
(2013) 08 P&H CK 0887

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3039 of 2012 (O and M)

Market Committee, Safidon

APPELLANT

Vs

Parveen Kumar and Others

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 23(1A), 28, 34

Citation : (2013) 08 P&H CK 0887

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : H.N. Mehtani, for the Appellant; Alok Mittal, Advocate for Mr. Akshay Bhan, Advocate, for Respondent nos. 1 to 5 and None, for the Respondent

Judgement

L.N. Mittal, J.

CM No. 16008. CII of 2012

1. Dismissed as withdrawn as prayed for by counsel for applicant-petitioner.

CR No. 3039 of 2012

The only question involved in this revision petition filed under Article 227 of the Constitution of India by Market Committee is regarding deduction of income tax at source (TDS) on the interest amount paid under sections 28 and 34 of the Land Acquisition Act, 1894 (in short, the Act) on compensation amount including enhanced compensation amount for acquired land of respondents no. 1 to 5. Learned executing court vide order dated 23.4.2012 Annexure P/6 has directed the petitioner to pay TDS amount to respondents no. 1 to 5/land owners. The said order is under challenge in this revision petition.

2. I have heard counsel for the parties and perused the case file.

3. Counsel for the petitioner relying on Division Bench judgments of this Court in CWP No. 10333 of 2011, titled Kulwant Rai and others versus State of Haryana

and others decided on 2.6.2011 Annexure P/7, CWP No. 7753 of 2011 titled Harbans Kaur and others versus Union of India and others decided on 16.1.2012 Annexure P/8 and CWP No. 21077 of 2008 titled Karnail Singh versus State of Haryana and others decided on 13.8.2009 Annexure P/10 and Single Bench judgment in CR No. 3225 of 2012, titled Market Committee Safidon versus Rattan Singh and another decided on 7.12.2012 contended that income tax had to be deducted at source on the interest amount paid under sections 28 and 34 of the Act.

4. On the other hand, counsel for respondents no. 1 to 5 relying on judgment of Hon"ble Supreme Court in Commissioner of Income Tax, Faridabad Vs. Ghanshyam (HUF), contended that income tax is not liable to be deducted at source on interest amount paid u/s 28 of the Act being part of the compensation amount and income tax can be deducted at source only on the interest amount paid u/s 34 of the Act on delayed payment of compensation amount.

5. I have carefully considered the rival contentions. Hon"ble Supreme Court in the case of Ghanshyam (supra) has not laid down that income tax is not to be deducted at source on the interest amount paid u/s 28 of the Act although it has been observed that the said interest is part of compensation amount. On the contrary, Division Benches of this Court in judgments Annexures P/7, P/8 and P/10 have categorically held that income tax has to be deducted at source on interest amount paid u/s 28 of the Act as well as on interest amount paid u/s 34 of the Act. In view thereof, the impugned order passed by the executing court is completely unsustainable as the same suffers from illegality and jurisdictional error. Resultantly, the instant revision petition is allowed. Impugned order Annexure P/6 passed by the executing court is set aside. It is held that petitioner and respondent no. 6 (State of Haryana) are not liable to refund the amount of TDS to respondents no. 1 to 5 which has been deducted on interest amount either u/s 28 or u/s 34 of the Act. However, if any amount has been deducted as income tax at source on the principal amount of compensation including amount paid u/s 23(1A) and (2) of the Act, the same shall be liable to be refunded. If any amount has been so deducted on the compensation amount (excluding interest), the same shall be refunded to respondents no. 1 to 5 by petitioner and respondent no. 6 failing which the executing court shall proceed to recover the same from petitioner and respondent no. 6 in accordance with law. Of course, petitioner and respondent no. 6 shall be at liberty to claim refund of the said amount from the income tax authorities in accordance with law.