

Before H.S. Madaan, J.

**STATE OF PUNJAB THROUGH SDM-CUM-LAND
ACQUISITION COLLECTOR, KHARAR—Petitioner**

versus

SURINDER KAUR—Respondent

CR No.3283 of 2017

November 26, 2019

**A. *Land Acquisition Act, 1894/2013—S.23(1A), 23(2) and 28—
In compulsory acquisition—Appreciation price @ 12% per annum
from the date of notification is payable.***

Held that, in that way, appreciation price @ 12% per annum on the market value is to be given in each case of compulsory acquisition. It has further been mentioned that while answering the reference on 20.10.2007, the Court of Additional District Judge, Rupnagar had specifically observed that claimant Surinder Kaur was also entitled to benefits envisaged as Section 23(1A), 23(2) and 28 of the Act, thus leaving no scope of doubt regarding entitlement of the decree holder to claim this benefit. Furthermore, the Executing Court could not go behind the decree especially when reference answered has since been upheld by the High Court and has attained finality. Therefore, it was observed that the argument of the JDs that benefit was not pleaded or prayed loses significance. Therefore, the decree holder was entitled to appreciation price @ 12% per annum.

(Para 11)

**B. *Arrears paid in installments—Decree holder entitled to adjust
part payment firstly towards interest, then towards cost and then
towards principal amount.***

Held that, since arrears had not been paid in one go but in parts/ installments, the decree holder was entitled to appropriate the part payments firstly towards interest and then towards costs and then towards principal amount due under the decree.

(Para 14)

**C. *Income Tax Act, 1961—S.194 LA—Tax deduction at
source—Acquisition of agricultural land—TDS @10% not
deductable.***

Held that, therefore, it was concluded that LAC could not deduct TDS upon the awarded amount or the enhanced amount.

(Para 16)

Anju Arora, Addl. A.G., Punjab
for the petitioner.

Naresh Kaushal, Advocate
for the respondent.

H.S. MADAAN, J.

(1) The State of Punjab through S.D.M.-cum-Land Acquisition Collector, Kharar, Tehsil Kharar, District Mohali has brought the present revision petition challenging the order dated 17.1.2017 passed by Additional District Judge, SAS Nagar(Mohali) in Execution application No.206 dated 3.4.2015 vide which application filed by the respondent has partially been allowed.

(2) The grouse of the revisionist is that learned Additional District Judge, SAS Nagar(Mohali) has wrongly awarded interest from the date of possession i.e. 5.11.1997, though the notification under Section 4 of the Land Acquisition Act acquiring the land of respondent was issued on 2.8.2001 and the Land Acquisition Collector had passed an award No.1 on 9.4.2003 and the compensation as per the award amounting to Rs.98,98,984/- has duly been paid to respondent before announcing the award on account of acquisition of her land. According to the version of the revisionist, State of Punjab had issued notification under Section 4 of the Land Acquisition Act on 2.8.2001 acquiring 213.10 acres of land under Section 17(1) of the said Act for construction of Reservoir area of Siswan Dam in village Siswan, Tehsil Kharar, District Ropar now District Mohali. A declaration under Section 6 was also made on 10.8.2001 and Land Acquisition Collector passed an award No.1 on 9.4.2003 awarding compensation as under:

Chahi	Rs.1,65,000/-per acre
Barani	Rs.1,30,000/per acre
Gair Mumkin Pahar and others	Rs.40,000/per acre

(3) The possession of the land was taken on 5.11.1997 before the notification under Section 4 was issued on 2.8.2001. The details of payment of compensation amount are given as under:

21.8.2002	Rs. 12,53,204/-
19.9.2002	Rs. 12,53,024/-
26.9.2002	Rs.15,00,000/-
27.1.2003	Rs. 25,00,000/-
10.4.2003	Rs. 33,92,936/-
Total	Rs. 98,98,984

(4) The respondent had filed Reference Application under Section 18 of the Land Acquisition Act, which was decided by Additional District Judge, Ropar on 20.10.2007 and compensation was further enhanced to Rs.4,28,000/- per acre along with statutory benefits under Section 23 (1A), 23(2) and 28 of the Land Acquisition Act. However, no interest was ordered or awarded under Section 34 of the Land Acquisition Act to the respondent from the date of taking possession till the award. The revisionist had deposited the amount as following details:

On 21.4.2010 – Rs 79,06,885/-

On 14.1.2015-Rs.1,22,48,636/-

On 21.11.2016-Rs.5,02,552/-

Total -Rs 2,06,58,073/-

(5) The decree holder had filed an execution application by giving two calculation sheets one for LAO award and second by enhancing the compensation by Reference Court. The first one was given on 29.10.2016, whereby compensation of Rs.2,01,19,264/- was claimed, whereas in the other calculation sheet compensation as enhanced to the tune of Rs.10,89,54,831/- was claimed. According to the revisionist learned Additional District Judge, Mohali had wrongly calculated the interest on the enhanced compensation of Rs.4,28,000/- per acre along with statutory benefits and interest from 5.11.1997 @ 9% for one year and thereafter 15% per annum from 5.11.1998 to 28.11.2002 and thereafter deduction was made as per award passed by LAO. According to the revisionist, the amount, which had already been paid by the LAO to the respondent/landlord should have been excluded first and only thereafter the interest and other benefits were to be awarded on enhanced compensation. According to the

revisionist, the amount payable by it to the decree holder is Rs.7,49,380/- up to 31.3.2017.

(6) Notice of the petition was given to the respondent, who put in appearance and has filed reply to the revision petition and contested the revision petition.

(7) I have heard learned State counsel for the revisionist and Sh.Naresh Kaushal, Advocate for the respondent besides going through the record.

(8) Learned State counsel for the petitioner has reiterated the assertions in the revision petition and in support thereof has referred to various judgments i.e. *R.L. Jain (D) by LRs versus DDA and others¹ Special Land Acquisition Officer versus Karigowda & Ors.², Municipal Corporation, Amritsar versus Bhupinder Singh³, Satinder Singh versus Umrao Singh⁴, Risal Singh and another versus Union of India and others⁵*

(9) On the other hand, learned counsel for the respondent has referred to judgments i.e. *Balwan Singh & Ors. versus Land Acquisition Collector & anr.,⁶Madishetti Bala Ramul(D) by LRs versus The Land Acquisition Officer⁷, Tahera Khatoon and Ors. versus Revenue Divisional Officer/Land Acquisition Officer and Ors.⁸*

(10) The Executing Court had formulated following points for determination:

1. Whether the DH is entitled to claim any AP(Additional Price), if so from what date?
2. Whether the DH is entitled to interest from the date of taking possession of his land i.e. 5.11.1997 or the JDs are liable to pay interest from the date of award i.e. 9.4.2003 only?

¹ 2004(2) RCR(Civil) 278

² 2011(7) RCR(Civil) 888

³ 2001(3) RCR(Civil) 740

⁴ 1961 AIR(SC) 908

⁵ 2011(3) RCR(Civil) 268

⁶ 2016(2) Apex Court Judgments 037(S.C.)

⁷ 2007(3) RCR(Civil) 455

⁸ 2014(13) SCC 613

3. Whether the JDs can deduct TDS from the compensation payable to the decree holder?

4. Whether the DH is entitled to the entire enhanced compensation or only 50% of the enhanced compensation is payable?

(11) The Executing Court by referring to Section 23(1A) of the Land Acquisition Act has observed that the Reference Court is required to award an amount calculated @ 12% per annum of such market value for the period commencing on or from the date of notification under Section 4(1) in respect of such land till the date of award of Collector or date of taking the possession of the land, whichever is earlier. In that way, appreciation price @ 12% per annum on the market value is to be given in each case of compulsory acquisition. It has further been mentioned that while answering the reference on 20.10.2007, the Court of Additional District Judge, Rupnagar had specifically observed that claimant Surinder Kaur was also entitled to benefits envisaged as Section 23(1A), 23(2) and 28 of the Act, thus leaving no scope of doubt regarding entitlement of the decree holder to claim this benefit. Furthermore, the Executing Court could not go behind the decree especially when reference answered has since been upheld by the High Court and has attained finality. Therefore, it was observed that the argument of the JDs that benefit was not pleaded or prayed loses significance. Therefore, the decree holder was entitled to appreciation price @ 12% per annum.

(12) Coming to the starting date from which the appreciation price shall be calculated, it was noticed that there was divergence for the reason that the possession of the land had been taken from the decree holder much prior to passing of award on 5.11.1997 when a notification under Section 4 was originally published, although due to paucity of funds that notification had lapsed. The possession of the land had remained with the JDs wherein they had constructed reservoir area of Siswan Dam. This fact was specifically mentioned by the then SDM-cum-LAC while passing award No.1 dated 9.4.2003 by observing that date of first notification No.2940A/4 KAD 97 dated 5.11.1997 under Section 4 was considered as date of possession. Due to that reason in the calculation sheet wherein a sum of Rs.79,06,885/- was arrived at as 50% of enhanced compensation, SDM -cum-LAC calculated the appreciation price w.e.f. 5.11.1997 to 9.4.2003. The Executing Court had rejected the arguments advanced by learned counsel for the decree holder that since the decree holder was deprived of her land on

5.11.1997 itself, therefore appreciation price may be calculated from that date upto 9.4.2003. The Court found that in the instant case notification to acquire the land was published on 2.8.2001, therefore appreciation price was calculated from that date till 9.4.2003.

(13) Next coming to the aspect that in the calculation submitted by the decree holder, interest on the arrears w.e.f. 5.11.1997 had been claimed but in reply SDM-cum-LAC had disputed that claim submitting that the decree holder was entitled to interest from the date of award i.e. 9.4.2003 only and in the earlier calculation filed on behalf of the decree holder interest was calculated from 5.11.1997. The Executing Court considering Sections 28 and 34 observed that starting date of payment of interest is the date when possession of the acquired land is taken. In this case possession was taken on 5.11.1997, therefore, the decree holder was entitled to interest on arrears of her enhanced compensation from 5.11.1997 onwards. Since in the reference award dated 20.10.2007 passed by Additional District Judge, Rupnagar, the claimant was found entitled to benefits under Sections 23(1-A), 23(2) and 28 of the Act when compensation of the acquired land was enhanced to Rs.4,28,000/- per acre.

(14) Learned Executing Court has noticed that in the calculation sheets submitted by SDM-cum-LAC interest has been calculated rightly @ 9% per annum for the first year and @ 15% per annum for the subsequent period/time and since arrears had not been paid in one go but in parts/installments, the decree holder was entitled to appropriate the part payments firstly towards interest and then towards costs and then towards principal amount due under the decree. Reference to judgment by Apex Court i.e. *Gurpreet Singh* versus *Union of India*⁹ was made in that regard.

(15) Next touching the aspect of of TDS (tax deduction at source), the TDS @ 10% was liable to be deducted. The Executing Court observing that the the acquisition was with regard to agricultural land and as per Section 194 LA of Income Tax Act, 1961 when on account of compulsory acquisition a compensation or enhanced compensation is paid to a resident other than on acquisition of agricultural land TDS @ 10% is deductible. A reference to judgment by Division Bench of this Court in case *Risal Singh and another* versus *Union of India*¹⁰ decided on 11.1.2010 has been made.

⁹ 2006(2) PLJ 593

¹⁰ CWP No.9912 of 2009

(16) Therefore, it was concluded that LAC could not deduct TDS upon the awarded amount or the enhanced amount. The Executing Court has concluded in para Nos.21 and 22 as under:

21. Thus to recapitulate 132B-9B of the land of the DH was acquired which is equivalent to 2649 biswas and if it is multiplied by Rs.4,28,000/- per acre (Rs.4458.33/- per biswa) being the enhanced compensation, it would come out to be Rs.1,18,10,125/-, upon which solatium @ 30% would come out to be Rs.35,43,037/-. In addition to solatium, as the decree holder is also entitled to appreciation price (AP) @12% from 2.8.2001 to 9.4.2003 for 613 days, which comes out to be Rs.23,80,145/-. Appreciation price (AP) is to be paid from the date of notification i.e. 2.8.2001 up till the date of award i.e. 9.4.2003, while interest is payable from the date of taking possession i.e. 5.11.1997. For the first year from 5.11.1997 to 4.11.1998 interest @ 9% p.a is payable while from 6.11.1998 onwards interest on the arrears of enhanced payment is payable @ 15% p.a. If all the above said part payments are adjusted and reconciled, it would come out that decree-holder is entitled to recover 65336463=00 up till 31.12.2016 as per the calculation sheet enclosed herein.

22. As per report of Nazir, a sum of 5,02,552/- has since been deposited by the JDs. Subject to receipt of R.D number, the said amount is ordered to be released in favour of the decree

(17) I find that the order passed by the Executing Court is quite detailed and well reasoned one. It is certainly not perverse or passed against the provisions of law. No miscarriage of justice is shown to have resulted. Admittedly, the revisionist State had filed an appeal before this Court, which has since been disposed of and award has attained finality. The State could have taken up these pleas there instead of filing the instant revision petition but it was not so done.

(18) Finding no merit in the civil revision petition, the same stands dismissed.

TejinderSingh