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Starred Assembly Question No. *9

Starred Assembly Question Diary No. *14/18/170

Listed on 21.02.2024

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Note for Pad

*14/18/170 SH. SATYA PRAKASH, M.L.A (Pataudi)

***14/18/170 SH. SATYA PRAKASH, M.L.A (Pataudi):**

Question a):- The time by which interest on an amount of compensation for 1128 acre land acquired in Panchgaon, Manesar for the date of award and upto the date of release of fund is likely to be given;

Reply:- In this regard, it is submitted that:-

1. The Government of Haryana notified land u/s 4 on 25.04.2008 for acquisition of land measuring 3510 acres 5 kanals 1 marla situated in the revenue estates of Fazilwas, Kukrola, Kharkhri, Bas Lambi, Mokalwas, Seharavan and Fakharpur, Tehsil and District Gurgaon, for a public purpose, namely, for setting up an Industrial Model Township to be planned as an integrated complex for Industrial, Commercial and other public utilities by the HSIIDC. That the declaration u/s 6 of the Act was issued in two parts, the first declaration u/s 6 of the Act was issued on 09.03.2009 in respect of 90A-5K-14M land as this portion of land was urgently required for interchange of KMP Expressway. The award of this land was announced on 24.08.2009. The remaining land measuring 3325A-3K-16M was notified u/s 6 on 22.04.2009. Meanwhile, aggrieved by the acquisition of their land by the State Govt, a large number of landowners approached the Hon'ble Punjab & Haryana High Court by way of filing Civil Writ Petitions and organized protests against acquisition of their fertile land. Therefore, the Govt. in its Cabinet Sub-Committee meeting held on 15.02.2011 decided to acquire 1128 acres land only and acquisition qua the remaining land was dropped. The DRO cum LAC, Gurgaon announced the award of land measuring 1128 acres on 21.04.2011.
2. After announcement of award PIL has been filed in the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 25.04.2011 put a stay on acquisition proceedings. The stay granted by the Hon'ble Court was vacated on 02.12.2019 in CWP No. 18940 of 2014.
3. In compliance of said order, the Advocate General Haryana opined that stay granted earlier in CWP No. 18940 of 2014 has been vacated for land measuring 1128 acres and the Corporation/state should proceed with the consequential action to be taken after the announcing of award under section 11 of the Land Acquisition Act, 1894 (1128 Acre acquisition whose award was announced on 21.04.2011).
4. As per above opinion, DRO-cum-LAC, Gurugram released the compensation as determined in the award dated 21.04.2011.

5. **Matter regarding Interest on the amount of Compensation:-**It is relevant to mention here that some of the landowners filed writ petitions in the Hon'ble Punjab & Haryana High Court and alleged that though the award No. 3 of compensation in respect of the land was passed by the Land Acquisition Collector on 21.04.2011, but the compensation for the acquired land was not paid before taking possession and has been paid after about 9 years. The petitioners prayed for directions to the respondents to pay interest on the amount of compensation for the acquired land from the date of award and taking possession till actual payment alleging that there was considerable delay in payment of compensation despite demand raised by the petitioner.
6. On the above cited matter, the Hon'ble High court has directed that it would be more appropriate to direct DRO-cum-LAC, Gurugram to decide the claim of petitioner in accordance with the law within a period of 2 months from the date of receipt of a certified copy of the order and if the petitioners are still aggrieved, they shall have the liberty to challenge the order.
7. Thereafter, the DRO-cum-LAC, Gurugram vide orders dated 24.09.2021 decided the representation of the landowners thereby, deciding the issue against the landowners/petitioners the operative part of the orders is as under:-
- “The represents continued to be in physical possession of their land and use the same for the agriculture purpose by growing crops of Bajra in Kharif and Wheat in Rabi crops as per detail given in khasra girdawari of representors/landowners after getting the stay proceedings qua award no. 2 to 8 dated 21.04.2011 and pendency of litigation before the Hon'ble Supreme Court and Hon'ble High Court since, the announcement of the Award in question. The delay, if any in payment of the award amount caused only due to occurrence of ad-interim relief of stay on the acquisition proceedings under Award no. 3 and pendency of litigation before the Hon'ble Supreme Court and Hon'ble High Court, knowing fully well the risks, costs, consequences and damages resulting therefrom, for which the respondents cannot be penalized in any manner. From the above discussions, sequence of events, pendency of the litigations and evidence relied upon by the parties, I am of the considered opinion that the representors miserably failed to prove that there was a delay in payment of Award amount on the part of respondents and as such, the claim representors qua interest over the award amount is not made out.*
- In view of the above the prayer of the representors for interest over the Award amount is declined and representation made by the representors is dismissed accordingly.”*
8. Thereafter, the land owners filed various writ petitions including CWP No. 7230 of 2022 titled Chandan Lal and others Vs State of Haryana and others before the Hon'ble High Court for quashing the order dated 24.09.2021 passed by DRO-cum-LAC, Gurugram denied the payment of

interest to the payment on account of compensation paid in pursuance of award passed DRO-cum-LAC, Gurugram for their acquired land for the time of taking possession until the same was made as per the provision of section 34 of the Land Acquisition Act, 1894. The land owners also prayed for directions to the respondents to make payment of interest to the petitioners on the said amount of compensation.

9. Vide order dated 28.04.2022, the Hon'ble Court disposed of the writ petitions by passing the detailed judgment and order, operative part of which is as under:-

“23. Now, this Bench proceeds to analyze the arguments advanced by the learned counsel representing the petitioners. With respect to the first argument, it would be noted that question of tender of the payment of compensation is not relevant in the present case because the landowners, in representative capacity, filed the writ petition in the Supreme Court. Hence, Section 31 of the 1894 Act will also not be applicable. As regards the argument that as per the Daily Diary Report (Rapat Roznamcha), the possession of the land was taken, the same being disputed question of fact, is left open to be decided by the appropriate forum.

24. The next argument of the learned counsel that title of the acquired land stood transferred in favour of the State on announcement of the award may be correct. However, that is not the question which arises for determination. At the cost of repetition, Section 34 of the 1894 Act is dependent upon the delivery of possession and not on the announcement of the award or transfer of the property. The argument of the learned counsel that because of interim order, the HSIIDC may not have been able to develop the land, rather leads the Court to draw an inference that the possession of the acquired land had never taken place.

25. As regards the argument of learned counsel representing the petitioners that as the acquisition proceedings were concluded before the interim order was passed, therefore, it has no effect, is also required to be noticed and rejected because the petitioners never made any representation that they have delivered the possession during all these years or applied for vacation of the interim order.

26. As regards the argument of the learned counsel representing the petitioners that henchmen of the officials of the HSIIDC had encroached upon the land, the aforesaid issue can only be examined after leading the sufficient evidence.

27. Similarly, there is no substance in the argument with regard to transfer of ₹200/- crores out of the liability of ₹904/- crores approximately. At the cost of repetition, it is noticed that Section 34 of the 1894 Act is dependent upon the delivery of possession or taking over of the possession by the acquiring agency of the State. Hence, the failure to tender the amount/payment would be an entirely different matter. In the context of the present case, the aforesaid situation is not relevant particularly when this case poses a different kind of challenge where the representative of the landowners filed a writ petition and did not permit the delivery of possession to the acquiring agency of the State.

28. *On a careful reading of the aforesaid judgments, it is evident that in none of the judgments, referred to above, the Court has addressed the issue which arises for determination before this Court in the present set of writ petitions.*

29. *It would be noted here that the disputed questions of facts are involved in the present case. On the one hand, the landowners claimed that they were dispossessed on the date of the award, whereas on the other hand, the State of Haryana and the HSIIDC claim that in view of the interim order passed by the Supreme Court, the physical possession of the acquired land was never taken. Such being a question of fact is required to be decided on the appreciation of evidence. This judgment is only deciding a legal issue while leaving it open to the parties to avail their alternative remedy.*

30. *With the observations made above, all the writ petitions are disposed of.”*

10. On the above cited matter, legal opinion has been sought from Sh. Ankur Mittal, Add. AG, Haryana, wherein the advocate opined that since, the petitioner/landowners have already filed LPA (LPA NO. 460 of 2022) which is pending adjudication before the Hon'ble High Court after issuance of notice of motion for 10.11.2022, in such eventuality, Corporation may either file cross appeal or cross objection against the judgment dated 28.04.2022 passed by the Ld. Single judge as the State/HSIIDC could not take the physical possession of the land on account of interim orders passed by the Hon'ble Supreme Court and the landowners continued to enjoy the possession of the land and cultivated the same. The advocate has further informed that the landowners cannot be permitted to be unjustly enriched by utilizing the cultivating the land on the one hand also claiming interest for the said period on account of the delayed payment of compensation on the other hand. The Advocate has advised to file cross appeals/cross objections against the orders dated 28.04.2022 passed by the Hon'ble High Court.
11. In pursuance of above, Legal Division, HSIIDC, was requested to file cross objections in the LPA's filed/to be filed by the land owners against the order dated 28.04.2022 passed by Hon'ble Punjab & Haryana High Court.

Based on the advice of office of Ld. Advocate General, Haryana, cross objections have been filed by HSIIDC in LPA Nos.542, 603, 531, 541, 602, 460 and 484 of 2022 filed by the landowners, which are pending for hearing before the Hon'ble High Court on 09.04.2024 and Sh. Ankur Mittal, Additional AG, Haryana has been engaged.

It is further submitted here that as per the provisions of the Land Acquisition Act, payment of interest is to be made from the time of taking possession until it shall have been so paid or deposited, therefore, interest

component is to be calculated and deposited upto the date of payment from the date of taking possession.

The issue regarding payment of interest is res sub-judice before the Hon'ble High Court and is fixed for hearing on 09.04.2024.

Question b):- The time by which compensation of 912 acre acquired land of Manesar is likely to be released; and

Reply:- It is submitted here that the matter pertains to acquisition of land in villages, Manesar, Naurangpur and Nakhraula for 912 acre, IMT Manesar in pursuance of notification dated 27.08.2004 and 25.08.2005 issued U/s 4 & 6 of the Act. 26.08.2007 is the date of deemed award of land measuring approx. 420 acres which was announced on 26.11.2018.

As per Judgment dated 12.03.2018 passed by the Hon'ble Supreme Court in Civil Appeal No.8788 of 2015 titled Rameshwar and others V/s State of Haryana and others, the directions with regard to payment of compensation to the landowners as contained in Para 39(f) are as under:-

“39(f) Consistent with directions issued in Para 33 of Uddar Gagan (Supra), the builders/private entities will not be entitled to recover the consideration paid by them to the landholders. The sale consideration paid by the builders/private entities to the landholders shall be treated towards compensation under the award and the landholders will not be required to refund any amount to such builders/private entities. The landholders will be at liberty to prefer Reference under Section 18 of the Act within a period of three months from today. For the purposes of maintaining such Reference the reasoning that weighed while passing Awards dated 09.03.2006 and 24.02.2007 shall be the basis. If the Reference Court were to enhance the compensation, the amounts received by the landholders by way of consideration from the builders/private entities shall be appropriated towards such sum awarded by the Reference Court. If the landholders are still entitled to something more than what they had received from the builders/private entities, the differential sum shall be made over to them by the State of Haryana towards acquisition of their interest in the lands in question. If however, what the landholders had received towards consideration from the builders/private entities is found to be in excess of what is awarded by the Reference Court, the remainder shall not be recovered from them.”

Pursuant to this judgment, references were filed by the landowners which have been decided by the Reference Court vide Award dated 19.05.2023 and 20.07.2023. Vide awards dated (1) 19.05.2023 passed in case titled Rajpal V/s State of Haryana determined the compensation @ Rs.69,19,082/- per acre alongwith statutory benefits, (2) Awards dated 20.07.2023 (2 nos.) passed in case titled Jhabar and others V/s State of Haryana and others and Rakesh Gupta and others V/s State of Haryana and others, the Reference Court has determined the @ Rs.48,46,000/- per acre alongwith statutory benefits.

Corporation has filed RFAs alongwith application with stay against the aforesaid awards before the Hon'ble High Court which are likely to be listed for hearing shortly.

Question c):- The time by which 27 acre land acquired in Manesar is likely to be released?

Reply:- Land measuring 912 acre (approx.) was notified under section 4 of the Land Acquisition Act, 1894 on 27.08.2004 for a public purpose namely for setting up of an integrated complex for residential, recreational and other public purposes at village Manesar, Lakhnaula and Naurangpur, District Gurgaon (now Gurugram). Subsequently followed by section 6 declaration issued on 25.08.2005 for an area measuring approx. 688 acres.

The State Government vide order dated 24.08.2007 observed that certain parcels of land had been released by the Government on the recommendation of Ministers Committee separately. Some of these parcels were included in the land acquisition proceedings under consideration. Further, Town and Country Planning Department had also informed that these were several cases of owners having applied for license/change of land use for the lands which also form part of the acquisition proceedings. Furthermore, in a number of cases the Courts have stayed dispossession of the land. In the circumstances, it was difficult to firm up a view as to what would be the shape and size of the land eventually being acquired by the Government and decided that it would not be appropriate to go ahead with these proceedings in the present form. In addition to above, the State Government ordered that a fresh notification be issued in place of the present proceedings indicating therein as to which are the land that are available for acquisition without encumbrances. In view of the Government order dated 24.08.2007, a Committee headed by the Sub Divisional Magistrate, Gurugram, was constituted to assess the ground situation and submit its recommendation on the feasibility of acquisition of land in this locality. The State Government vide order dated 29.01.2010 accepted the recommendations of the said Committee and decided against acquisition of the land in this acquisition proceedings. The Hon'ble High Court vide order dated 15.12.2014 in CWP No. 23769 of 2011 and other connected cases dismissed the said CWPs on the ground that the Hon'ble High Court found no ground to interfere with the said acquisition proceedings and the sale deeds executed in favour of the private respondents by the petitioners, being hit by delay and laches and which with the efflux of time has culminated and fructified into creation of 3rd and 4th party rights in favour of subsequent purchasers of about 1400 flats/plots constructed and developed by the private respondents after having purchased the land in question from the petitioners long back. Aggrieved by the order dated 15.12.2014 of the Hon'ble High Court, land owners approached the Hon'ble Supreme Court of India by way of Civil Appeal No. 8788 of 2015 titled as Rameshwar and others vs State of Haryana and others has been adjudicated by the Hon'ble Supreme Court of India vide order dated 12.03.2018 and the relevant part in this context, is reproduced as under:-

*“39. Having bestowed our attention to various competing elements and issues we deem it appropriate to direct:
The decisions dated 24.08.2007 and 29.01.2010 referred to hereinabove are set aside as being brought about by mala fide exercise of power. In our considered view, those decisions were clear case of fraud on power and as such are annulled.*

The decision dated 24.08.2007 was taken when the matters were already posted for pronouncement of the award on 26.08.2007. Since all the antecedent stages and steps prior thereto were properly and validly undertaken, and since the decision dated 24.08.2007 has been held by us to be an exercise of fraud on power, it is directed that an Award is deemed to have been passed on 26.08.2007 in respect of lands (i) which were covered by declaration under Section 6 in the present case and (ii) which were transferred by the landholders during the period 27.08.2004 till 29.01.2010. The lands which were not transferred by the landholders during the period from 27.08.2004 till 29.01.2010 are not governed by these directions.”

Accordingly, the land measuring about 420 acres (which were transferred by the landholders during the period 27.08.2004 till 29.01.2010) of village Manesar, Lakhnaula and Naurangpur, District Gurugram was taken over by HSIIDC vide award dated 28.11.2018 deemed to be announced on 24.08.2007 by DRO-cum-LAC, Gurugram, in compliance of order dated 12.03.2018 passed by the Hon’ble Supreme Court in CA No. 8788 of 2015.

As far as 27 acre (approx.) of the revenue estate of village Manesar is concerned, the same forms part of the said deemed award.

Further, as per the judgement dated 21.07.2022 passed by the Hon’ble Supreme Court in Misc application no. 50 of 2019 in Civil Appeal no. 8788 of 2015 & connected matters, operative part of Hon’ble Apex Court order dated 21.07.2022 qua 27 acres in question, is reproduced as under:

“With respect to Dharamveer and other petitioners, as well as similarly placed individuals the rights and title in respect of lands under their occupation is vested with HSIIDC. It is up to the HSIIDC to frame such scheme as is permissible in accordance with its parent enactment and a non-discriminatory manner by a scheme, in regard to such land (i.e., the 27 acres to which the petitioners and others like them may claim relief) as it may deem appropriate. In case the HSIIDC chooses to do so, it shall be bound by all provisions of the Master Plan and Zoning and such other rules and regulations as are applicable, in the area and shall strictly enforce them.”

In view of the above, there are no directions for release of 27 acres land by the Hon’ble Apex Court. Liberty has been granted to the Corporation to frame a policy for which a survey has been conducted by HSIIDC. Duly conducted survey shows that structures exist in scattered form on the said land. Since, it is a policy matter, therefore, after detailed examination and considering planning parameters, a proposal will be submitted to the State Government for appropriate decision.

पैड के लिए नोट

***14/18/170 श्री सत्य प्रकाश विधायक (पटौदी):**

प्रश्न (क) समय जिस तक अवार्ड की तिथि से तथा निधि जारी करने की तिथि तक पंचगांव, मानेसर में अर्जित 1128 एकड़ भूमि के लिए मुआवजे की राशि पर ब्याज, दिया जाना सम्भाव्य है;

उत्तर: इस सम्बन्ध में यह प्रस्तुत किया जाता है कि:-

1. हरियाणा सरकार में लोक प्रयोजन अर्थात्, एच.एस.आई.आई.डी.सी. द्वारा औद्योगिक, वाणिज्यिक तथा अन्य लोक उपयोगिताओं के लिए एक समेकित काम्प्लेक्स के रूप में योजनाबद्ध किए जाने वाले औद्योगिक आदर्श नगर क्षेत्र स्थापित करने हेतु फाजिलवास, कुकरोला, खरखड़ी, बास लाम्बी, मोकलवास, सेहरावन तथा फखरपुर, तहसील तथा जिला गुड़गांव की राजस्व सम्पदाओं में स्थित 3510 एकड़ 5 कनाल एक मरला भूमि के अर्जन के लिए दिनांक 25.04.2008 को धारा-4 के अधीन भूमि अधिसूचित की थी। अधिनियम के धारा-6 के अधीन उसकी घोषणा दो भागों में जारी की गई थी, अधिनियम की धारा-6 के अधीन पहली घोषणा 90 एकड़ 5 कनाल 14 मरला भूमि के सम्बन्ध में दिनांक 09.03.2009 को जारी की गई थी जैसा कि भूमि का अवार्ड दिनांक 24.08.2009 को घोषित किया गया था। बाकी 3325 एकड़ 3 कनाल 16 मरले भूमि दिनांक 22.04.2009 को धारा-6 के अधीन अधिसूचित की गई थी। इसी बीच, राज्य सरकार द्वारा उनकी भूमि के अर्जन से व्यथित बहुत से भूस्वामियों सिविल रिट याचिकाएं फाईल करने के रास्ते से माननीय एवं हरियाणा उच्च न्यायालय में पहुंच गए तथा उनकी उपजाऊ भूमि के अर्जन के खिलाफ विरोध संगठित किया। इसलिए सरकार ने दिनांक 15.02.2011 को हुई अपनी केबिनेट बैठक

में केवल 1128 एकड़ भूमि अर्जित करने तथा बाकी की भूमि का अर्जन बन्द करने का निर्णय किया। डी.आर.ओ एवं एल.ए.सी. गुडगांव ने दिनांक 21.04.2011 को 1128 एकड़ भूमि का अवार्ड घोषित किया।

2. अवार्ड की घोषणा के बाद माननीय उच्चतम न्यायालय में पी.आई.एल. दायर की गई तथा माननीय उच्चतम न्यायालय ने दिनांक 25.04.2011 के आदेश द्वारा अर्जन की कार्यवाहियों पर रोक लगा दी थी। माननीय न्यायालय द्वारा प्रदान किया गया स्थगन (स्टे) सी.डब्ल्यू.पी. नम्बर 18940/2014 में दिनांक 02.12.2019 को रद्द किया गया था।
3. उक्त आदेश की पालना में महाधिवक्ता, हरियाणा ने मन्त्रणा दी कि सी.डब्ल्यू.पी. नम्बर 18940/2014 में पहले दिया गया स्टे 1128 एकड़ भूमि के लिए रद्द किया गया है तथा निगम/राज्य को भूमि अर्जन अधिनियम, 1894 की धारा-11 के अधीन अवार्ड की घोषणा के बाद की जाने वाली अनुवर्ती कार्रवाई में अग्रसर होना चाहिए (1128 एकड़ का अर्जन जिसका अवार्ड दिनांक 21.04.2011 को घोषित किया गया था)।
4. उक्तरोक्त मन्त्रणा के अनुसार डी.आर.ओ. एवं एल.ए.सी. गुरुग्राम ने दिनांक 21.04.2011 के अवार्ड में निर्धारित अनुसार मुआवजा जारी किया।
5. मुआवजे की राशि पर ब्याज के सम्बन्ध में मामला:- यहां यह वर्णन करना सुसंगत है कि कुछ भूस्वामियों ने माननीय पंजाब तथा हरियाणा उच्च न्यायालय में रिट याचिकाएं फाईल की तथा आरोप लगाया कि भले ही भूमि के सम्बन्ध में मुआवजे का अवार्ड नम्बर-3

दिनांक 21.04.2011 को भूमि अर्जन कलक्टर द्वारा पारित किया गया था किन्तु अर्जित भूमि के लिए मुआवजे का कब्जा लेने से पहले भुगतान नहीं किया गया था तथा लगभग 9 वर्ष के बाद भुगतान किया गया है। याचिकादाताओं ने अवार्ड तथा कब्जा लेने तक की तिथि से वास्तविक भुगतान करने तक अर्जित भूमि के लिए मुआवजे की राशि पर ब्याज का भुगतान करने के लिए प्रतिवादियों को निर्देश देने की प्रार्थना कथित करते हुए कि याचिकाओं द्वारा मांग उठाने के बावजूद मुआवजे के भुगतान में काफी विलम्ब हुआ था।

6. उपरोक्त वर्णित मामले पर माननीय उच्च न्यायालय ने निर्देशित किया कि आदेश की प्रमाणित प्रति की प्राप्ति की तिथि से 2 मास की अवधि के भीतर कानून के अनुसार याचिकादाता के दावे का निर्णय करने के लिए डी.आर.ओ. एवं एल.ए.सी. गुरुग्राम को निर्देश देना अधिक उचित होगा तथा तथापि यदि याचिकादाता व्यथित है, तो उन्हें आदेश को चुनौती देने की स्वतन्त्रता होगी।
7. उसके बाद डी.आर.ओ. एवं एल.ए.सी गुरुग्राम ने आदेश दिनांक 24.09.2021 द्वारा भूमालिकों के प्रतिवेदन का निर्णय किया जिसके द्वारा भूमालिकों/प्रार्थियों के विरुद्ध मामले का निर्णय किया। आदेश का प्रवर्तनशील भाग निम्न अनुसार है:-

“उनकी भूमि के भौतिक कब्जे के रूप में अभिवेदन क्रमागत है तथा दिनांक 21.04.2011 के अवार्ड नम्बर 2 से 8 तथा प्रश्नगत अवार्ड की घोषणा के बाद माननीय उच्चतम न्यायालय तथा माननीय उच्च न्यायालय के सम्मुख वाद की विचाराधीनता के सम्बन्ध में स्टे कार्यवाही प्राप्त करने के बाद निवेदनकर्ताओं/भूमालिकों की खसरा गिरदावरी में दिए गए ब्योरों के अनुसार खरीफ में बाजरे तथा रबी में गेहूं की फसल उगाने हेतु कृषि प्रयोजन के लिए भूमि का प्रयोग करते हैं। अवार्ड राशि के भुगतान में देरी, यदि कोई हो, केवल अवार्ड नम्बर 3 के अधीन अर्जन कार्यवाही पर स्टे की अस्थायी राहत तथा माननीय उच्चतम न्यायालय तथा माननीय उच्च

न्यायालय के सम्मुख वाद की विचाराधीनता, उसके परिणास्वरूप जोखिम, लागत, परिणाम तथा हानियां जिसके लिए प्रतिवादियों को किसी रीति में दण्डित नहीं किया जा सकता, को पूर्ण रूप से परिचित होने की घटना के कारण थी। उपरोक्त विचार-विमर्ष, घटनाओं के अनुक्रम, वादों की विचाराधीनता तथा पक्षकारों द्वारा साक्ष्य पर निर्भर होने से मेरी सुविचारित राय है कि निवेदनकर्ता यह साबित करने में दयनीय रूप से असफल है कि अवार्ड की राशि के भुगतान में देरी प्रतिवादियों के भाग पर हुई थी तथा इस प्रकार, अवार्ड राशि पर ब्याज के सम्बन्ध में निवेदनकर्ताओं का दावा नहीं बनता है। उपरोक्त के दृष्टिगत अवार्ड की राशि पर ब्याज के लिए निवेदनकर्ताओं की प्रार्थना अस्वीकार की जाती है तथा निवेदनकर्ताओं द्वारा किया गया प्रतिवेदन तदानुसार खारिज किया जाता है।“

8. उसके बाद, भूमालिकों ने कब्जा लेने समय पर उनकी अर्जित भूमि के लिए डी.आर.ओ. एवं एल.ए.सी. गुरुग्राम द्वारा पारित अवार्ड के अनुसरण में भुगतान मुआवजे के मद्दे भुगतान पर ब्याज का भुगतान करने से अस्वीकृत करने के लिए डी.आर.ओ. एवं एल.ए.सी. द्वारा पारित दिनांक 24.09.2021 के आदेश के रद्द करने हेतु माननीय उच्च न्यायालय के सम्मुख सी.डब्ल्यू.पी. नम्बर 7230/2022 शीर्षक चन्दन लाल एवं अन्य बनाम हरियाणा राज्य एवं अन्य सहित विभिन्न रिट याचिकाएं फाईल की जबकि मुआवजा भूमि अर्जन अधिनियम, 1894 की धारा 34 के उपबन्धों के अनुसार नहीं किया गया था। भूमालिकों ने मुआवजे की कथित राशि पर प्रार्थियों को ब्याज का भुगतान करने के लिए प्रतिवादियों को निर्देश देने हेतु भी प्रार्थना की गई थी।
9. आदेश दिनांक 24.04.2022 द्वारा माननीय न्यायालय ने विस्तृत निर्णय तथा आदेश पारित करते हुए रिट याचिकाओं का निपटान कर दिया था जिसका प्रवर्तनशील भाग निम्न अनुसार है:-

“23. Now, this Bench proceeds to analyze the arguments advanced by the learned counsel representing the petitioners. With respect to the first argument, it would be noted that question of tender of the payment of compensation is not relevant in the present case because the landowners, in representative capacity, filed the writ petition in the Supreme Court. Hence, Section 31 of the 1894 Act will also not be applicable. As regards the argument that as per the Daily Diary

Report (Rapat Roznamcha), the possession of the land was taken, the same being disputed question of fact, is left open to be decided by the appropriate forum.

24. The next argument of the learned counsel that title of the acquired land stood transferred in favour of the State on announcement of the award may be correct. However, that is not the question which arises for determination. At the cost of repetition, Section 34 of the 1894 Act is dependent upon the delivery of possession and not on the announcement of the award or transfer of the property. The argument of the learned counsel that because of interim order, the HSIIDC may not have been able to develop the land, rather leads the Court to draw an inference that the possession of the acquired land had never taken place.

25. As regards the argument of learned counsel representing the petitioners that as the acquisition proceedings were concluded before the interim order was passed, therefore, it has no effect, is also required to be noticed and rejected because the petitioners never made any representation that they have delivered the possession during all these years or applied for vacation of the interim order.

26. As regards the argument of the learned counsel representing the petitioners that henchmen of the officials of the HSIIDC had encroached upon the land, the aforesaid issue can only be examined after leading the sufficient evidence.

27. Similarly, there is no substance in the argument with regard to transfer of ₹200/- crores out of the liability of ₹904/- crores approximately. At the cost of repetition, it is noticed that Section 34 of the 1894 Act is dependent upon the delivery of possession or taking over of the possession by the acquiring agency of the State. Hence, the failure to tender the amount/payment would be an entirely different matter. In the context of the present case, the aforesaid situation is not relevant particularly when this case poses a different kind of challenge where the representative of the landowners filed a writ petition and did not permit the delivery of possession to the acquiring agency of the State.

28. On a careful reading of the aforesaid judgments, it is evident that in none of the judgments, referred to above, the Court has addressed the issue which arises for determination before this Court in the present set of writ petitions.

29. It would be noted here that the disputed questions of facts are involved in the present case. On the one hand, the landowners claimed that they were dispossessed on the date of the award, whereas on the other hand, the State of Haryana and the HSIIDC claim that in view of the interim order passed by the Supreme Court, the physical possession of the acquired land was never taken. Such being a question of fact is required to be decided on the appreciation of evidence. This judgment is only deciding a legal issue while leaving it open to the parties to avail their alternative remedy.

30. With the observations made above, all the writ petitions are disposed of.”

10. उपरोक्त वर्णित मामले पर प्रार्थियों श्री अंकुर मितल, अपर महाधिवक्ता, हरियाणा से प्राप्त की गई है जिसमें अधिवक्ता ने राय दी है कि जैसा कि प्रार्थियों/भूस्वामियों ने पहले ही एल.पी.ए. (एल.पी.ए. नम्बर 460/2022) फाईल किया हुआ है जो कि दिनांक 10.11.2022 के लिए प्रस्ताव सूचना जारी करने के बाद माननीय उच्च न्यायालय के सम्मुख निर्णय के लिए लम्बित है, ऐसी सम्भाव्य घटना में निगम माननीय एकल न्यायाधीश द्वारा पारित दिनांक 28.04.2022 के निर्णय के खिलाफ या तो क्रॉस अपील या क्रॉस आक्षेप फाईल कर सकता है क्योंकि राज्य/एच.एस.आई.आई.डी.सी. माननीय उच्चतम न्यायालय द्वारा पारित अन्तरिम आदेशों के कारण भूमि का भौतिक कब्जा नहीं ले सका तथा भूमालिकों ने भूमि के कब्जे का निरन्तर उपभोग किया है तथा उस पर खेती की है। अधिवक्ता ने आगे सूचित किया है कि भूमालिकों को एक तरफ भूमि कर खेती करने के लिए उपयोग करने तथा दूसरी तरफ पर मुआवजे के बिलम्बित भुगतान के मद्दे कथित अवधि के लिए ब्याज का भी दावा करने के लिए अनुचित रूप अंलकृत करने की अनुमति नहीं दी जा सकती। अधिवक्ता ने माननीय उच्च न्यायालय द्वारा पारित दिनांक 28.04.2022 के आदेशों के खिलाफ क्रॉस अपील/क्रॉस आक्षेप फाईल करने की सलाह दी गई है।
11. उपरोक्त के अनुसरण में कार्यालय ने माननीय पंजाब एवं हरियाणा उच्च न्यायालय द्वारा पारित दिनांक 28.04.2022 के आदेश के खिलाफ भूमालिकों द्वारा फाईल किए गए/फाईल किए जाने वाले एल.पी.ए. में क्रॉस आक्षेप फाईल करने के लिए कानूनी डिवीजन से पहले ही अनुरोध किया गया है।

माननीय महाधिवक्ता, हरियाणा के कार्यालय की मन्त्रणा के आधार पर भूमालिकों द्वारा दायर एल.पी.ए. नम्बर 542, 603, 531, 541, 602, तथा 484/2022 में एच.एस.आई.आई.डी.सी. द्वारा क्रॉस आक्षेप फाईल किए गए हैं जो कि दिनांक 09.04.2024 को माननीय उच्च न्यायालय के सम्मुख सुनवाई के लिए लम्बित हैं तथा श्री अंकुर मितल, उपर महाधिवक्ता, हरियाणा को इस कार्य पर लगाया गया है।

आगे यहां यह प्रस्तुत किया जाता है कि भूमि अर्जन अधिनियम के उपबन्धों के अनुसार ब्याज का भुगतान कब्जा लेने के समय से इस प्रकार किए गए भुगतान या जमा किए जाने तक किया जाना है, इसलिए, ब्याज घटक को कब्जा लेने की तिथि से भुगतान की तिथि तक परिकलित तथा जमा किया जाना है। ब्याज के भुगतान के बारे में मामला माननीय उच्च न्यायालय के सम्मुख पूर्व-न्यायाधीन है तथा दिनांक 09.04.2024 को सुनवाई के लिए नियत है।

प्रश्न (ख) समय जिस तक मानेसर की 912 एकड़ अर्जित भूमि का मुआवजा जारी किया जाना सम्भाव्य है; तथा

उत्तर: यह प्रस्तुत किया जाता है कि मामला अधिनियम की धारा-4 तथा 6 के अधीन जारी दिनांक 27.08.2004 तथा 25.08.2005 को अधिसूचना के अनुसरण में आई.एम.टी., मानेसर हेतु 912 एकड़ भूमि गांव मानेसर, नौरंगपुर तथा नखरौला में उसके अर्जन से सम्बन्धित है। लगभग 420 एकड़ भूमि का अवार्ड दिनांक 26.11.2018 को घोषित किया गया था जिसकी समझी गई तिथि 26.08.2007 है।

सिविल अपील नम्बर 8788/2015 शीर्षक रामेश्वर एवं अन्य बनाम हरियाणा राज्य एवं अन्य में माननीय उच्चतम न्यायालय

द्वारा पारित दिनांक 12.03.2018 के निर्णय के अनुसार पैरा 39(च) में दिए गए अनुसार भूमालिकों को मुआवजे के भुगतान के बारे में निर्देश निम्न अनुसार है:-

“39(f) Consistent with directions issued in Para 33 of Uddar Gagan (Supra), the builders/private entities will not be entitled to recover the consideration paid by them to the landholders. The sale consideration paid by the builders/private entities to the landholders shall be treated towards compensation under the award and the landholders will not be required to refund any amount to such builders/private entities. The landholders will be at liberty to prefer Reference under Section 18 of the Act within a period of three months from today. For the purposes of maintaining such Reference the reasoning that weighed while passing Awards dated 09.03.2006 and 24.02.2007 shall be the basis. If the Reference Court were to enhance the compensation, the amounts received by the landholders by way of consideration from the builders/private entities shall be appropriated towards such sum awarded by the Reference Court. If the landholders are still entitled to something more than what they had received from the builders/private entities, the differential sum shall be made over to them by the State of Haryana towards acquisition of their interest in the lands in question. If however, what the landholders had received towards consideration from the builders/private entities is found to be in excess of what is awarded by the Reference Court, the remainder shall not be recovered from them.”

इस निर्णय के अनुसार निर्देश भूमालिकों द्वारा फाईल किए गए थे जिसे अवार्ड दिनांक 19.05.2023 तथा 20.07.2023 द्वारा निर्देश न्यायालय द्वारा निर्णीत किए गए हैं। शीर्षक राज्यपाल बनाम हरियाणा राज्य के मामले में पारित अवार्ड दिनांक (1) 19.05.2023 द्वारा वैद्यनिक लाभों के साथ 69,19,082/- रूपए प्रति एकड़ की दर, (2) झाबर तथा अन्य बनाम में हरियाणा राज्य एवं अन्य तथा राकेश गुप्ता तथा अन्य नाम हरियाणा राज्य एवं अन्य नाम (क) शीर्षक मामलो में (2 नम्बर) के मामले में पारित अनुसार मुआवजा निर्धारित किया गया, निर्देश न्यायालय ने वैद्यनिक लाभों के साथ मुआवजा 48,46,000/- रूपए प्रति एकड़ की दर से निर्धारित किया गया है।

निगम ने माननीय न्यायालय के सम्मुख पूर्वोक्त अवार्ड के खिलाफ स्टे सहित आवेदन के साथ आर एफ ए फाईल किया है जोकि शीघ्र ही सुनवाई के लिए सूचीबद्ध किया जाना सम्भाव्य है।

प्रश्न (ग) जिस समय तक मानेसर में अर्जित 27 एकड़ भूमि छोड़ी जानी सम्भाव्य है ?

उत्तर:- लोक प्रयोजन के लिए लगभग 912 एकड़ भूमि अर्थात गांव मानेसर, लखनौला तथा नौरंगपुर, जिला गुड़गांव में आवासीय, मनोरंजनत्मक तथा अन्य लोक प्रयोजनों के लिए एक समेकित काम्प्लैक्स की स्थापना करने हेतु भूमि अर्जन अधिनियम, 1894 की धारा-4 के अधीन दिनांक 27.08.2004 को अधिसूचित की गई थी। बाद में धारा-6 का पालन करते हुए लगभग 688 एकड़ के क्षेत्र के लिए दिनांक 25.08.2005 को घोषणा जारी की गई थी।

राज्य सरकार ने आदेश दिनांक 24.08.2007 द्वारा अवलोकित किया कि भूमि के कुछ टुकड़े, मन्त्री समिति की सिफारिश पर सरकार द्वारा अलग से छोड़े गए थे। इन में से कुछ टुकड़े विचाराधीन भूमि अर्जन कार्यवाही में शामिल किए गए थे। इसके अतिरिक्त, नगर तथा ग्राम आयोजना विभाग ने भी सूचित किया था कि भूमि जो अर्जन कार्यवाही का भाग रूप में है, के लिए भूमि उपयोग लाईसेंस/परिवर्तन के लिए आवेदित किए गए भूस्वामियों के बहुत से मामले हैं। इसके अलावा, बहुत से मामलों में न्यायालयों ने भूमि को बेकब्जा करने को स्थगित किया गया है। ऐसी परिस्थितियों में मजबूती से यह विचार करना कठिन है कि सरकार द्वारा अर्जित की जारी भूमि की घटना में रूप तथा आकार क्या होगा तथा निर्णय किया गया कि वर्तमान रूप

में इन कार्यवाहियों में आगे बढ़ना उचित नहीं होगा। उपरोक्त के अतिरिक्त, राज्य सरकार ने आदेश दिया कि वर्तमान कार्यवाही के स्थान पर कई अधिसूचना उनमें यह सूचित करते हुए जारी की गए कि ऐसी कौन सी भूमि है जो सभी ऋणधारों के बिना अर्जन के लिए उपलब्ध है। सरकार के आदेश दिनांक 24.08.2007 के दृष्टिगत उप-मण्डल मजिस्ट्रेट, गुरुगारम की अध्यक्षता में एक समिति भूमि की स्थिति का निर्धारण करने तथा इस क्षेत्र में भूमि के अर्जन की सम्भाव्यता पर अपनी सिफारिश प्रस्तुत करके के लिए गठित की गई थी। आदेश दिनांक 29.01.2010 द्वारा राज्य सरकार के कथित समिति की सिफारिश आदेश स्वीकार की तथा इस अर्जन कार्यवाही में भूमि अर्जन के विरुद्ध निर्णय किया।

सी.डब्ल्यू.पी. 23679/21 तथा अन्य मामलों में माननीय उच्च न्यायालय के आदेश दिनांक 15.12.2014 द्वारा इस आधार पर उक्त सी.डब्ल्यू.पी. खारिज कर दी कि माननीय उच्च न्यायालय ने कथित अर्जन कार्यवाही तथा विलम्ब तथा अड़चनों के कारण प्रार्थियों द्वारा प्राईवेट प्रतिवादियों के पक्ष में निष्पादित विक्रय विलेख में हस्तक्षेप करने का कोई आधार नहीं पाया है तथा जोकि समय की समाप्ति के साथ समाप्त हो गया है तथा पिछे से प्रार्थियों से प्रश्नगत भूमि की खरीद करने के बाद प्राईवेट प्रतिवादियों द्वारा निर्मित तथा विकसित लगभग 1400 फ्लैट/प्लॉट के पश्चावर्ती खरीददारों के पक्ष में तीसरे तथा चौथे पक्षकार का सर्जन करने में लाभप्रद हो गया है। माननीय उच्च न्यायालय के दिनांक 15.12.2014 के आदेश से व्यथित भूमि मालिकों ने सिविल अपील 8788/15 शीर्षक रामेश्वर एवं अन्य बनाम हरियाणा राज्य एवं अन्य के रूप में भारत के उच्चतम न्यायालय में पहुंच की जो कि भारत के उच्चतम न्यायालय द्वारा आदेश

दिनांक 12.03.2018 द्वारा निर्णीत किया गया तथा इस सम्बन्ध में सम्बन्धित मात्र निम्न अनुसार पुनः दोहराया जाता है:-

“39.Having bestowed our attention to various competing elements and issues we deem it appropriate to direct:

The decisions dated 24.08.2007 and 29.01.2010 referred to hereinabove are set aside as being brought about by mala fide exercise of power. In our considered view, those decisions were clear case of fraud on power and as such are annulled.

The decision dated 24.08.2007 was taken when the matters were already posted for pronouncement of the award on 26.08.2007. Since all the antecedent stages and steps prior thereto were properly and validly undertaken, and since the decision dated 24.08.2007 has been held by us to be an exercise of fraud on power, it is directed that an Award is deemed to have been passed on 26.08.2007 in respect of lands (i) which were covered by declaration under Section 6 in the present case and (ii) which were transferred by the landholders during the period 27.08.2004 till 29.01.2010. The lands which were not transferred by the landholders during the period from 27.08.2004 till 29.01.2010 are not governed by these directions.”

तदानुसार, गांव मानेसार, लखनौला तथा नौरगंपुर, जिला गुरुग्राम की लगभग 420 एकड़ भूमि (जोकि भूमि मालिकों द्वारा दिनांक 27.08.2004 से 29.01.2010 तक की अवधि के दौरान स्थान्तरित की गई थी) सी.ए. नम्बर 8788/2015 में माननीय उच्चतम न्यायालय द्वारा पारित दिनांक 12.03.2018 के आदेश की पालना में डी.आर.ओ. एवं एल.ए.सी. गुरुग्राम द्वारा दिनांक 24.08.2007 को घोषित की गई समझी गई तिथि 28.11.2018 के अवार्ड द्वारा एच.एस.आई.आई.डी.सी. द्वारा ली गई थी।

जहां तक गांव मानेसार की राजस्व सम्पदा की (लगभग) 27 एकड़ भूमि का सम्बन्ध है, वह भी कथित समझे गए अवार्ड का भाग रूप बनती है।

इसके अतिरिक्त, सिविल अपील नम्बर 8788/2015 में विविध आवेदन संख्या 50/2019 तथा अन्य सम्बन्धित मामलों में माननीय उच्चतम न्यायालय द्वारा पारित दिनांक 21.07.2022 के निर्णय के अनुसार प्रश्नगत 27 एकड़ भूमि के

सम्बन्ध में दिनांक 21.07.2022 के माननीय शीर्ष न्यायालय के आदेश का प्रवर्तनशील भाग निम्न अनुसार पुनः दोहराया जाता है:-

“With respect to Dharamveer and other petitioners, as well as similarly placed individuals the rights and title in respect of lands under their occupation is vested with HSIIDC. It is up to the HSIIDC to frame such scheme as is permissible in accordance with its parent enactment and a non-discriminatory manner by a scheme, in regard to such land (i.e., the 27 acres to which the petitioners and others like them may claim relief) as it may deem appropriate. In case the HSIIDC chooses to do so, it shall be bound by all provisions of the Master Plan and Zoning and such other rules and regulations as are applicable, in the area and shall strictly enforce them.”

उपरोक्त के दृष्टिगत माननीय शीर्ष न्यायालय द्वारा 27 एकड़ भूमि छोड़ने के लिए कोई निर्देश नहीं है। निगम को पालिसी बनाने की स्वतन्त्रता दी गई है जिसके लिए एच.एस.आई.आई.डी.सी. द्वारा एक सर्वेक्षण कराया गया है। विधिवत किया गया सर्वेक्षण दर्शाता है कि कथित भूमि पर बिखरे हुए रूप में संरचनाएं विद्यमान हैं। जैसा कि यह एक पालिसी मामला है, इसलिए, विस्तृत जांच तथा योजना पैरामीटरों को विचारने के बाद एक प्रस्ताव उचित निर्णय के लिए राज्य सरकार को प्रस्तुत किया जाएगा।