IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20171 of 2018
Date of decision: 06.11.2019

Ramkishan @ Krishan ....Petitioner(s)

Versus

State of Haryana and others ...Respondent(s)

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

Present: Mr. M.K. Sangwan, Advocate,
for the petitioner.

Ms. Vibha Tewari, AAG, Haryana.

Mr. Sanjeev Majra, Advocate,
for HUDA (now HSVP).

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 5 writ petitions i.e. CWP Nos. 20171, 28393, 20176, 20177 and 25947 of 2018, since common questions of facts and law are involved in all the writ petitions, though the period of delay may differ by few days. Reference is being made to ***CWP No. 20171 of 2018, Ramkishan @ Krishan vs. State of Haryana and others,*** for dictating the judgment.

The claim in the petition filed under Articles 226 and 227 of the Constitution of India is for payment of interest @ 9% per annum on the compensation amount on account of delayed payment for a period of 11 months and 8 days i.e. from 29.07.2016 to 07.07.2017.

The case of the parties is that notification under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act') was issued on 01.10.2013 for the land measuring 30.68 acres of village Charkhi, District

Bhiwani. The same was followed by notification under Section 6 of the Act dated 01.08.2014 and the award was passed on 29.07.2016 (Annexure P-1) and possession of the land was taken over and handed over to the Estate Officer, HUDA on the same day of the award. The compensation was not deposited or paid to the petitioners and representations dated 19.09.2016 (Annexure P-2) and 17.02.2017 (Annexure P-3) were filed. Thereafter the amounts were received on 07.07.2017.

The defence of the respondents is only to the extent that the amount of awarded compensation was prepared and sent to the Punjab National Bank, Manimajra to transfer the same vide letter dated 22.09.2016. The payment had to be released as per priority list prepared during the years 2016-17 and 2017-18 since awards had been passed earlier. The payments were made subject to the availability of funds and the delay is due to the above reasons and not intentional. Thus, it is admitted that the payments were not made and the delay as such had occurred.

The issue is no longer *res integra* and settled beyond the anvil of doubt regarding the liability of the State to pay statutory interest on taking possession of the land.

A 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:*

"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 unit 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 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.]

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 Sections23(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, of 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."*

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).**

The excuse which has been pleaded by the State that documents had to be prepared and submitted by the petitioner and delay was on account of the petitioner for complying with the requirement and as such amount could not paid is, thus, without any basis.

Accordingly, the present writ petitions are allowed. The respondents shall pay interest @ 9% per annum for the delayed payment to the petitioners. The needful be done within a period of 2 months from today. In case the same is not done within the stipulated period, the respondents shall pay penal interest @ 12% per annum beyond that period till the date of deposit.

06.11.2019 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No