

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on:- **July 31 , 2023**
Date of Pronouncement:- **August 18, 2023**

1.

Parkash

vs.

State of Haryana & Others

CWP-32035-2019(O&M)

...Petitioner

...Respondents
2.

Lal Chand & another

vs.

State of Haryana & Others

CWP-32324-2019 (O&M)

...Petitioners

...Respondents
3.

Om & Others

vs.

State of Haryana & Others

CWP-32329-2019 (O&M)

...Petitioners

...Respondents
4.

Mahabir & Others

vs.

State of Haryana & Others

CWP-32387-2019 (O&M)

...Petitioners

...Respondents
5.

Balwan & another

vs.

State of Haryana & Others

CWP-32407-2019 (O&M)

...Petitioners

...Respondents
6.

Smt. Hukam Kaur

vs.

State of Haryana & Others

CWP-35693-2019 (O&M)

...Petitioner

...Respondents
7.

Anil & Others

vs.

State of Haryana & Others

CWP-32685-2019 (O&M)

...Petitioners

...Respondents
8.

Om Rati & Others

vs.

State of Haryana & Others

CWP-32733-2019 (O&M)

...Petitioners

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Chanderhas Yadav, Advocate
for the petitioners in all the cases.

Mr. Shivendra Swaroop, DAG Haryana.

Mr. Pritam Singh Saini, Advocate, for respondent-HSIIDC.

HARKESH MANUJA, J.

1. By way of present writ petitions, challenge has been laid to the orders passed by the Land Acquisition Collector, to the extent that in the petitions filed by petitioners under Section 28-A(2) of Land Acquisition Act, 1894 (hereinafter referred as 'the Act'), amount of interest was ordered not to be given for the period during which application remained subjudice on account of pendency of RFA. Since the factual matrix as well as the point of law involved in all these cases is identical, they are being taken up together. For convenience, facts are being taken from CWP 32035 of 2019.

2. Briefly stated, facts of the case are that land of the petitioner was acquired for construction and development of express-way known as Kundli-Manesar-Palwal Express-Way, qua which notifications were issued and award No. 16 dated 22.02.2006 was passed, as per which Rs. 12,50,000/- per acre was awarded as market value. Petitioner was not able to file reference under Section 18 of the Act, but when he came to know that the reference filed by other landowners of the same acquisition was allowed by Ld. Addl. District Judge, Jhajjar, vide award dated 31.03.2014, as per the provisions of Section 28-A(1) of the Act, the petitioner claimed the same amount and

filed a petition within the prescribed limitation. The said petition was kept pending as matter qua enhancement was subjudice in the Appellate Court, ultimately it was finally decided vide judgment dated 12.02.2016 passed in RFA No. 1427 of 2014. Resultantly, relying thereupon, the present award was passed on 03.09.2019, but while passing the same, in column No. IV of the relief clause, respondent No.2-LAC, Jhajjar, stated that "no interest shall be payable from the date of receipt of the present application till the date of present award during which the present application remained subjudice on account of pendency of RFA".

3. By way of present writ petition, challenge has been laid to this award dated 03.09.2019 to the extent of relief clause No. IV and prayer has been made to issue a writ in the nature of mandamus directing respondent No.2 to award an amount of interest @ 15% per annum on the amount of award i.e. Rs. 19,91,300/- per acre w.e.f. 31.03.2014 to 24.06.2014 and further w.e.f. 24.06.2014 till the decision of the impugned award i.e. on 03.09.2019 (P-6) in the interest of justice.

4. Impugning the aforesaid award dated 03.09.2019, learned counsel for the petitioner submits that petition filed by him under Section 28-A of the Act was kept pending on account of pendency of appeal before this Court, however, there was no fault on the part of petitioner and thus, pendency of the present application before respondent No.2 could not be taken as a bar to grant interest to the petitioner, therefore, order passed by respondent No.2 to that extent is

highly illegal and arbitrary and the same deserves to be set aside. In support of his contentions, he places reliance upon:

- i. **"Union of India v. Pushpavathi"**, reported as 2018(3) SCC 28.
- ii. **"Union of India v. Pradeep Kumari"**, reported as 1995(2) SCC 736.

5. On the other hand, prayer made herein has been opposed by learned State Counsel as well as the counsel representing respondent No 3 by submitting that, procedurally, it was obligatory for respondent No 2 to keep the petition pending during the period when award passed by LAC under Section 18 of the Act was under challenge before the Appellate Court and therefore, for this period no interest was payable to the petitioner and responding No. 2 rightly declined the same.

6. I have heard learned counsel for the parties and gone through the paper-book as well as the law cited at the Bar and I find substance in the arguments raised by the learned counsel for the petitioner. It is trite to say that "Land Acquisition Act 1894" is a complete code by itself and lays down detailed procedure for the acquisition of land and payment of compensation as well as the "granting of interest". Provisions which relate to grant of interest are Section 28 and Section 34 of the Act, while Section 28 thereof relates to grant of interest by the Reference Court and is not applicable in the present case, it would be beneficial to have a look at Section 34 of the Act:-

“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.]”.

7. In **Pradeep Kumari**’s case (supra), on an objection raised by State counsel that under Section 28-A of the Act, it is not permissible for the Collector to award interest on the additional amount of compensation awarded by him, it was held by the Hon’ble Apex Court that Section 34 of the Act would be applicable to the award made by the Collector under sub-section (2) of Section 28A and it would be permissible for him to award interest under Section 34 on the additional amount of compensation awarded by him. Relevant para of this judgment is reproduced below:

“14. Shri Goswamy has next contended that while re-determining the amount of compensation under Section 28A it is not permissible for the Collector to award interest on the additional amount of compensation awarded by him for the reason that under Section 28 of the Act only the Court can direct payment of interest on the excess amount awarded as compensation and no such power is conferred on the Collector and, therefore, interest cannot be awarded by the Collector on the

additional amount of compensation determined under Section 28A. It is no doubt true that under Section 28 only the Court can direct payment of interest on the excess amount awarded as compensation and the Collector is not competent to award interest on the additional amount of compensation under the said provision. But sub-section (2) of Section 28A provides that after an application has been submitted under sub-section (1) of Section 28A the Collector after conducting an inquiry makes an award determining the amount of compensation payable to the applicants and under sub-section (3) of Section 28A any person who has not accepted the award under sub-section (2) may move the Collector requiring that the matter be referred for determination to the Court and the provisions of Section 18 to 28 have been made applicable to such reference. This would show that after an application has been submitted under Section 28A(1) for re-determination of the amount of compensation the process of such redetermination results in making of an award by the Collector and a person not accepting the said award can move the Collector to refer the matter to the Court for determination and such reference is governed by Sections 18 to 28. If that is so Section 34 of the Act would be applicable to the award that is made by the Collector under sub-section (2) of Section 28A and it would be permissible for him to award interest under Section 34 on the additional amount of compensation awarded by him. The second contention urged by Shri Goswamy is, therefore, rejected."

8. Accordingly, when the Act is a complete Code and by way of statutory mandate of Section 34 thereof, it is made obligatory to pay the interest, then respondent No.2 cannot have any recourse to the fact that petition was kept pending on account of pendency of appeal before higher Courts. Reliance in this regard can be placed on

Pushpavathi's case (supra), in which Hon'ble Apex Court while holding that a "writ" is the appropriate remedy when interest is not granted under Section 28-A of the Act, payment of interest being statutory in character, it is mandatory to be granted once conditions specified under Sections 28 and/or 34 are fulfilled. Relevant portion therefrom is reproduced below:-

"37. A dispute relating to non-award of interest payable to the landowners under Section 28 or/and Section 34 of the Act is not specified under Section 18 and hence it is not capable of being referred by the Collector to the Civil Court under Section 18 of the Act. It is also for the reason that payment of interest is statutory in character and being statutory, it is mandatory for payment once conditions specified under Sections 28 or/and 34 are fulfilled."

In **Pushpavathi's** case (supra), Hon'ble Apex Court while reaching on this conclusion, relied upon the judgment in "**Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat**", reported as (1991) 1 SCC 262, wherein it was held that framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Relevant para of this judgment is reproduced below:-

"There is inherent evidence in the wording of Sections 28 and 34 to show that the framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Section 34 lays down that "the Collector shall pay the 'amount awarded with interest at 6% per annum ..." The legislative mandate is clear. It is a directive to the Collector to pay the interest in a given circumstance.

Section 34 nowhere says that the interest amount is to be included in the award decree as prepared under Section 23(1) read with Section 26 of the Act. Similarly Section 28 provides "the award of the Court may direct that the Collector shall pay interest". Here also the award under Section 23(1) read with Section 26 has been kept distinct from the payment of interest under the section. The interest to be paid under Section 34 and also under Section 28 is of different character than the compensation amount under Section 23(1) of the Act. Whereas the interest, if payable under the Act, can be claimed at any stage of the proceedings under the Act, the amount of compensation under Section 23(1) which is an Award-Decree under Section 26, subject to the rules of procedure and limitation. The rules of procedure are hand maiden of justice. The procedural hassle cannot come .In the way of substantive rights of citizens under the Act."

9. In view of these judgments, a procedural requirement that Collector is required to wait before passing any award under Section 28-A of the Act, if an appeal has been filed before higher Courts, will not come into the way of petitioner's entitlement for grant of interest on the enhanced amount under Section 34 of the Act. The maxim "***Actus Curiae neminem gravabit***", which means that the act of Court shall prejudice no-one, becomes applicable in such a case. Pendency and delay in disposal of enhancement issue is an "act of court" and the same is not attributable to the landowners, thus he cannot be put to a disadvantageous position by denying interest for this period.

10. In view of the discussion made above, order dated 03.09.2019 passed by the Land Acquisition Collector is liable to be set aside to the extent that it restricts the granting of interest to the

petitioner for the period during which the application remained subjudice on account of pendency of RFA and he is held entitled for the interest on the enhanced amount for the subjudice period as well i.e. for the period when the appeal was pending before higher Courts, which shall be calculated in accordance with Section 34 of the Act.

12. Consequently, all the writ petitions are disposed of in view of the aforementioned terms.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

August 18, 2023
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No