

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9515 of 2018

Date of Decision: 17.05.2019

Devender Kumar Jain

... Petitioner

VS.

NHAI & Ors.

... Respondents

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

Present: Mr. Sudhanshu Makkar, Advocate for the petitioner

Mr. DK Prajapati, Advocate for
Mr. RS Madan, Advocate for NHAI

Ms. Vibha Tewari, AAG Haryana

G.S. SANDHAWALIA, J. (Oral)

(1) This order shall dispose of CWP Nos.9515, 9882, 9892 & 9531 of 2018 as the point in issue is common. The facts are being taken from CWP No.9515 of 2018.

(2) The present writ petition under Articles 226/227 of the Constitution of India has been filed for directions in the form of a writ in the nature of mandamus to direct the respondents to calculate, grant and release the arrears of *solatium* and interest on the awarded amount in lieu of the acquisition of petitioner's land. The relief is claimed on the basis of Division Bench judgment in *M/s Golden Iron and Steel Forgings Vs. Union of India and others, 2011 (4) RCR (Civil) 375* and *Sunita Mehra & Anr. vs. Union of India & Ors. (2016) 8 SCALE 582*. Resultantly, the direction is sought to pass supplementary award as per the directions given by the Division Bench in *CWP No.11771 of 2017 Rajesh Kumar & Anr. vs. National Highway Authority of India & Ors.* decided on 02.06.2017 (P2).

(3) The stand taken by NHAI is that in *Sunita Mehra*, the Apex Court has restricted the operation of *M/s Golden Iron's* case i.e. the award

proceedings pending on the date of the High Court order in ***M/s Golden Iron's*** case i.e. 28.03.2008 and therefore the petitioner is not entitled to *solatium* and interest. Reliance has been placed upon the Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The other defence taken is that the petitioner has a statutory remedy under section 3-G(5) of the Act and therefore the writ petition is not maintainable. The State on the other hand has taken similar stand as such that alternative remedy is available.

(4) This need not detain this Court for long more-so keeping in view the fact that the petitioner has specifically in affidavit dated 01.10.2018 averred that he would not wish to agitate the rate of compensation before the Arbitrator therefore the alternative remedy objection would not stand. Once the Division Bench has held that the landowners are entitled for the benefits of *solatium* and interest way back on 28.03.2008 and the award by the competent authority was passed on 31.12.2014/16.01.2015 and the said respondent was under obligation as such to comply with the directions of Division Bench. It has to be noticed that the argument raised that in ***Sunita Mehra*** the right has been restricted only to proceedings pending on 28.03.2008 also is not of any help to the respondents keeping in view the fact that the award was passed after the said date and therefore the petitioner would be entitled for benefit.

(5) The Apex Court in ***Sunita Mehra*** held that by virtue of notification, the benefit as such is liable to be granted in terms of the 2013 Act. The relevant portion of the said judgment reads as under:-

7. *Learned Solicitor General has pointed out that there is an apparent inconsistency in the judgment, which needs to be*

clarified. It has also been submitted by the learned Solicitor General that the order of the High Court should be clarified to mean that the issue of grant of interest and solatium should not be allowed to be reopened without any restriction or reference to time. Learned Solicitor General has particularly submitted that to understand the order of the High Court in any other manner would not only seriously burden the public exchequer but would also amount to overlooking the delay that may have occurred on the part of the land-owner(s) in approaching the Court and may open floodgates for en masse litigation on the issue.

8. *We have considered the submissions advanced. In **Gurpreet Singh v. Union of India, (2006) 8 SCC 457**, this Court, though in a different context, had restricted the operation of the judgment of this Court in **Sunder v. Union of India, (2001) 7 SCC 211** and had granted the benefit of interest on solatium only in respect of pending proceedings. We are of the view that a similar course should be adopted in the present case also. Accordingly, it is directed that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in **M/s Golden Iron and Steel Forgings Vs. Union of India & others,** i.e. 28.03.2008. Concluded cases should not be opened. As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and*

Resettlement Act, 2013 (came into force on 01.01.2014), which Act has been made applicable to acquisitions under the National Highways Act, 1956 by virtue of notification/order issued under the provisions of the Act of 2013.

(6) Resultantly, keeping in view the above, the present writ petitions are disposed of with a direction to respondent No.4 to initiate proceeding for passing a supplementary award pertaining to *solatium* and interest within two months from the date of receipt of certified copy of this order. The NHAI shall deposit the amount with the competent authority thereafter within two months for disbursal of the same to the landowners on the passing of such award.

(7) Ordered accordingly.

17.05.2019

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(G.S. Sandhawalia)
Judge

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

Yes/No
Yes/No