2025:PHHC:078826

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3734-2024
Date of Decision: July 03, 2025

HARYANA SHEHRI VIKAS PRADHIKARAN SECTOR-5 PANCHKULA TH ITS ADMINISTRATOR .....Petitioner

Versus

ROSHAN LAL SINCE DECEASED TH LRS AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Siddhanth Arora, Advocate for
Mr. Ankur Mittal, Advocate for the petitioner.

Mr. Akshay Jindal, Advocate with
Mr. Bhavya Vats, Advocate for the respondents.

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HARKESH MANUJA, J. (ORAL)

By way of present revision petition filed under Article 227 of the Constitution of India at the instance of petitioner being beneficiary of the acquisition of land, challenge has been laid to the orders dated 13.02.2024 and 06.05.2024 passed by the Executing Court whereby, the Calculations furnished by the petitioners were rejected and the respondents were held entitled for the release of outstanding enhanced compensation towards acquired land.

2. Learned counsel for the petitioner vehemently submits that the Executing Court went wrong while rejecting the calculations submitted by the petitioner as upon a challenge been made to the acquisition proceedings at the instance of original owners by way of CWP No. 16363 of 1990, their dis-possession was stayed by this Court vide order dated 18.12.1990, and as a result thereof, the reference petition filed under Section 18 read with Section 30 of the Land Acquisition Act 1894 (hereinafter referred to as '1894 Act'), at the

instance of private respondents who happened to be the tenants over the acquired land was adjourned *sine die* in terms of order dated 09.03.1998 passed by the reference Court which finally came to be adjudicated upon on 17.07.2017 and thus, private respondents being tenant or even the owner of the acquired land were not entitled for grant of interest in terms of Section 28 of 1894 Act during the period of stay, i.e. w.e.f. 21.12.1990 till 07.10.2010. In support, learned counsel for the petitioner places reliance upon decision rendered by Apex Court in case of ***"Indore Development Authority Vs. Manoharlal and Others"*** reported as "***AIR 2020 SUPREME COURT 1496"***. Relevant paragraph Nos.297, 306, 312, 314, 318 and 321 are extracted hereunder:-

> *"297. In cases where some landowners have chosen to take recourse to litigation (which they have a right to) and have obtained interim orders on taking possession or orders of status quo, as a matter of practical reality it is not possible for the authorities or State officials to take the possession or to make payment of the compensation. In several instances, such interim orders also impeded the making of an award. Now, so far as awards (and compensation payments, pursuant to such proceedings were concerned) the period provided for making of awards under the Act of 2013 could be excluded by virtue of Explanation to Section 11A.192 Thus, no fault of inaction can be attributed to the authorities and those who had obtained such interim orders, cannot benefit by their own action in filing litigation, which may or may not be meritorious. Apart from the question of merits, when there is an interim order with respect to the possession or order of status quo or stay of further proceedings, the authorities cannot proceed; nor can they pay compensation. Their obligations are intertwined with the scheme of land acquisition. It is observed that authorities may wait in the proceedings till the interim order is vacated.*
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> *306. In Union of India and Ors. v. North Telumer Colliery & Ors198, this Court observed that delaying tactics should not be permitted to fructify. By causing delay, the owner would get huge amount of interest, but he may not get a penny out of the principal amount. It would amount to conferring unjust*

benefit on the owners which can never be the intention of the Parliament. This Court observed:

> *"8. The High Court's conclusions are primarily based on the interpretation of Section 18(5) of the Coal Act. The High Court has quoted the meaning of words "enure" and "benefit" from various dictionaries. No dictionary or any outside assistance is needed to understand the meaning of these simple words in the context and scheme of the Coal Act. The interest has to enure to the benefit of the owners of the coal mines. The claims before the Commissioner under the Coal Act are from the creditors of the owners, and the liabilities sought to be discharged are also of the owners of the coal mines. When the debts are paid and the liabilities discharged, it is only the owners of coal mines who are benefited. Taking away the interest amount by the owners without discharging their debts and liabilities would be unreasonable. They have only to adopt delaying tactics to postpone the disbursement of claims and consequently earn more interest. Due to such delay, the owner would get huge amount of interest though ultimately, he may not get a penny out of principal amount on the final settlement of claims. It would amount to conferring unjust benefit on the owners which can never be the intention of the Parliament. We do not agree with the interpretation given by the High Court and hold that the interest accruing under the Coal Act is the money paid to the Commissioner in relation to the coal mine and the same has to be utilized by the Commissioner in meeting the claims of the creditors and discharging other liabilities in accordance with the provisions of the Coal Act."*

312. The maxim "lex non cogit ad impossibilia" means that the law does not expect the performance of the impossible. Though payment is possible but the logic of payment is relevant. There are cases in which compensation was tendered, but refused and then deposited in the treasury. There was litigation in court, which was pending (or in some cases, decided); earlier references for enhancement of compensation were sought and compensation was enhanced. There was no challenge 1999 (5) SCC 209 to acquisition proceedings or taking possession etc. In pending matters in this Court or in the High Court even in proceedings relating to compensation, Section 24 (2) was invoked to state that proceedings have lapsed due to non-deposit of compensation in the court or to deposit in the treasury or otherwise due to interim order of the court needful could not be done, as such proceedings should lapse.

314. Another Roman Law maxim "nemo tenetur ad impossibilia", means no one is bound to do an impossibility. Though such acts of taking

possession and disbursement of compensation are not impossible, yet they are not capable of law performance, during subsistence of a court's order; the order has to be complied and cannot be violated. Thus, on equitable principles also, such a period has to be excluded. In Industrial Finance Corporation of India Ltd. v. Cannanore Spinning & Weaving Mills Ltd. & Ors.204, this Court observed that where law creates a duty or charge and the party is disabled to perform it, without any default and has no remedy over, there the law will in general excuse him. This Court relying upon the aforesaid maxim observed as under:

> *"30. The Latin maxim referred to in the English judgment lex non cogit ad impossibilia also expressed as impotentia excusat legem in common English acceptation means, the law does not compel a man to do that which he cannot possibly perform. There ought always thus to be an invincible disability to perform the obligation, and the same is akin to the Roman maxim nemo tenetur ad impossible. In Broom's Legal Maxims, the state of the situation has been described as below:*
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> *"It is, then, a general rule which admits of ample practical illustration, that impotentia excusat legem; where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over, there the law will in general excuse him (t): and though impossibility of performance is, in general, no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is a good excuse. Thus in a case in which 2002 (5) SCC 54 consignees of a cargo were prevented from unloading a ship promptly by reason of a dock strike, the Court, after holding that in the absence of an express agreement to unload in a specified time there was implied obligation to unload within a reasonable time, held that the maxim lex non cogit ad impossibilia applied, and Lindley, L.J., said: 'We have to do with implied obligations, and I am not aware of any case in which an obligation to pay damages is ever cast by implication upon a person for not doing that which is rendered impossible by causes beyond his control.' "*

318. The maxim actus curiae neminem gravabit is founded upon the principle due to court proceedings or acts of court, no party should suffer. If any interim orders are made during the pendency of the litigation, they are subject to the final decision in the matter. In case the matter is dismissed as without merit, the interim order is automatically dissolved. In case the matter has been filed without any merit, the maxim is attracted commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. No person ought to have the advantage of his own wrong. In

case litigation has been filed frivolously or without any basis, iniquitously in order to delay and by that it is delayed, there is no equity in favour of such a person. Such cases are required to be decided on merits. In Mrutunjay Pani and Anr. v. Narmada Bala Sasmal and Anr209, this Court observed that:

> *"(5) X x x The same principle is comprised in the latin maxim commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act. …" 209 AIR 1961 SC 1353*

321. In G.T.C. Industries Ltd. v. Union of India210, it was observed that while vacating stay, it is the court's duty to account for the period of delay and to settle equities. It is not the gain which can be conferred. In Jaipur Municipal Corporation v. C. L. Mishra211, it has been observed that interim order merges in the final order, and it cannot have an independent existence, cannot survive beyond final decision. In Ram (1998) 3 SCC 376 211 (2005) 8 SCC 423 Krishna Verma v. the State of U.P212, reliance was placed on Grindlays Bank Ltd. v. C.I.T213. It was held that no one could be permitted to suffer from the act of the court and in case an interim order has been passed and ultimately petition is found to be without merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized."

3. On the other hand, learned counsel for the private respondent submits that once benefit under Section 28 of the 1894 Act was specifically awarded by the Reference Court in its award dated 17.07.2017 on the enhanced compensation, it was not within the jurisdiction of the Executing Court to deny the claim of interest for the period of stay. He further submits that if at all the petitioner was aggrieved of the award passed by the reference Court, it were at liberty to challenge the same in an appropriate forum of competent jurisdiction. He also points out to Paragraph 12 of the award passed by the reference Court wherein, a specific mention was made to the deposition of RW1 Bharat Singh i.e. the Patwari Halqa, Karnal who stated that the possession with respect to the land in question was taken by HUDA on

19.12.1990 and even a rapat roznamcha No. 287 dated 19/12/1990 was entered in this regard. Learned counsel thus submits that once the possession was taken by the petitioner on 19.12.1990, the plea to deny the interest under Section 28 of the 1894 Act to the private respondents for the subsequent period was not made out and as such the impugned orders warrant no interference.

4. I have heard learned counsel for the parties and gone through the paper-book.

5. In the present case, a perusal of the reference Court award dated 17/07/2017 makes it abundantly clear that the interest under Section 28 of 1894 Act was specifically and categorically awarded to the beneficiaries of the acquired land on the enhanced market value. Furthermore, the reference Court in its award even made reference to the deposition made by RW1 Bharat Singh Patwari Haqka, Karnal, who categorically mentioned in his statement that the possession of the acquired land was taken over on 19/12/1990; followed by rapat roznamcha No.287 dated 19/12/1990. Relevant portion from paragraph number 12 from the award dated 17.07.2017 is extracted hereunder:-

> *"In order to rebut the evidence of the petitioners, the respondents have examined RW1 Bharat Singh who has deposed on oath that he has been posted as patwari Halga of Karnal second for the las four years. The possession of khasra numbers 8233, 8234,8236,8237 to 8239 was taken by HUDA on 19.12.1990. The Revenue Patwari did not go to the spot for getting delivered possession to HUDA. Possession was taken by the HUDA itself through its Patwari and only intimation/letter was sent to them in this regard. He can not say whether the possession was actually taken by the HUDA or not. There was entry regarding the delivery of possession to HUDA at Sr. No.287 in the roznamcha on 19.12.1990. He has not brought all that letters in his record. That report does not bear his signatures in token of delivery of possession. It bears the signatures of LAO Panchkula. The DDR*

No.287 is in his hand. He did not receive any letter intimating delivery of possession and therefore there could be no copy of award also with that letter. He was called to the office of LAO andasked to make entry regarding delivery of possession and he made this report otherwise no intimation/letter regarding the delivery of possession was received by him. No application was given to him by Roshan Lal on on 24.01.1990. He has brought roznamcha dated 24.10.1970 and 23.03.1972. In those years he was not patwari Halqa and no report is in his hand."

6. Thus, once the possession of the acquired land was taken on 19/12/1990 followed by an entry made in the Rapat roznamcha No.287 on the same date, the factum of interim order passed by the court in the writ petition could not be taken to be fatal to the cause of the private respondents for depriving them of the statutory benefit of interest as provided under Section 28 of the 1894 Act especially, under the circumstances when no document at all was produced or referred to by the petitioner to the effect that the possession of the land was taken over by them or the office of Land Acquisition Collector, anytime after decision of the writ petition on 07.10.2010 and the same was utilized for the development purposes thereafter only.

7. In view of the aforesaid discussion, with all due respect to the observations made by the Hon'ble Apex Court in case of ***"Indore Development Authority"*** (supra) the same cannot be applied to the facts and circumstances of the case in hand. Moreover, if at all the petitioners were aggrieved of the award of interest under Section 28 of 1894 Act in favour of land owners/tenants, they could assail the same only in an appeal preferred under Section 54 of 1894 Act as it was not within the domain of the Executing Court to travel beyond the award.

8. In view of the aforesaid reasoning, finding no illegality or perversity with the orders dated 13.02.2024 and 06.05.2024 passed by the Executing Court, the present petition stands dismissed.

9. Pending application(s), if any, shall also stand disposed of.

03.07.2025 **(HARKESH MANUJA)**
Tejwinder **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*