

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No. 826/2009
CMA Nos. 1080/2009 & 1278/2010

Date of Order: 21.09.2012

Sansar Chand & ors.	V. Chief Secretary, Rev. Deptt & ors.
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Coram:

Mr. Justice Muzaffar Hussain Attar, Judge.

Appearing Counsel:

For Petitioner(s)	:	Mr. Ankush Manhas, Advocate.
For Respondent(s)	:	Mr. H. A. Siddiqui, AAG. Mr. Ajay Sharma, CGSC.

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| 1. | Whether approved for Law Journal. | : | Yes. |
| 2. | Whether approved for Publication.
in Press. | : | |
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(Oral)

Petitioners land measuring 57 (Fifty seven) Kanals 04 (Four) marlas was acquired by the respondents. The final award was published on November 24, 2005 by the Collector Land Acquisition, Bhadarwah. The claim of the petitioners is that despite publication of the award and taking possession of land, compensation was not paid to them. It is submitted that in the year 2011 during the pendency of the Writ Petition, the compensation as determined by the Collector was deposited with the Collector concerned and paid.

The grievance of the petitioners is that despite determination of compensation of the acquired land, and taking over possession compensation was not paid. It is

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submitted that petitioners in these circumstances are entitled to receive interest in terms of *Section 35 of the State Land Acquisition Act, 1990* (for short **the Act**).

It is prayed that respondents be directed to pay the interest on the compensation amount awarded to the petitioners.

Learned counsel for the respondent No.4 submitted that in view of the decision of the Kerala High Court in case titled *S.A. P. Mariyumma & ors. v. State of Kerala & ors.*, reported in *AIR 1991 Kerala 301* which is based on the Hon'ble Supreme Court's decision in case titled *Sham Lal. v. Income –Tax Commissioner*, reported in *AIR 1964 SC 1878* in order to seek interest, when same is not awarded by the Collector, the aggrieved parties have to seek reference under Section 18(1) of the Act for award of proper interest. Section 34 on which reliance is placed, is in parametrie with *Section 35 of the State Land Acquisition Act, 1990*.

Section 34 of the Act relied upon in the aforementioned Judgment and *Section 35 of the State Land Acquisition Act*, which are taken note of:

“Section 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 nine per centum per annum from the time of so

(3)

taking possession until it shall have been so paid or deposited:

Provided that is 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”

“Section 35.

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 six 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 ten per centum shall be payable from the date of expiry of the said period of one year n the amount of compensation or part thereof which has not been paid or deposited at the date of such expiry.”

(4)

The law laid down by the Hon'ble Supreme Court binds all including this Court in view of the mandate contained in *Article 141 of the Constitution of India*.

On the facts available in this case, the petitioners may not be in a position to seek reference under Section 18(1) of the Act as in this case though the award was published on November 24, 2005, the compensation awarded was deposited with the Collector concerned on October 30, 2010. Aggrieved parties could seek reference within the period provided under Section 18 itself. Since the compensation awarded by the Collector has been deposited almost after five years of publication of the award, the petitioners have been deprived from seeking reference, by the act of respondents.

It would be unjust to ask the petitioners to seek reference at this stage when as a matter of fact in view of the limitation prescribed in *Section 18* of the Act *no reference could be made*. The right to seek interest in the facts of this case cannot be allowed to be defeated.

If the argument of the learned counsel is to be accepted that seeking reference is the only remedy then the petitioners who have been admittedly deprived of compensation for a considerably long period, will be rendered remedyless. The respondents have not been fair to the petitioners.

The Constitutional Courts are duty bound to meet out justice to the aggrieved parties.

(5)

In the facts of this case remedy of seeking reference has been closed by the operation of the Statute itself, the petitioners, thus, have to be provided relief in these proceedings.

Admittedly, petitioners were deprived of the compensation despite taking over of possession of their property, they are entitled to get interest in terms of Section 35 of the Act. The interest has to be paid to them.

For the above said reasons, this writ petition is disposed of along with connected CMA (s) in the following manner:

Respondents are directed to assess and determine the interest which should be payable to the petitioners because of delayed payment of compensation. The Collector after assessing the amount of interest on the awarded amount shall refer the matter to the Defence Department.

Respondent No.4 shall pay interest amount to the petitioners so assessed.

Respondents to initiate and conclude the exercise of determining the amount of interest preferably *within a period of eight weeks* from the date copy of writ order is served on them.

(Muzaffar Hussain Attar)
Judge

Jammu:
21.09.2012
Sunita.