

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

CWP No. 25947 of 2018
Date of decision: 06.11.2019

Balbir Singh

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. Amit Gupta, Advocate,
for Mr. Bhaskar Sharma, Advocate,
for the petitioner.

Ms. Vibha Tewari, AAG, Haryana.

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

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks the benefit of interest under Section 34 of the Land Acquisition Act, 1894 (in short 'The Act') in a petition filed under Articles 226 and 227 of the Constitution of India. The claim is made on the basis of the award which was announced on 29.12.2015 (Annexure P-4) and the compensation was released on 13.06.2016 (Annexure P-6).

The pleadings would go on to show that notification under Section 4 of the Act was issued on 09.09.2013 and was followed by notification under Section 6 on 31.12.2013. The award was passed on 29.12.2015. A claim has been made that possession was taken on the same date but compensation was only paid on 13.06.2016 and resultantly reliance has been placed upon Section 34 of the Act.

The State, in its defence, has taken the plea that the land owners

had got a stay prior to passing of award on 11.02.2014 and 15.12.2015 (Annexures R-2 and R-2/A) and possession could not be taken. The writ petition was withdrawn on 28.03.2016 (Annexure R-3) and the possession was thereafter taken on 25.04.2016 (Annexure R-4) vide Rapat No. 541. It is submitted that thereafter requisite documents for release of payment were not submitted and payment was then released on 13.06.2016 and, therefore, the interest is not liable to be paid.

The facts have not been rebutted by filing replication. Once the land owners continued to be in possession as such, they cannot claim the benefit of statutory interest element for the period after the award. Explanation under Section 11A and Section 23 of the Act provide that the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of a Court have to be excluded. The purpose of the said explanation is to ensure that the land owners should not get the benefit as such of the Court order and, therefore, they cannot blow hot and cold at the same time and claim interest but not having delivered possession.

The principle laid down in the maxim "*Actus Curiae Neminem Gravabit*" would come into play that no party is to be prejudiced by the Court's mistake. The Full Bench of this Court in ***Maharana Pratap Charitable Trust (Regd.) vs. State of Haryana and others, 2015 (1) PLR 291*** held that once the Court had passed order staying dispossession and the State could not take possession, the consequences of interim orders cannot be used against the State. The relevant part of the said judgment reads thus:-

"In view of the maxim actus curiae neminem

gravabit or even in its absence, any interim order granted by the Court cannot prejudice any rights of the parties. It is necessary for the proper working of the justice delivery system. Once the Court has passed an order staying dispossession, the State could not take possession. If an order of the Court disables a person to take any action, the doctrine of nemo tentur ad impossible would be applicable, that is the law in general excuse a party, which is disabled to perform a duty and impossibility of performance of a duty is a good excuse. Still further, the latin maxim lex non cogit ad impossibilia, that is the law does not compel a man to do that which he cannot possibly perform. The maxim impotentia excusat legem, that is where the law creates a duty or charge and the party is disabled to perform it, without any default in him and has no remedy over, there the law will in general excuse him. Since, it was impossible for the State to take possession, therefore, the consequences of an interim order cannot be used against the state.”

The benefit of statutory interest is to be granted on account of the fact that the State is depriving the land owners of ownership and, therefore, the mandate as such to pay or deposit an amount at the first instance before possession is taken.

However, the stand as such of the State is that paper work is not completed is not justified. The Division Bench of this court in **CWP No. 1147 of 2010, Raghbir Singh and another vs. State of Haryana and others** decided on 30.07.2010 has held that it is the duty of the Collector to offer the compensation to the land owners immediately after passing of the award or deposit the same under the provisions of Section 31 of the Act, failing

which, interest will become payable.

Resultantly, keeping in view the above, this Court is of the opinion that the State has become liable to pay interest from 25.04.2016 till 13.06.2016 @ 9% per annum. The amount be calculated and paid to the petitioner within two months from the date of receipt of certified copy of the order. 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
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No