Before S.J. Vazifdar, CJ & Tejinder Singh Dhindsa, J.

HINDUSTAN MARBLE AND TILES INDUSTRIES AND OTHERS—*Petitioners*

versus

HARYANA STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD. AND ANOTHER—*Respondents*

CWP No.9202 of 2014

November 6, 2015

Constituion of India, 1950 – Art.226 – Writ petition – Acquisition of land for respondent Corporation – Allotment of plots – Enhancement of compensation – Demand of 'additional price' with interest – When justified – On facts, petitioners were allottees of industrial plots on the land acquired by the State for the respondent – Regular letter of allotment (RLA) issued – Agreement entered into – Clause 2 (viii) thereof provided "any additional price of the aforesaid plot/shed, as a consequence of enhancement of compensation that may be awarded by Court(s)… shall be payable by the allottee..." – On a reference by the land owners under S.18 of the Land Acquisition Act, 1894, ld. Additional District Judge enhanced the compensation – Aggrieved, the respondent filed appeal before the High Court which was admitted on 04.11.1999 – Enhanced compensation deposited by the respondent in terms of the interim order by 01.06.2001 – Demand notice issued to the allottees determining additional price of Rs.846/- per square meter along with interest at 12% per annum – Challenge to, firstly, on the ground respondent is entitled to raise a demand only on account of enhancement which took place subsequent to allotment – And, secondly, any amount over and above the amount actually deposited, including the interest payable after the date of deposit, cannot be claimed – Held, the language of Clause 2 (viii) is wide, it refers to enhancement of compensation that may be awarded by any court, be it Reference Court, Appellate Court or the Supreme Court – The Clause does not exclude the enhancement made by the Court prior to the date of allotment – Further held, Clause 2 expressly requires "any additional price" shall be payable, the interest constitutes an additional price as a consequence of enhancement in compensation awarded by a Court – Even in equity the interest must be paid by the allottee – The interest is payable under the Act by the State

Government/Acquiring Body – It is but fair that the Acquiring Body recovers the same from the allottee – There is nothing unfair about that.

Further held that, the submission is based on an erroneous construction of the terms of the letter of allotment and the agreement. Clause 2(viii) provides that any additional price in respect of the plot as a consequence of enhancement in compensation that may be awarded by the Court(s) shall be payable by the allottees. The language of this clause is wide as is evident from the words "enhancement in compensation that may be awarded by the Court(s)". The enhancement is not restricted to that granted by the Reference Court or even the Appellate Court. It refers to any enhancement in compensation that may be awarded by the Court(s) meaning thereby any Court be it the Reference Court, the Appellate Court or the Supreme Court. The clause does not exclude the enhancement made by the Court - whether the Reference Court or even the High Court prior to the date of allotment. Had it been otherwise, the clause would have provided that the liability of the allottees was to pay any enhancement in compensation as determined after the date of allotment. Mr. Goel's submission, if accepted, would amount to rewriting clause 2(viii).

(Para 13)

Further held that, the submission is based on the erroneous premise that the enhancement in compensation referred to in clause (2) of the agreement refers to the rate payable for the land under the award and not to the interest payable thereon. Clause (2) expressly requires the allottee to pay "any additional price of the aforesaid plot/shed, as a consequence of enhancement in compensation that may be awarded by the Court(s).....". Thus it is not merely the compensation that is awarded and payable by the allottee. The allottee is bound to pay any additional price as a consequence of the enhancement in compensation. The interest constitutes an additional price as a consequence of enhancement in compensation that is awarded by a Court. When the compensation is enhanced, the consequence is not merely an increase in the price based on the rate at which the land is computed but also the liability to pay interest thereon.

(Para 17)

Further held that, even in equity the interest must be paid by the allottee. It is difficult to appreciate the contention that the demand for interest is unfair. The interest is payable under the Act by the State

Government/Acquiring Body. It is but fair that the acquiring body recovers the same from the allottees. There is nothing unfair about that. It would be infact unfair and unjust for the allottees not to pay the interest that is paid by the State Government/Acquiring Body to the owners of the land which is subsequently allotted to the allottees.

(Para 18)

Further held that, there is no reason why the respondents should not claim interest on the amount deposited by it pursuant to the order dated 04.11.1999. The respondents paid the amount as compensation/enhanced compensation under the Act. This interest also falls within the ambit of the words "any additional price" within the meaning of clause (2) for it is as a consequence of the enhancement. Had the amount not been deposited, the liability to pay the interest would have continued. That liability would certainly have constituted additional price as a consequence of enhancement in compensation. In that event the interest would have to be paid to the landowners. We see no reason why the respondents ought not to be reimbursed the interest on account of their having deposited the amount. A view to the contrary would be grossly unfair to the respondents. It would infact result in the Court compelling the respondents to finance the purchase of the plots by the allottees to the extent of the loss of interest by the respondents.

(Para 19)

Govind Goel, Advocate,
Rajesh Sethi, Advocate and
Ankit Goel, Advocate
for the petitioner(s)
in CWP Nos. 9202 of 2014 and 13089 of 2014).

K.K.Gupta, Advocate
for the petitioners(in CWP No. 18632 of 2014).

Kamal Sehgal, Advocate, for HSIIDC.

Rajvir Singh Sihag, Advocate
for the respondents(in CWP Nos. 13089 and 18632 of 2014).

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

(1) These three petitions raise common questions and are, therefore, disposed of by this common order and judgment. For convenience, we will refer to the facts from Civil Writ Petition No. 9202 of 2014.

(2) The sixty nine petitioners in CWP No. 9202 of 2014 have sought a writ of certiorari to quash an impugned order dated 21.03.2014/28.03.2014 determining an additional price of Rs. 846 per sq. meters as payable by the petitioners and a notice dated 08.05.2014 demanding payment thereof. The petitioners have also sought an order directing the respondent to execute conveyance deeds in their favour in respect of the lands/plots which are subjectmatter of this petition.

(3) The State of Haryana acquired land under the Land Acquisition Act, 1894 (for short 'the Act') for setting up an Integrated Infrastructural Development Centre at Sirsa (Haryana). The industrial plots carved out thereonwere to be allotted to small scale industries. A Section 4 notification was issued on 05.07.1994, the declaration under section 6 was issued on 09.03.1995 and an award under section 9 was made on 20.03.1996. The land owners filed references under section 18 of the Act for enhancement of compensation beforethe Reference Court viz. the Court of Additional District Judge, Sirsa. The learned Judge enhanced the compensation by an order and judgment dated 01/02.06.1999. Aggrieved by the said order and judgment, the respondent filed a First Appeal before this Court. The appeal was admitted by an order dated 04.11.1999. The following interim order was also passed:-

> "Let enhanced compensation be deposited in the Executing Court. The claimants shall withdraw the same on furnishing solvent security to the satisfaction of the trial Judge, that in case appeal is allowed, they shall return the amount within one month. The security shall be accepted only after notice to the appellant herein."

(4) The order did not fix the time for depositing the amount. The entire amount of Rs. 6,81,95,768/- was deposited by the respondent between 11.01.2001 and 30.04.2007. An amount of Rs.4,40,200,59/- was deposited on 11.01.2001. An amount of Rs.1,07,000,00/- was deposited on 01.06.2001. Thus by 01.06.2001, an amount of almost Rs.5.50 crores out of total amount of about Rs. 6.82 crores had been deposited.

(5) The respondent published an advertisement dated 21.07.2005 inviting applications for the allotment of industrial plots in various areas including Sirsa. The land at Sirsa was to be allotted at the rate of Rs. 600/- per sq. meter.

(6) The petitioners applied for and were allotted plots. Regular

letters of allotment with offer of possession were issued. One such letter of allotment dated 22.09.2005 is produced at Annexure P-4. The letter of allotment stated that the application for allotment of an industrial plot was pursuant to the State Government Industrial Policy-2005 and the Estate Management Procedure- 2005 (EMP) of the respondents. The recital stated that the allotment alongwith offer of possession of the plot/shed was subject to the terms and conditions contained therein as well as in the format of the agreement annexed thereto which was to be read as part and parcel of the regular letter of allotment. The letter further stated:-

> "The tentative area and price of the plot/shed are specified hereunder:-

Estate	Sector/Phase	Plot/No.	Approx. Dimensions	Area (Sq. Mtr.)	Rate per Sq. Mtr.	Tentative prive (Rs.)
Sirsa	--	65		102.50	Rs. 600/-	6,07,500/-

> …emphasis supplied."

Clause 2(viii) of the regular letter of allotment reads as under:-

> "2. AND WHEREAS this allotment, among other terms and conditions, contained in Appendix A, is subject to the following conditions to be fulfilled by you within the stipulated period:-
>
> (i) to (vii)……
>
> (viii) Any additional price of the aforesaid plot/shed, as a consequence of enhancement in compensation that may be awarded by the Court(s), in any matters/cases arising out of the acquisition proceedings or any incidental or connected matter thereto, shall be payable by you, in lump sum within 30 days from the date of issuance of demand notice failing which penal interest @ 14% p.a. on the due amount shall be charged from the date of notice till the date of payment. In the event of non-payment of such enhanced compensation within a period of three months from the date of notice, the aforesaid plot/shed shall also be liable to be resumed. The aforesaid plot/shed shall be liable to be resumed inter-alia on the ground for breach of any of the terms and conditions stipulated in the agreement, referred to hereinabove.

…emphasis supplied."

(7) An agreement was thereafter entered into between the respondent and the petitioners. The recitals refer to the regular letter of allotment and the stipulation therein that the same only mentioned the tentative price. Clauses-1 and 2 of the agreement dated 21.10.2005 read as under:-

> "1. That in consideration of the HSIDC, having agreed to allot plot/shed No. 65 measuring 1012.5 square meters, sector/block/phase in Industrial estate Sirsa for setting up an industrial project of Mfg. of Steel Furniture like Almirah, Cooler and gate etc. to the allottee in lieu of tentative price of Rs. 6,07,500/- @ Rs. 600/- per square meter against which the allottee has paid Rs. _____(Rupees. ___) to HSIDC towards 15% of the tentative price of the said plot/shed in addition to 10% of the tentative price deposited alongwith the application for allotment and has further agreed to pay to HSIDC the remaining 75% balance of the tentative price in five equal half yearly installments, as per above mentioned schedule and in the manner appearing hereinafter.
>
> a) The balance of the tentative price of the aforesaid plot/shed shall be paid by the allottee to HSIDC through bank draft representing the installment/amount, including the principal and interest thereon, on or before the due date specified in the above mentioned schedule of payment and that the said bank draft shall be furnished in the concerned filed office of the HSIDC at Industrial Estate, Sirsa.
>
> b) That if the allottee defaults in making payment towards any of the installment(s) on the due date(s) the allottee shall be liable to pay penal interest @ 14 on the defaulted amount from the due date of the installments till the date of payment and that in case the allottee perpetuates such default(s) in making the payment of installments beyond the time allowed by HSIDC after the default having been committed, aforesaid plot/shed shall be liable to be resumed.
>
> 2. That any additional price of the aforesaid plot/shed, as a

> consequence of enhancement in compensation that may be awarded by the Court(s) in the matters/cases arising out of the acquisition proceedings or any incidental or connected matter thereto, shall be payable by the allottee, in lumpsum, within 30 days from the date of issuance of demand notice, failing which penal interest @ 14% p.a. shall be charged on the due amount from the date of notice till thedate of payment. In the event of non-payment of such enhanced compensation, within a period of three months from the date of notice, the aforesaid plot/shed shall also be liable to be resumed."
>
> …….(emphasis supplied)

(8) The respondents issued a notice dated 01.11.2007 stating that the enhanced cost for the plot had been fixed at Rs.1009.32 per sq. meter which was recoverable from the allottees. The allottees were requested to deposit the amount calculated at the said rate within 30 days. Admittedly, the enhancement was not qua the price mentioned in the judgment of the Reference Court but qua the offer contained in the award itself.

(9) The petitioners contend that in terms of the letter of allotment and the said agreement the enhancement can be computed only qua the enhanced amount adjudicated by the Reference Court and not qua the amounts stipulated in the award. In other words according to the petitioners the additional amount they are liable to pay is the difference between the finally enhanced amount and the enhanced amount computed by the Reference Court and not the difference between the finally enhanced amount and the amount awarded bythe Special Land Acquisition Officer.

(10) The petitioners, therefore, challenged the notice of demand by filing Civil Writ Petition No. 23991 of 2011. By an order dated 05.09.2012, a Division Bench of this Court recorded the statement on behalf of the respondent that it had decided to withdraw the demand notice and to issue a fresh demand notice. The matter was accordingly adjourned. A fresh demand notice was issued on 10.08.2013 raising a demand of Rs. 1022.72 per sq. meter. This notice was also challenged by filing Civil Writ Petition No.19317 of 2013. The writ petition was disposed of by an order and judgment dated 09.10.2013. The Division Bench recorded the statement on behalf of the respondent that it would pass a speaking order after hearing the petitioners.

(11) Ultimately, the impugned order dated 21.03.2014/28.03.2014 was passed determining the additional price at Rs.846 per sq. meter. The respondentalso demanded interest at 12% per annum from 01.08.2013 till the date of payment.

(12) Mr. Goel's submission that the respondent-corporation is entitled to raise a demand only on account of the enhancement which took place subsequent to the allotment is not well founded. He contended that the expression "as a consequence of enhancement in compensation that may be awarded by the Court(s)" means that the corporation is entitled to raise a demand only on account of the enhancement which took place subsequent to the allotment. As we noted earlier, the Reference Court enhanced the compensation vide judgment dated 01/02.06.1999 and the allotments were made to the petitioners in the years 2005-06. He contended that the enhancement prior to the allotment does not fall within the ambit of the clause.

(13) The submission is based on an erroneous construction of the terms of the letter of allotment and the agreement. Clause 2(viii) provides that any additional price in respect of the plot as a consequence of enhancement in compensation that may be awarded by the Court(s) shall be payable by the allottees. The language of this clause is wide as is evident from the words "enhancement in compensation that may be awarded by the Court(s)". The enhancement is not restricted to that granted by the Reference Court or eventhe Appellate Court. It refers to any enhancement in compensation that may be awarded by the Court(s) meaning thereby any Court be it the Reference Court, the Appellate Court or the Supreme Court. The clause does not exclude the enhancement made by the Court- whether the Reference Court or even theHigh Court prior to the date of allotment. Had it been otherwise, the clause would have provided that the liability of the allottees was to pay any enhancement in compensation as determined after the date of allotment. Mr. Goel's submission, if accepted, would amount to rewriting clause 2(viii).

(14) It was then submitted that the respondents had failed and neglected to comply with the order of the Reference Court dated 04.11.1999 which we set out earlier. This he submitted resulted in increase in the liability towards the statutory amount payable to the landowners from the date of the order till the date of actual deposit in Court as required by the said order. It wascontended that the liability therefore falls on the respondents.

(15) We do not find this contention to be well founded for more

than one reason. Firstly, the respondents had not failed to comply with the order dated 04.11.1999. The order did not specify the period within which the compensation was to be deposited by the respondents in the Executing Court. Secondly, the amount to be deposited was about Rs.6.82 crores and an amount of Rs.5.50 crores was deposited on 01.06.2001. Only a small amount was deposited much thereafter. Thus, the respondents cannot be said to have acted contrary to the order. Thirdly, the petitioners are not concerned with the order dated 04.11.1999. Even if the amounts had been deposited immediately upon passing of the order dated 04.11.1999, they would have had to pay the entire amount that was payable by the respondents to the landowners for in that eventthe respondents would have lost the use of the money deposited and consequently the interest thereon.

(16) Mr. Goel further submitted that in any event the respondents are not entitled to claim any amount over and above the amount actually deposited by them in the Court pursuant to the order dated 04.11.1999. He submitted that the interest payable after the date of deposit cannot be claimed by the respondents.

(17) The submission is based on the erroneous premise that the enhancement in compensation referred to in clause (2) of the agreement refers to the rate payable for the land under the award and not to the interest payable thereon. Clause (2) expressly requires the allottee to pay "any additional price of the aforesaid plot/shed, as a consequence of enhancement in compensation that may be awarded by the Court(s)……". Thus it is not merely the compensation that is awarded and payable by the allottee. The allottee is boundto pay any additional price as a consequence of the enhancement in compensation. The interest constitutes an additional price as a consequence of enhancement in compensation that is awarded by a Court. When the compensation is enhanced, the consequence is not merely an increase in the price based on the rate at which the land is computed but also the liability to pay interest thereon.

(18) Even in equity the interest must be paid by the allottee. It is difficult to appreciate the contention that the demand for interest is unfair. The interest is payable under the Act by the State Government/Acquiring Body. It is but fair that the acquiring body recovers the same from the allottees. There is nothing unfair about that. It would be infact unfair and unjust for the allottees not to pay the interest that is paid by the State Government/Acquiring Body to the owners of the land which is subsequently allotted to the allottees.

(19) There is no reason why the respondents should not claim interest on the amount deposited by it pursuant to the order dated 04.11.1999. The respondents paid the amount as compensation/enhanced compensation under the Act. This interest also falls within the ambit of the words "any additional price" within the meaning of clause (2) for it is as a consequence of the enhancement. Had the amount not been deposited, the liability to pay the interest would have continued. That liability would certainly have constituted additional price as a consequence of enhancement in compensation. In that event the interest would have to be paid to the landowners. We see no reason why the respondents ought not to be reimbursed the interest on account of theirhaving deposited the amount. A view to the contrary would be grossly unfair tothe respondents. It would infact result in the Court compelling the respondents to finance the purchase of the plots by the allottees to the extent of the loss of interest by the respondents.

(20) Mr. Goel then submitted that the liability to pay interest commencesonly after 30 days of the raising of the demand for payment for the same.

(21) The submission is based on a total misconstruction of clause 2 of the agreement. As we mentioned earlier, the interest payable on the enhanced compensation falls within the ambit of the words "any additional price" in clause (2). Thus the additional compensation together with interest thereon is liable to be paid within 30 days from the date of issuance of the demand notice. This interest includes the period prior to the date of the demand notice. What is referred to thereafter in clause (2) is "penal interest @ 14% p.a. from the dateof notice till the date of payment".

(22) Faced with this Mr. Goel contended that the demand for additional price was raised belatedly as a result whereof the allottees have been unfairly burdened with interest for a longer period.

(23) It is difficult to understand this grievance. The respondents could undoubtedly have demanded the amount immediately upon enhancement by the Reference Court at least in order to indemnify and secure themselves. Theywere, however, not bound to do so. Infact by not doing so the respondents were fair to the petitioners. The respondents had challenged the enhancement granted by the Reference Court before this Court by filing a first appeal. This appeal was infact for the benefit of the petitioners. For had the respondents succeeded, the liability of the allottees/petitioners would have been reduced. As far as the respondents are concerned, they could not have demanded the

additional price as a consequence of the enhancement in compensation awarded by the Reference Court or even by this Court for by filing the appeal the respondents did not accede to the landowner's right to the same. The time or the occasion to make a demand in turn from the allottees had, therefore, not arisen for the respondents' contention was that the same is not payable. Indeed the respondents could have demanded the amount even before the conclusion of their appeal whether before this Court or even before the Supreme Court by way of indemnity/security and the allottees/petitioners would in any event have been bound to comply with the demand. However, by not having demanded theamount earlier, the respondents cannot be deprived of the interest.

(24) The reliance placed on behalf of the petitioners upon the judgment of a Division Bench of this Court in *Charanjit Bajaj and others v. The State of Haryana and others 1986 P.L.J. 601,* is not well founded. Condition No. 4 in that case reads as under:-

> "The above price of the plot is subject to variation with reference to the actual measurement of the plot as well as in case of enhancement of compensation of acquisition cost of land of this sector by the Court or otherwise and you shall have to pay this additional price of the plot, if any, as determined by the Department within 30 days from the date of demand".

(25) It was contended on behalf of the petitioners that the interest charged by HUDA for the period intervening between the deposit of compensation and the issue of notices to the plot holders was not sustainable asthe petitioners could not be held liable to pay interest and suffer for the lapses on the part of HUDA not depositing the amount of compensation. Condition No.4, however, in that case was not similar to clause (2) of the agreement inthe case before us. Clause (2) is much wider. The plain language entitles the respondents to interest. Moreover, it appears that in that case the HUDA had not even challenged the enhancement granted by the Reference Court. The demand notices were issued by the HUDA in that case on the basis of the enhancement granted by the Reference Court. The demand could therefore have been made forthwith in that case. In the case before us the respondents had filed a First Appeal.

(26) The judgment of a Division Bench of this Court dated 07.10.2003 in Civil Writ Petition titled as *Jagat Narain and others vs. HUDA and another* is not relevant either. The relevant clause in that

case is not set out in the judgment. We will assume, however, that it is similar to clause(2) of the agreement in the case before us. It is important to note, however, that in that case the demand had been made by the respondents for the earlier period which was quashed as being illegal and arbitrary. The fresh demand included the demand for interest for that very period. The Division Bench, therefore, held that the same was not permissible. Such a situation does not arise in the case before us.

(27) Mr. Goel submitted that the calculation of compensation was patently erroneous since it ignores the proceeds received from the sale of 8.66 acres of land sold by the respondents.

(28) The grievance is justified to a certain extent. While determining the compensation the area of 8.66 acres must be taken into consideration. The area must form a part of the denominator.

(29) However, the contention that the sale proceeds of much land must also be taken into consideration is not well founded. What the respondents do with a part of the land which is not sold to the allottees is of no concern to the allottees. The sale proceeds go only to the credit of the respondents.

(30) Thus, the petitioners would succeed only to the extent that the total consideration for the acquisition of the land being the numerator the total area of the land for which the compensation was paid must constitute the denominator in computing the amount payable.

(31) We are unable to agree that II-D scheme dated 07.03.1994 precludes the respondents from recovering the cost of the land. The appendix to the scheme merely refers to the cost of the components mentioned therein. It does not prevent the respondents from recovering the cost of the land.

(32) In these circumstances, the writ petition is allowed only to the extent of directing the respondents to recompute the compensation by apportioning the cost of the plots in proportion to the entire land that has been acquired for which the compensation has been paid.

Tribhuvan Dahiya