

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2556-2018

Date of decision: 24.05.2019

Karnail Singh & others

....Petitioners

Versus

State of Punjab & others

...Respondents

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

Present: Mr.D.S.Kahlon, Advocate, for the petitioners.

Ms.S.G.Randhawa, AAG, Punjab.

G.S. SANDHAWALIA, J. (Oral)

Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India, is for granting the benefit of interest @ 18% per annum on the delayed payment of Rs.16,71,033/- since 06.05.2014 (Annexure P-1), i.e., the date of passing of the award to 10.11.2017 (Annexures P-4 to P-10), i.e. the date when payment has been made.

A perusal of the paperbook would go on to show that the award was passed on 06.05.2014 and it was only on 10.09.2014 (Annexure R-1) that respondent No.3 forwarded the amount of Rs.2,20,08,355/- to respondent No.4-Land Acquisition Collector. The petitioners not having received the amount, filed CWP-16042-2016 titled *Karnail Singh & others Vs. State of Punjab & others* (Annexure P-3), in which directions were issued on 09.08.2016 as under:

“(2) The petitioner’s grievance in the instant writ petition is that their land was acquired for Shahpur Kandi project vide notifications dated 05.12.2012 and 23.07.2013 issued under Section 4&6 of the Land Acquisition Act, 1894 (in short, ‘the 1894 Act’), followed by the award dated 06.05.2014. They

allege that full amount of compensation has not been paid so far.

(3) As more than two years have passed since the award was passed, there can hardly be a legitimate ground for withholding the balance payment of compensation to which the petitioners are entitled to in accordance with law.

(4) We thus dispose of the writ petition, without expressing any views on merit, with a direction to the Land Acquisition Collector and other authorities to ascertain the correct facts and if the petitioners are found to have not been paid full amount of compensation, let the same be released along with due interest as per the statutory rate within a period of *three months* from the date of receipt of a certified copy of this order.

(5) Ordered accordingly.”

In view of the above directions, payment was made on 10.11.2017 (Annexure P-4). Thereafter, the respondents passed an order dated 04.05.2018 that parentage of the petitioners was not correct in the revenue record and the applicants had submitted corrected revenue record of the year 2014-15 and therefore, they are not entitled for the benefit of interest.

The defence of the respondents, in the written statement, is also similar that there was no fault, as such, of the authorities. It was also mentioned that petitioners had also filed COCP-1599-2017, regarding non-compliance of the order, which was dismissed on 28.03.2019. A perusal of which would go on to show that the rule was discharged on the ground that the delay had occurred on account of correction in the names of parentage from the competent authority and payment had been duly made.

As noticed above, the award was passed way-back on 06.05.2014 and the amount had been forwarded by the Land Acquisition Collector to the respondent No.3, only 4 months later, on 10.09.2014. Section 34 of the Land Acquisition Act, 1894 provides that at the time of taking the possession, if the compensation is not paid on or before taking possession, for the first year, the Collector is to pay the interest @ 9% per annum. Thereafter, the rate of interest is 15% per annum. Section 80 of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013, is para materia also. Section 31 of the Land Acquisition Act, 1894 further provides that the Collector is to tender payment to the persons interested until prevented by one of the contingencies mentioned and if there is no consent to receive compensation or where there is dispute as to the title, the amount is to be deposited with the Court. Section 31 reads as under:

“31. Payment of compensation or deposit of same in court

(1) On making an award under section II, 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 further' that no person who has received the amount otherwise than under protest as to the entitled to make any application under section 18:

Provided also that nothing herein contained shall effect 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.”

Similar is the provision of Section 77 of the 2013 Act. The Collector has, thus, to deposit the amount of compensation with the Court on account of the contingencies. Nothing has been shown that any notice was issued to the petitioners that there was discrepancy, as such, regarding the parentage, for which the petitioners have filed the writ petition and got the necessary directions on 09.08.2016 (Annexure P-3). Only thereafter, they had also filed a contempt petition for the enforcement of the said directions. It is, thus, for the first time, that the petitioners were called vide notice dated 09.11.2017 and payment has been made on 10.11.2017 and thus, the respondents have become liable to pay the interest element on account of the delay. 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 *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.”

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 also without any basis, in the above facts and circumstances.

Accordingly, the present writ petition is allowed. The respondents shall pay interest @ 9% per annum for the delayed period, for the first year and thereafter, @ 15% per annum, till the date of payment. Needful be done within a period of 2 months from the receipt of a certified copy of this order. In case the payment is not made, the interest element shall further carry 9% interest till the date of payment.

24.05.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*