

PUNJAB AND HARYANA HIGH COURT

Improvement Trust

Vs

Narinder Kumar

Civil Revision No. 2644 of 1989

(J.V. Gupta, A.C.J.)

20.02.1990

JUDGMENT

J.V. Gupta, A.C. J.

1. This order will also dispose of Civil Revision Petitions Nos. 2645 to 2.660 of 1989, as the question involved is common in all these cases.

2. The facts giving rise to Civil Revision Petition No. 2644 of 1989, are that the land, in dispute, was acquired and the award by the Collector was given on November 26, 1976. On reference, the tribunal enhanced the amount of compensation vide order dated January 10, 1985. Then the matter was taken up in the High Court where statutory benefits were given in view of the amendments to the Land Acquisition Act (hereinafter called the Act), vide order dated January 12, 1988. After the award was given by the tribunal, the compensation amount including interest and solatium, etc. as then awarded, was deposited by the Municipal Committee, Jind. In some cases, it has been stated at the bar that the amount was deposited in full as determined by the tribunal whereas in certain cases only part payment was made, by the Municipal Committee. After the decision of the High Court, execution was sought by the claimants where the Improvement Trust-Judgment-debtor which was dissolved subsequently, and was taken over by the Municipal Committee, Jind, filed objections alleging that the decree-holders cannot claim interest on the additional amount awarded by the High Court from the period of notification under Section 4 of the Act and that of the award; the decree-holders cannot claim solatium on trees, kotha and well etc. at the rate of 30 per cent and they are not entitled to any interest at the rate of 9 per cent per annum from January 10, 1977 to January 10, 1978 and 15 per cent per annum from January 10, 1978 to date which they are not entitled even according to the judgment. The said objection petition was contested on behalf of the decree-holders-claimants. The executing Court found that the decree-holders can claim interest on the additional amount awarded by the High Court from the period of notification under section 4 of the Act and that of the award. Similarly, they could claim solatium on trees, kotha, tubewell etc. at the rate of 30 per cent and that they can claim interest at the rate of 9 per cent per annum from January 10, 1977 to January, 10, 1978, and at the rate of 15 per cent from January 10, 1978 up to date. The executing Court also found that the decree-holders were not entitled to compound interest. Dissatisfied with

the same, the judgment-debtor has filed this revision petition in this Court.

3. The first contention raised on behalf of the counsel for the petitioner is that 30 per cent solatium as awarded by the High Court could not be claimed in execution on the compensation amount awarded for the trees, kotha, tubewell etc. It was next contended that since the compensations amount as determined by the tribunal was paid and was duly received by the claimants, the said amount is to be adjusted towards the principal amount first and, therefore the calculations are to be made accordingly. According to the learned counsel, the amount of compensation was deposited under different heads and that being so, the amount of compensation deposited under the head of compensation is to be adjusted towards compensation as such and not towards interest, as claimed by the decree-holders. Reference was made, in this behalf, to *L.I.C. of India v. Samarendra Nath*¹. It was also submitted that the claimants are not entitled to 15 per cent interest on the amount of compensation including 12 per cent interest which according to the claimants forms part of compensation, as awarded by the High Court under section 23(1-A) of the Act. In support of the contention, reference was made to *Kushal Singh v. The State of Haryana*²,

4. On the other hand, the learned counsel for the decree-holders claimants submitted that they were entitled to 30 per cent solatium on the entire amount of compensation including trees etc. According to the learned counsel, the term "land" has been defined under section 3 (a) of the Act, which include benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. Reference in this behalf was made to *Chaturbhuj Pande v. Collector, Raigarh*³, As regards the adjustment of the amount, paid, it was contended on behalf of the claimants that in view of the provisions of section 60 of the Contract Act, the creditor may adjust the amount at his discretion to any lawful debt and, therefore, if the amount paid is adjusted towards interest, solatium and costs. etc. there was nothing wrong or illegal therein. Reference was, made in this behalf to *Meghraj v. Bayabai*⁴, and *Manohar Lal v. State of Haryana*⁵

5. I have heard the learned counsel for the parties at a great length and have also gone through the case law cited at the bar.

6. So far as the first contention that the claimants are not entitled to, 30 per cent solatium on the entire amount of compensation, including the price of the trees, is concerned, the same has no merit. The trees are included in the definition of the term "Land". as defined under section 3(a) of the Act. That being so, the said amount will be deemed to be the market value of the land in view of the provisions of section 23 (I-A) (2) of the Act, in addition to the market value of the land, the Court shall also award a sum of thirty per cent on such market value, in consideration of the compulsory nature of the acquisition.

7. As far as the second contention with respect to the adjustment of the amount already paid by the judgment-debtor and duly received by the claimants is concerned. the amount will be adjusted first towards the principal and then towards interest and costs etc. It may be mentioned here that the amount of compensation was deposited by the judgment-debtor as determined by the tribunal. It was in the High Court that the matter was pending and the Act was amended meanwhile that the claimants were found entitled to more interest and solatium. That being the situation, the claimants could not be allowed to turn round and to say that the amount received by

them earlier will be adjusted towards interest and costs etc. and not towards principal amount of compensation. Reference in this behalf may be made to clause (4) of rule (1) of Order 21 of the Civil Procedure Code, which provides that on any amount paid under clause (a) or clause (b) of sub-rule (1), interest, if any shall cease to run from the date of the service of the notice referred to in sub-rule (2). Under the circumstances, when once the principal amount as determined by the Tribunal on reference was deposited, further interest thereon will cease. However, the claimants will be entitled to enhanced rate of interest as ordered by the High Court in view of the amendment in the Act. The, claimants cannot be allowed to adjust the amount already received by them towards enhanced interest and costs etc. and then to claim the principle amount, as was contended on behalf of the claimants in this court. As noticed earlier also, section 60 of the Contract Act, which provides that where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits, has no relevance to the facts and circumstances of the case. As observed earlier this enhanced rate of interest and solatium was being allowed to the claimants by the High Court in view of the amendments later on made in the Act and, therefore, the claimants cannot be allowed to adjust that amount already received by them towards interest and costs etc. at this stage of the execution as enhanced by the High Court.

8. As regards the third contention that the claimants are entitled to 15 per cent interest on the entire amount of compensation including the additional amount of 12 per cent, the same stands concluded by the decision of this Court in Kushal Singh's case, 1989(2) Recent Revenue Reports 540 (supra). It was noticed therein that 12 per cent interest does not form part of the market value. The additional amount of 12 per cent is a statutory creation. It is not related to the market value. Nor it is a benefit arising out of land.

9. Consequently, all the revision petitions are disposed of accordingly. The amount payable to the claimants be calculated accordingly to the observations made above.

Cases Referred.

1AIR 1979 Cal 243

21989 Recent Revenue Reports 540; 1989 Punjab Law Journal 262

3AIR 1969 SC 255

4AIR 1970 SC 161

51986 RRR 5 (P&H) : 1986 Punjab law Journal 581