
(2008) 04 P&H CK 0068
In the Punjab And Haryana At Chandigarh

P.C. Wadhwa and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 18, 23, 31, 34

Citation : (2008) 3 PLR 214 : (2008) 4 RCR(Civil) 538

Hon'ble Judges : Sabina, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for issuance of directions to respondent No. 3-Land Acquisition Collector, Urban Estate, Faridabad to pay the petitioners interest as per the provisions of Section 34 of the Land Acquisition Act, 1894 (for brevity "the Act"). It is conceded position that the petitioners were owners of land/godown comprised in Khasra Nos. 576, 585 and 587 situated in Had Bast No. 38, Mauza Bahadurgarh District Jhajjar. In order to acquire the land, notification dated 17.4.2002 was issued by the respondent-State u/s 4 of the Act. After hearing of objections, a declaration was issued on 10.4.2003 u/s 6 of the Act. A part of the land in Khasra No. 587, owned by the petitioners was released on 21.6.2004 (Annexure P-3) and award was announced on 25.6.2004. However, on the application made by the petitioners for acquisition of the released land, a notification u/s 6 was issued on 18.2.2005 (Annexure P-4) and the portion of the land under the godown in Khasra No. 587 was also acquired. In respect of that part of the land, award was announced on 31.3.2005. The petitioners have claimed that they were paid the compensation including the solatium and additional compensation @ 12% in September, 2005, which was calculated up to 25.6.2004 although additional compensation @12% for the portion of Khasra No. 587 acquired and taken into possession on 31.3.2005 should have been paid from the date of notification issued u/s 4 of the Act. The petitioners have claimed that the first petitioner was

present at the time of announcement of the award at P.W.D. Rest House at Bahadurgarh but no compensation was deposited with the Court as per requirement of Section 31 of the Act. As a consequence of failure of the respondent to comply with the mandatory provisions, there was delay in making the payment of compensation which was interest under actually paid in September, 2005, and, therefore, Section 34 of the Act @ 9% per annum for one year and @ 15% per annum thereafter from the date of possession of the said portion of the land till the date of actual payment has become payable. The petitioners are stated to have filed a representation dated 17.9.2005 (Annexure P-5) in that regard but without any success.

2. The petitioners sought information under the Right to Information Act, 2005 as to whether the amount paid to them in September, 2005 included the element of interest at the rate of 9% per annum for one year and at the rate of 15% per annum thereafter which was payable u/s 34 of the Act. It was further enquired what is the amount of interest paid. There were further queries that the interest has not been paid or whether the respondents wishes to pay the same. In reply to the aforesaid queries it was considered that the compensation has been paid in September, 2005 and the matter with regard to the payment of interest u/s 34 of the Act had been referred by the Collector to the Urban Estates Department on 6.10.2006 which was pending. A communication from the Collector-respondent No. 3 is that the payment of compensation was made to the petitioners in April, 2005 and September, 2005 but no payment of interest on the awarded amount has been made u/s 34 of the Act. It has further been clarified that the Land Acquisition Collector is not competent to make the payment of interest on the compensation at his own level u/s 34 of the Act and the petitioners were advised to approach the competent Court to claim interest.

3. In the written statement filed by the respondents, it is claimed that in respect of Khasra No. 576 acquired under Award No. 9 dated 25.6.2004 compensation of amount of Rs. 2,76,171/- was paid vide cheque No. 914309 on 18.8.2004. The reason for nonpayment of rest of the amount is that the petitioner did not deliberately mention the share of land in other Khasra Numbers in his affidavit dated 19.6.2004 (Annexure R-1). likewise in respect of Khasra No. 585, the petitioner was paid the compensation in pursuance to Award No. 9 dated 25.6.2004 for total area of 2 Bighas 15 Biswani which included 12% additional compensation calculated from the date of notification u/s 4 of the Act till the date of award besides 30% compulsory acquisition charges amounting to Rs. 11,93,949/-. It has also been claimed that the petitioner was paid compensation for Khasra No. 587 under Award No. 33 dated 31.3.2005 for total area of land measuring 7 Biswas 5 Biswansi which includes 12% additional compensation calculated from the date of notification u/s 4 of the Act till the date of award which is 31.3.2005 besides 30% compulsory acquisition charges up to 31.3.2005. The payment of compensation was received by the petitioners on 19.4.2005 in the shape of two cheques, of even date amounting to Rs. 4,49,928/-.

4. The factual position which emerges is that the petitioners have mentioned their share in Khasra Nos. 576, 585 and 587 as is evident from the perusal of affidavit dated 19.6.2004. Even the share of the petitioners No. 1 and 2 have been correctly shown. There are various other assertions made by the petitioners in their replication. It has also been asserted, although the provisions of Section 34 requiring the payment of interest from the date of possession till the date of payment, are mandatory but respondent has never followed the same causing loss to the land owners.

5. We have heard petitioner No. 1 who has appeared on behalf of petitioner No. 2 also as well as the learned State counsel and have also perused the paper-book.

6. The question which has arisen for our consideration is whether the petitioners are entitled to interest on account of delay in making of compensation u/s 34 of the Act. It is mandatory for the respondents to pay interest for any delayed payment. Section 34 of the Act, reads thus:

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 of 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. A perusal of Section 34 of the Act makes it evident that if the amount of compensation is not paid or deposited on or before taking possession of the land, then the Collector is under obligation to pay the amount awarded with interest at the rate of 9% per annum from the time the possession was taken till it has been paid or deposited. It is further pertinent to notice that u/s 31 of the Act, it is also mandatory that the Collector on making an award u/s 11 is required to tender the payment of compensation awarded by him to those who are interested persons and are entitled to such payment according to the award. It is further obligation imposed on him to pay the amount unless he is prevented by some contingencies. In cases where the interested person refuses to receive the compensation or if there is any dispute as to title, the Collector is required to deposit the amount of Compensation in the Court to which a reference u/s 18 of the Act would be submitted.

8. In Gurpreet Singh Vs. Union of India (UOI), , it has been held by the Constitution Bench of Hon"ble the Supreme Court that the first stage in the whole process is when the award is passed u/s 11 of the Act. It has been observed that award takes into consideration all the amount contemplated by Sections 23(1), 23(1A) and 23(2) and interest contemplated by Section 34 of the

Act. The whole of that amount is required to be paid or deposited by the Collector in terms of Section 31 of the Act. The judgment in unmistakable terms states that at this stage no short fall in deposit is contemplated because the Collector is under obligation to pay or deposit the amount awarded by him. In case there is no short fall, the claimant cannot thereafter claim any interest on that part of the compensation paid to him or deposited for payment to him once notice of the deposits is given. The first stage, thus, comes to an end when the amount is deposited by the Collector u/s 31 of the Act subject to the right of the claimant to notice of the deposit, withdrawal or acceptance of the amount with or without protest. Likewise, in *Rakesh Kumar Jain and Another Vs. State of U.P. thr. Collector and Another*, interest on delayed payment in respect of compulsory acquisition of land was awarded from the date of taking forcible possession till the date of actual payment.

9. In the present case, there is apparent delay in making the payment of compensation to the petitioners in respect of their land which has been acquired. In respect of Khasra Nos. 576 and 585, award No. 9 was announced on 25.6.2004 but compensation has been paid on 18.8.2004 in respect of Khasra No. 576 whereas in respect of Khasra No. 585, the amount appears to have been deposited, which has been paid in September, 2005. Be that as it may. The petitioners are entitled to interest from the date when possession was taken till the date of actual payment. According to Section 34 of the Act, in a case where amount of compensation has not been paid or deposited on or before taking possession of the land, interest at the rate of 9% per annum is payable by the Collector on the awarded amount till the date of payment. It has further been clarified that if the amount of compensation or any part thereof has not been paid or deposited within a period of one year from the date on which possession is taken then interest at the rate of 15% per annum must be paid from the date of expiry of the said period of one year on the amount of compensation or any part thereof. The aforementioned aspect has been considered by the Constitution Bench of Hon'ble the Supreme Court in the case of *Sunder v. Union of India* (2001)7 S.C.C. 11. In para 14 of the judgment it has been observed as under:

Question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession of the land.

It is inequitable that the person who is deprived of the possession of the land on account of vet acquisition proceedings is not given the amount which law demands to be paid to him; any delay thereafter would only be to his detriment. There must be a provision to buffet such iniquity. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made u/s 34 of the Act.

10. As a sequel to the above discussion, the instant petition succeeds. Respondent No. 3 Is directed to calculate the amount of interest from the date the possession is taken till the date of payment of amount to the petitioners and pay the same to them, however, made clear that if any excess amount has been

paid to the petitioners, as claimed by the respondent, the same may be set off and adjusted in making the payment of interest. However, the set off or adjustment must be made after confronting the petitioners the factual position. The needful shall be done within a period of two months from the date of receipt of certified copy of this order.