

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 16168 of 2021 (O&M)

Date of Decision: 13.09.2021

Suresh Kumar and Others

... Petitioner(s)

Versus

Union of India and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Shailendra Jain, Senior Advocate
with Ms. Peeyushi Diwan Jain, Advocate
for the petitioner(s).

Mr. Chetan Mittal, Senior Advocate
with Mr. Abhilaksh Gaiind, Advocate
for respondent No. 1 and 3.

Anil Kshetarpal, J.

1. As many as 28 petitioners have filed the writ petition with a prayer to issue a writ in the nature of mandamus to direct the respondents to award the benefit of interest in terms of Section 34 of the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”) on the delayed payment of the amount of solatium awarded under Section 28(2) and additional amount awarded under 23(1-A) of the 1894 Act. It is stated that the aforesaid amount has been paid on 07.07.2018 in terms of the supplementary award dated 02.07.2018.

FACTS

2. Some facts are required to be noticed. The land of the petitioners was proposed to be acquired for four-laning of Hisar Section of

notification under section 3D of the National Highways Act, 1956 (hereinafter referred to as “the 1956 Act”) was issued on 19.08.2010. The Competent Authority-cum- Land Acquisition Collector announced the award on 30.04.2012 while assessing the market value of the acquired land @ ₹25,00,000/- per acre. The petitioners accepted the amount offered by the Competent Authority and hence, did not file an application under Section 3G(5) of the 1956 Act for determination by the Arbitrator. Thereafter, the petitioners filed ***Civil Writ Petition No. 17177 of 2017 (Suresh Kumar etc. v. Union of India etc.)*** claiming grant of the statutory benefits. In essence, the petitioners claimed that the benefits as held in the judgment passed by a Division Bench of the Court in ***M/s Golden Iron and Steel Forgings v. Union of India and Others 2011 (4) RCR (Civil) 375*** be paid to them. The aforesaid writ petition (***Civil Writ Petition No. 17177 of 2017***) was disposed of on 06.09.2017 in terms of the directions, issued in a previous writ petition i.e. ***Civil Writ Petition No. 17010 of 2017*** contained in clauses (i) to (iv), which are extracted as under:

“The writ petition is accordingly disposed of in the following terms:-

- (i) The petitioners may apply to the Competent Authority-cum- Land Acquisition Collector within a period of one month for the grant of aforesaid benefits;*
- (ii) The said Competent Authority will issue notice and call for the records/reply from the National Highway Authority of India;*
- (iii) The Competent Authority shall thereafter determine the petitioners' claim for the aforesaid benefits, especially in view*

of the decisions of this Court and the Hon'ble Supreme Court, cited above;

(iv) If the petitioners are found entitled to, a self speaking supplementary Award to this effect shall be passed within a period of four months from the date of filing of the application”.

3. In terms of the aforesaid directions of the Court, the Competent Authority-cum- Land Acquisition Collector on 02.07.2018 announced the supplementary award and as on 07.07.2018, the amount as per the supplementary award has been paid to the petitioners.

4. On 04.08.2021, after a period of more than three years, the petitioners have filed this writ petition.

5. Heard the learned counsel for the parties and with their able assistance perused the paper book.

6. The learned senior counsel representing the petitioners contends that in the judgment passed in *M/s Golden Iron and Steel Forgings' case (supra)*, which has been upheld by the Supreme Court in *Union of India and Another v. Tarsem Singh and Others (2019) 9 SCC 304*, the Courts have held that the amount of solatium and additional amount under Section 23(2) and 23(1-A) of 1894 Act is payable even in a case where the acquisition of the land is made under the 1956 Act. He further contends that the amount so payable has to be paid alongwith interest as provided in Section 34 of the 1894 Act.

7. It is important to note that judgment in *Tarsem Singh's case (supra)* was delivered on 19.09.2019, but on 30.07.2021 (*In Miscellaneous*

has been clarified with the following order:-

“Sh. Shyam Divan, learned senior counsel appearing on behalf of the applicant(s), seeks a clarification of our Judgment dated 19.09.2019 in two aspects. First, he points out that in Paragraph 41 of our Judgment, we have included Section 23(1A) as well, when Section 23(1A) was not present before any authority or the Court on the facts of these cases.

He has also shown us the Judgment and Order dated 28.03.2008 passed by the High Court of Punjab and Haryana in Civil Writ Petition No. 11461 of 2005 to buttress this submission.

Since this plea is correct, we delete the expression “(1A) and” occurring in Paragraph 41 (Page 76 of the paperbook) for the reason given above.

Second, Sh. Shyam Divan points to Paragraph 42 and the sentence reading, “The burden to prove that the land in question is within 50m of the National Highway, and that it does not have commercial potentiality, is on the NHAI but, on facts, has never been discharged.” According to him, the burden to prove that the land in question is within 50m of the National Highway, is correctly on the NHAI, but whether it does or does not have commercial potentiality, ought to be on the person whose land is acquired. We may indicate that it was only on the facts of those cases that it was held that the burden, in the facts of those cases, as to commercial potentiality, is placed on the NHAI. This is not a general statement of the law,

as is clear from Paragraph 42.

With these two modifications, the misc. application is disposed of”.

8. The learned senior counsel although tried to contend that the aforesaid clarificatory order is only in ***Miscellaneous Application Diary No. 2572 of 2020 in Civil Appeal No. 7086 of 2019 (National Highway Authority of India and Another v. Tehal Singh and Others)***, however, it is apparent that the said appeal was also disposed of by a common judgment in ***Tarsem Singh’s case (supra)*** passed on 19.09.2019. Thus, the inescapable conclusion is that the judgment passed in ***Tarsem Singh’s case (supra)*** stands clarified and consequently, the benefit under Section 23(1A) of the 1894 Act shall not be available to the owners whose land has been acquired under the 1956 Act. The learned senior counsel representing the petitioners admits that there is no other statutory provision extending the benefit of Section 34 of the 1894 Act to the acquisitions made under the 1956 Act. In other words, it can be stated that the provisions of the 1894 Act have not been shown to be applicable in their entirety, either by incorporation or by reference.

9. Furthermore, it is apparent that Section 34 of the 1894 Act is a special provision for grant of interest to the owners on account of delay in the payment of the amount on or before taking possession. Section 34 of the 1894 Act is extracted as under:-

“34. 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 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 centum 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”.

10. By a statutory mandate, a provision has been made for payment of the interest if the amount of compensation, as determined by the Land Acquisition Collector, is not paid or deposited on or before taking possession of the acquired land. There is no parallel provision under the 1956 Act. The 1956 Act is a complete code. The provisions of an independent statute cannot be read into another Act unless there is a provision for applicability thereof either by incorporation of the aforesaid Statute or by reference. The learned senior counsel representing the petitioners has failed to draw the attention of the Court to any relevant material on this aspect. Moreover, the writ petition clearly suffers from delay and laches. The petitioners have been paid the amount as per the supplementary award on 07.07.2018. The present writ petition has been filed on 04.08.2021. There is no explanation for the delay. This Bench does not lay down that there is any limitation for filing any writ petition. However, it is well settled that the Court can decline to exercise its extraordinary writ jurisdiction if the writ petition suffers from an unexplained delay and laches.

remedy under Section 3G(5) of the 1956 Act, which permits the landowners to apply for determination of the amount by the Arbitrator to be appointed by the Central Government. Section 3G is extracted as under:-

“3G. Determination of amount payable as compensation.—(1)

Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government--

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner; or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change”.

12.

Moreover, it is apparent that in view of the judgment passed in

Tarsem Singh's case (supra), the petitioners were not entitled to the benefit under Section 23(1A) of the 1894 Act. However, under the supplementary award dated 02.07.2018, the additional amount under Section 23(1A) has been paid which is undesirable.

13. Furthermore, it is well settled that the jurisdiction of the writ Court cannot be invoked by the fence-sitters. They cannot be permitted to barge into the Courts and claim their rights as and when they feel convenient.

14. Consequently, the writ petition is dismissed.

15. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

September 13, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No