
(2019) 11 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20361 Of 2017(O&M)

Gurinder Singh @ Gurinderjit Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 07-11-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1A), 23(2), 28, 34
National Highways Authority Of India Act, 1988 — Section 3(J)
Constitution Of India, 1950 — Article 14, 136, 226, 227

Citation : (2019) 11 P&H CK 0048

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : R.K. Singh Verka, Ambika Bedi, R.S. Madan

Final Decision : Disposed Of

Judgement

G.S. Sandhawalia, J

The present judgment shall dispose of two writ petitions i.e. CWP No. 20361 of 2017 Gurinder Singh @ Gurinderjit Singh vs. Union of India and others and CWP No. 20460 of 2017 Surjit Singh and others vs. Union of India and others (O&M) as common question of law and the facts are involved in the aforementioned two cases. For brevity, the facts are being extracted from CWP No. 20361 of 2017.

The prayer in the present writ petition filed under Articles 226/227 of the Constitution of India is for directing the respondents to pay the statutory benefits available to the petitioner under Section 23(1-A), 34 as per the Land Acquisition Act, 1894 (for short '1894 Act') on the delayed amount of compensation awarded by way of supplementary award dated 20.07.2015. The writ in the nature of certiorari is for quashing the order dated 29.12.2014 (Annexure P-3) to the extent that it denies the benefit of Section 23(1-A) and Section 34 of 1894 Act is also prayed for.

The case of the petitioner is that an award was passed on 21.12.2009 (Annexure

P-1) in view of the acquisition done under the National Highways Act, 1956. The petitioner approached this Court by way of filing CWP No. 20497 of 2014 for grant of solatium and other statutory benefits, which was disposed of on 01.10.2014 (Annexure P-2) with a direction to the respondents to take action in view of the judgment passed by the Division Bench of this Court in M/s Golden Iron and Steel Forgings vs. Union of India 2011 (4) RCR (Civil) 375. The relevant part reads as under:-

"We have heard learned counsel for the parties at some length and gone through the record.

The principles laid down by this Court in Golden Iron and Steel Forgings's case (supra), are not in dispute. Similarly, the fact that the benefit of solatium and interest has been extended by this Court to the similarly situated land-owners vide order dated 27.09.2012 in Bhag Singh's case (supra), can also be hardly disputed. In these circumstances, we are of the view that it is imperative upon respondent Nos.1 & 2 to consider the petitioner's claim for the grant of solatium and interest in accordance with the decision of this Court in Golden Iron and Steel Forgings's case (supra).

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

- (i) The petitioner shall move an application before the notified 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 whether or not the petitioner is entitled to the aforesaid benefits, especially in view of the decisions of this Court and the Hon'ble Supreme Court relied upon by the claimant(s);
- (iv) If the petitioner is 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;
- (v) The National Highways Authority of India shall be required to disburse the additional amount as per the supplementary Award within a period of two months from the date of passing of the supplementary Award subject to its right to challenge the same before appropriate forum.

Disposed of."

Resultantly, the Land Acquisition Collector, Gurdaspur granted solatium under Section 23(2) of the 1894 Act @30% but the benefit under Section 23(1-A) and Section 34 of the 1894 Act has not been granted.

Perusal of the impugned order would go to show that the order is silent regarding the provisions under Section 23(1-A) and the interest element to be paid under

Section 34 of the 1894 Act in spite of a direction as such issued by the Division Bench of this Court on an earlier occasion. The defence of the respondent-NHAI was that supplementary award dated 20.07.2015 (Annexure P-4) was passed by the competent authority and subsequently released on 08.03.2017 vide letter dated 20.03.2017.

Judgment of Division Bench has been relied upon to take a plea that only the provisions of Section 23(2) and Section 28 of 1894 Act are to be applicable and benefit under Section 23(1-A) and Section 34 of 1894 Act are not to be made applicable.

The issue as such is now been settled by the Apex Court in Civil Appeal No. 7064 of 2019 arising out of SLP (c) No. 9599 of 2019 titled Union of India and another vs. Tarsem Singh and others decided on 19.09.2019. The Apex Court was seized of a similar issue as to whether non-grant of solatium and interest to the landowner acquired under NHAI Act is bad in law and whether section 3(J) of the NHAI Act is liable to be struck down, being violative of Article 14 of the Constitution of India.

Resultantly, the answer has been given in favour of the landowners and it has been held that solatium and interest are liable to be paid which arise between 1997 and 2015 which was the period when the amendment was in force. The view was taken away in view of the provisions of Right to Fair Compensation and Transparency of Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Act came into force vide notification dated 28.08.2015. The benefit was also to be given of solatium and interest to the landowners whose land was acquired under the National Highway Act. The relevant part reads as under:-

"There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, appeal @ SLP (c) No. 9599/2019 is dismissed."

Thus, keeping in view the above observations, the impugned order dated

29.12.2014 is not sustainable.

Resultantly, the writ of mandamus directing the respondent no.2 to calculate the benefit under Section 23(1-A) and the interest element as provided under Section 28 of the 1894 Act is allowed. The needful be done within a period of two months from the date of receipt of certified copy of this order. Thereafter the amount be deposited by respondent no.3 with respondent no.2, who shall disburse the same within a period of one month thereafter to the landowners.

Both the writ petitions are disposed of in view of the above said terms.