.26,94,141/- and thus they cannot be held liable for interest for the period intervening.

The issue will not detain this Court for long as the provisions of the Act have time and again been reiterated by this Court as well as by the Apex Court. The relevant provisions of the 1894 Act read as under:-

30. Dispute as to apportionment. - When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

31. Payment of compensation or deposit of same in Court. –

(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the

amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

“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.”

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.

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:

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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

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.”

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.”

In Ivo Agnelo Santimano Fernandes & Ors. vs. State of Goa & Anr. (2011) 11 SCC 506 while discussing the provisions of Section 34, it was held that the liability to pay interest continues to subsist till the amount is deposited in Court while placing reliance upon the judgment in **Prem**

Nath Kapur vs. National Fertilizers Corpn. Of India Ltd. (1996) 2 SCC

71. The relevant portion read as under:-

21. In Prem Nath Kapur (supra), a three- Judge Bench of this Court considered the question as to when the liability of the State to pay interest ceases. The relevant portion of the judgment reads as follows:

"13. Thus we hold that the liability to pay interest on the amount of compensation determined under section 23(1) continues to subsist until it is paid to the owner or interested person or deposited into court under section 34 read with section 31. Equally, the liability to pay interest on the excess amount of compensation determined by the Civil Court under section 26 over and above the compensation determined by the Collector/Land Acquisition Officer under section 11 subsists until it is deposited into court. Proprio vigore in case of further enhancement of the compensation on appeal under section 54 to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into court. The liability to pay interest ceases on the date on which the deposit into court is made with the amount of compensation so deposited."

This Court also held that by operation of Section 53 of the Act, Order [21](#) Rule [1](#) of Civil Procedure Code, being inconsistent with the express provisions contained in Sections 34 and 28 of the Act, stood excluded.

22. In the light of the abovesaid principle, we are of the view that the contentions of the respondents cannot be accepted. The Act requires that the interest be deposited in court, and the same has been upheld in the case of Prem Nath Kapur (supra).

23. In the present case, the respondents did not deposit the amount in court, but in their Revenue account and utilised the same. Even if the respondent State does pay the compensation to the claimants directly, and the same is not collected, the respondent State cannot then keep the said money with itself and utilise it. In such cases, after a reasonable period, if the claimants do not come forward to collect compensation, then it should be deposited in court by the State. Allowing the State to keep the compensation with itself and utilising it cannot possibly be permitted being contrary to the provisions of the Act and the law laid down in Prem Nath Kapur (supra). Hence, the judgment of the High Court is clearly erroneous and deserves to be set side.”

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.”*

Thus the respondents were under an obligation under Section 31(2) to deposit the amount in the Court to which reference under Section 18 was to be submitted, as they were defendants in the suit filed and were aware that a dispute had arisen qua the title of the land.

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.

Ordered accordingly.

08.05.2019

vvishal

(G.S. Sandhawalia)
Judge

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

Yes
Yes