

Ashok Kumar and Others Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 15, 2010

Acts Referred: Land Acquisition Act, 1894 " Section 17, 17(3)A, 18, 23, 23(1)

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

The land-owners are in revision aggrieved against an order passed by the learned Executing Court on 03.08.2009,

whereby the decree-holders were found entitled to interest on the amount of market value at the rate of 12%.

2. The brief facts leading to the present revision petitions are that notifications dated 29.4.1988 and 02.05.1988 under Sections 4 and 6

respectively, of the Land Acquisition Act, 1894 (for short "the Act") were published for acquiring the land measuring 124 Acres, 1 Kanal and 07

Marias, owned by the petitioners. Such notifications were published by invoking the urgency provisions in terms of Section 17 of the Act. The

Land Acquisition Collector took up the possession of the entire land on 13.07.1988 in compliance with the provisions of the of the Act.

3. The Land Acquisition Collector awarded 12% per annum increase in the price of land from 02.07.1988 to 12.07.1988 and interest at the rate

of 9% per annum for the first year and interest at the rate of 15% per annum for the period from 14.07.1989 to 20.03.1990 as per its Award

dated 20.03.1990. 80% of the estimated compensation is recited to be paid to the land-owners in the aforesaid Award as provided u/s 17(3)(A)

of the Act. The calculations as given by the Land Acquisition Collector read as under:

Computation of Compensation:

1. Cost of land measuring 124 Acres, 1 Rs. 24,88,954.91

Kanal and 7 Marlas at the rates

supplied by the District Collector,

Bathinda.

2. Cost of Trees, Jahllars/Tubewells Rs. 1,13,734.33

structures and Crop etc.

3. 12% per annum increase in the price Rs. 9,104.98

of land etc. (Col. Nos. 1, 2, 3) from

27.7.88 to 12.7.88 (11 days) both

days inclusive.

4. 30% solatium on Col. Nos. 1, 2 and 3 Rs. 7,80,806.60

5. Total of Column Nos. 1 to 4 Rs. 33,92,600.82

6. Interest @ 9% per annum for the first Rs. 49,500.24

year, on the balance compensation

7. Interest @ 15% per annum for the Rs. 61,591.60

period 14.7.89 to 20.3.90 i.e. upto

the date of Award.

8. Grand Total of compensation payable Rs. 35,03,692.66

to landowners/interested persons.

4. The decree-holders sought execution of the amount claiming interest at the rate of 12% on the market value for the period commencing from the

date of publication of the notification as part of the compensation. To that extent, learned Executing Court has allowed the claim of the land-

owners.

5. Before this Court, learned Counsel for the petitioners has vehemently argued that the land-owners are entitled to interest under Sections 28 and

34 of the Act and such interest is to be treated as part of the compensation payable on the analogy of interest as part of compensation payable u/s

23(1)(A) of the Act. It is contended that interest at the rate of 9% for the first year and 15% for the subsequent years in terms of Section 28 of the

Act, is part of the compensation u/s 23(1)(A) of the Act and on such amount a land-owner is entitled to solatium and future interest in terms of

Section 34 of the Act.

6. The relevant extracts of the statutory provisions read as under:

23. Matters to be considered in determining compensation: (1) In determining the amount of compensation to be awarded for land acquired under

this Act, the Court shall take into consideration

first, the market value of the land at the date of the publication of the notification u/s 4, Sub-section (1);

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(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve

per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification u/s 4, Sub-

section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

(2) In addition to the market value of the land, as above provided, the court shall in every case award a sum of thirty per centum on such market-

value, in consideration of the compulsory nature of the acquisition.

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28. Collector may be directed to pay interest on excess compensation: If the sum which, in the opinion of the court, the Collector ought to have

awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the

Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the

date of payment of such excess into Court.

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of 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 such excess of part thereof which has not been paid into Court before the date of expiry.

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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 9 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. Learned Counsel for the petitioners has relied upon a Constitutional Bench judgment rendered in *Sunder Vs. Union of India*, wherein it has

been held that the interest is payable on the amount of solatium u/s 23(2) of the Act. In the aforesaid judgment, it has been held that the question of

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

been further held that interest u/s 34 and Section 28 of the Act is on the compensation awarded. The Court has proceeded to explain the

expression ""compensation awarded"", when it held to the following effect:

16. Thus interest has to accrue as per Section 34 and Section 28 of the Act on the compensation awarded, whether it is as per the award initially

passed by the Collector or by the Court later. What is meant by ""the compensation"" awarded?

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19. Section 26 does not say that the award would contain only the amounts granted under Sub-section (1) of Section 23. The special mention of

that sub-section in Section 26 is only for the purpose of directing that the grounds or reasons for awarding the amount under each of the clauses in

the sub-section shall be specified in the award. It is unnecessary to mention any reason or ground in any award as to why the sums indicated in

Sub-section (1-A) and Sub-section (2) of Section 23 of the Act were granted, because they are only the sequels or concomitant adjuncts of the

determination of the total amount indicated in Sub-section (1). No judicial exercise is required to quantify the sums mentioned in Sub-section (1-A)

or Sub-section (2) because the section itself specifies the percentage to be worked out for the purpose of adding to the total amount arrived at

under Sub-section (1). Otherwise Section 26 is not intended to show that the compensation awarded would be bereft of the additional amount and

the solatium envisaged under Sub-section (1-A) or Sub-section (2). This can be clearly discerned from the commencing words of Section 26 itself.

They are: ""Every award under this Part shall be in writing signed by the Judge"". What is referred to therein is Part III of the Act which comprises of

a fasciculus of twelve provisions starting with Section 18 and ending with Section 28A of the Act. There can be no doubt that all the three heads

specified in the three sub-sections in Section 23 are the sums to be ""awarded by the court"". Hence the words ""every award under this Part"" cannot

be treated as the award after delinking the amounts awarded under Sub-section (1-A) or Sub-section (2) of Section 23.

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23. We make it clear that the compensation awarded would include not only the total sum arrived at as per Sub-section (1) of Section 23, but the

remaining subsections thereof as well. It is thus clear from Section 34 that the expression ""awarded amount"" would mean the amount of

compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof.

8. In the aforesaid judgment it has been held that the compensation includes the amount payable under Sub-section (1-A) and (2) of Section 23 of

the Act, but while interpreting scope of Section 34 of the Act, the Court has held that the expression ""awarded amount"" in Section 34 of the Act

mean the amount of compensation worked out in accordance with law with the provisions contained in Section 23 including of the sub-sections

thereof. The interest u/s 34 of the Act is payable, if the amount of compensation is not paid or deposited on or before taking possession of the land

at the rate of 9% per annum from the date of taking of possession until it shall have been so paid. If such interest is not paid within one year, then

interest at the rate of 15% per annum is payable.

9. In the present case, 80% of the amount of compensation was paid at the time of taking possession. Therefore, the land-owners would be

entitled to interest in terms of Section 34 of the Act on the remaining amount of 20% at the rate of 9% per annum from the date of taking

possession or at the rate of 15% after the expiry of one year of taking possession. However, the interest shall be payable on such amount

determined as payable under Sub-sections (1)(1-A) and (2) of Section 23 of the Act. The calculations reproduced above shows that such interest

has been paid.

10. The argument that interest u/s 28 of the Act has to be treated as part of the interest payable under Sub-section (1-A) of Section 23 of the Act

is misconceived. Section 28 of the Act comes into play when the Court enhances the compensation awarded by the Collector. The interest at the

rate of 9% per annum from the date of possession is payable or 15% after the expiry of one year of taking over possession on the enhanced

amount of compensation by the Court. Such enhanced amount is the amount of compensation under Sub-sections (1), (1-A) and (2) of Section 23

of the Act alone. Therefore, the interest at the rate of 9% or 15% does not fall within the scope of compensation under Sub-section (1-A) of

Section 23 of the Act.

11. In view of the above, I do not find that the interest at the rate of 9% or 15% payable under Sections 28 and 34 of the Act can be treated as

part of the "compensation awarded" u/s 23(1), (1-A) and (2) of the Act.

12. Consequently, I do not find any merit in the present revision petitions. The same are accordingly dismissed with no order as to costs.