

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

**1. Civil Writ Petition No.3295 of 2018
Date of decision: 25.01.2019**

M/s Shine Buildcon Private Limited **...Petitioner**

Versus

State of Haryana and others **...Respondents**

2. Civil Writ Petition No.3552 of 2018

M/s Divya Buildcon Private Limited **...Petitioner**

Versus

State of Haryana and others **...Respondents**

3. Civil Writ Petition No.3565 of 2018

M/s Divya Buildcon Private Limited **...Petitioner**

Versus

State of Haryana and others **...Respondents**

4. Civil Writ Petition No.3687 of 2018

M/s Glorious Informatics Private Limited **...Petitioner**

Versus

State of Haryana and others **...Respondents**

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

Present: Mr. Adarsh Jain, Advocate for the petitioner.

Ms. Vibha Tewari, Assistant Advocate General, Haryana
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of Civil Writ Petition Nos.3295, 3552,
3565 and 3687 of 2018 as common questions of fact and law are involved

taken from Civil Writ Petition No.3295 of 2018-M/s Shine Buildcon Private Limited Vs. State of Haryana and others.

The sole question which arises for consideration is to whether the respondents are liable to pay statutory interest in terms of Section 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the 2013 Act”) on account of non deposit of compensation which was due at the rate of 9% per annum for the period of first year and at the rate of 15% per annum for the period after the expiry of first year.

The answer has to be in affirmative for the reasons given below.

The facts would go on to show that the land of the petitioners was sought to be acquired and resultantly a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”) was issued on 11.12.2013 for the public purpose namely for development and utilization of 60 Mtr. wide Sector Plan Roads between Sector 68 to 74 at Gurugram. Resultantly, notice under Section 9 of the 1894 Act was issued on 21.10.2016 (Annexure P/2) that in view of declaration under Section 6 dated 10.12.2014, the award would be pronounced on 9.12.2016 qua the land measuring 25 Kanals 19 Marlas pertaining to the petitioner. The petitioner a day prior on 8.12.2016 (Annexure P/3) furnished the necessary details of the bank account to respondent no.2-Land Acquisition Collector, Gurugram. Resultantly, award was passed on 9.12.2016 (Annexure P/4) and possession was taken as per Clause 8 in which it has been mentioned that the same was done after offering the compensation.

Relevant Clause 8 reads as under:-

“8. POSSESSION

After the announcement of award the possession of the land measuring 86.41 acres acquired vide this award, has been taken over after offering the compensation. The possession of land handed over to the representative of HUDA, Gurugram, vide Rapat No.277 dated 09-12-2016 entered in the Roznamcha Wakayati of Patwari Halqua Badshahpur except the land which is subject matter of CWPs wherein land owners/interested persons have taken order of stay from dispossession from the Hon'ble Punjab and Haryana High Court. The land thus acquired, of which the possession has been taken vests completely with the Haryana Urban Development Authority, free from all encumbrances from today i.e. 09-12-2016.”

The payment of compensation however, was received by the petitioner only on 9.6.2017 (Annexure P/5) by way of RTGS transfer though the same had been sanctioned on 3.4.2017 which would be clear from communication dated 30.6.2017 which was addressed to the petitioner by respondent no.2. Resultantly, a representation dated 17.7.2017 (Annexure P/6) was filed by the petitioner that in view of Section 80 of the 2013 Act, that the petitioner is entitled to interest on the delayed period of 181 days from 9.12.2016 to 9.6.2017 and a sum of ₹ 93,82,161/- was claimed on the account of interest for the delayed payment of compensation. It is on the said basis, the present writ petitions have been filed.

The stance of the respondents in the written statement is that the petitioner should have furnished the bank details and other relevant documents for the disbursal of compensation and on perusal of documents it was found that petitioner company passed the resolution only on 26.12.2016 authorizing its representative to do all necessary things for the release of compensation. The affidavit had been prepared and submitted on 12.4.2017

for disbursal of compensation in the office and thus there was no delay in making the payment.

Section 80 of the 2013 Act which is para-materia to the provisions of Section 34 of the 1894 Act reads as under:-

“80. 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 cent 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 cent 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.”

Similarly reference can also be made to Section 77 whereby the Collector is to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by someone or more of the contingencies mentioned in sub-section (2). Section 77 of the 2013 Act reads as under:-

“77. Payment of compensation or deposit of same in Authority.— (1) On making an award under section 30, 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 by depositing the amount in their bank accounts unless prevented by some one or more of the contingencies mentioned in sub-section (2).

(2) If the person entitled to compensation 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 Authority to which a reference under section 64 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 shall be entitled to make any application under sub-section (1) of section 64:

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.”

As noticed as per clause 8 of the award, it has been mentioned that possession has been taken after offering the compensation. Nothing has been averred in the written statement as such that compensation was not accepted by the petitioner. The payment was to be tendered as per Sub Section (2) of Section 77 and if there was no consent to receive the amount or if there was no person competent to alienate the land, or if there was any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector had to deposit the amount of the compensation with the Authority. Thus, the State was under bounden duty as such to transfer the amount immediately but it had kept the amount which has resulted in deprivation for the utilization of the same to the petitioner and as such it is liable to pay interest on the amount of compensation for the delayed period.

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:-

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.

Counsel for the petitioner has referred to the instructions dated 24.9.2015 (Annexure P/8) issued by the Additional Chief Secretary and Financial Commissioner to Govt. of Haryana, Revenue and Disaster Management Department wherein the requirement was to supply the information about the land owners, their names, their bank account number,

bank details etc. before passing of the award. Clause 3 of the communication reads as under:-

“3. Further, it has been decided that in future compensation/award amount should be transferred in the accounts of land owners whose land is being acquired through RTGS only. The present practice of issuing cheques/bank drafts and taking signatures of land owners on the receipt slips need to be discontinued forthwith. For this purpose before announcement of the award, Land Acquisition Officers (LAOs) should collect information about the land owners, their names, their bank account number, bank details etc. so that after the announcement of award, amount can be transferred through RTGS instantly.

These instructions should be followed strictly in letter and spirit.”

Another aspect which would be clear that notice itself under Section 9 (Annexure P/2) was issued to the petitioner being interested person that the Government is to take possession and therefore, there was no such dispute regarding the title or the fact that whether the petitioners were not entitled to the compensation on account of lack of ownership/possession of the property. Resultantly, the State cannot give the excuse that affidavits had to be submitted by the petitioner.

Accordingly, the present writ petitions are allowed. The State shall pay interest at the rate of 9% per annum for the delayed period to the petitioners. It is pointed out that in Civil Writ Petition no.3552 of 2018, the delay is beyond one year. Resultantly, the State shall pay interest to the petition in the said writ petition at the rate of 9% per annum for the first year and beyond that interest shall be paid at the rate of 15% per annum from the date of the award and till the date of deposit.

Let the needful be done within two months from today.

In case needful is not done within stipulated period, the State shall pay penal interest at rate of 12% beyond that period till the date of deposit.

January 25, 2019
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No