(2009) 04 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 2929 of 2008

Anantdas Jeevandas Amichand and Others — APPELLANT

Vs

The Land Acquisition Officer and Assistant Commissioner, Gadag Division and Another — RESPONDENT

Date of Decision : 23-04-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 23 (1), 23 (1A), 4 (1)

Citation : (2009) 6 KarLJ 315

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : P.A. Kulkarni, for the Appellant; K.S. Desai and Harsh Desai for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

Ajit J. Gunjal, J.—The land belonging to the petitioners was acquired for the public purpose. Suffice it to say in a reference case namely LAC No. 14 of 1984, the Reference Court fixed the market value at Rs. 750/- per gunta with all statutory benefits. The said award was put into execution. The petitioners filed their memo of calculation. The Executing Court has granted the request of the petitioners. But, however, has restricted it from the date of decision of the Apex Court in the case of Sunder Vs. Union of India, . The said observation is questioned in this petition.

2. Learned Counsel for the petitioners submits that having regard to the fact that the petitioners have been awarded interest at the rate of 9% p.a. from the date of taking possession and all other statutory benefits including the 15% interest on the additional amount which is awardable u/s 23(1-A) of the Land Acquisition Act, 1894, the Executing Court was not justified in declining to grant the said relief from the date of passing of the award. He submits that the same could not have been restricted from the decision rendered by the Apex Court in Sunder''s case.

3. Mr. Harsh Desai, learned Counsel for respondent 2 submits that in the case on hand, the observation made by the Apex Court is applicable inasmuch if there is no indication in the award as from which date the interest is required to be calculated, Sunder''s case would step in and the interest is required to be awarded from the aforesaid date.

4. I have perused the order passed by the Executing Court as well as the award. It is useful to extract the award which would read as under:

The claimants are entitled to receive compensation at the rate of Rs. 750/- per gunta less the amount already received by them with interest at 9% p.a. from the date of taking possession of the acquired land 30% solatium and 12% p.a. on the market value on the enhanced compensation.

If the enhanced compensation is not paid within one year, the claimants are entitled to 15% p.a. interest on the enhanced compensation from the date of taking possession of the acquired land. The claimant is also entitled to receive additional amount awardable u/s 23(1-A) of the L.A. Act.

5. A perusal of the award would clearly disclose that the petitioners are entitled for interest at the rate of 9% p.a. from the date of taking possession of the acquired land, 30% solatium and 12%'' p.a. on the market value on the enhanced compensation. If the enhanced compensation is not paid within one year, they are also entitled for interest at 15% p.a. on the enhanced compensation from the date of taking possession.

6. Indeed it has to be noticed that the Apex Court in a recent decision in the case of The Collector, Land Acquisition and Anr. v. Jaswant Singh and Ors. 2009(1) SCR 1341, has observed that the interest on solatium even though not specifically granted by decree, such interest on solatium can be claimed only in pending execution but not in closed execution.

7. Apart from the decision referred to above, there are three more decisions which would relate to the award of interest on solatium as to from which date it is required to be awarded.

8. Indeed the Apex Court in the case of Sunder has observed that the compensation awarded in all land acquisition cases would include liability to pay the interest on the compensation. Indeed, the solatium paid on account of compulsory acquisition u/s 23(2) forms part of the compensation. Hence, the State is liable to pay interest at 9% p.a. on the said solatium. The Apex Court in the case of Gurpreet Singh Vs. Union of India (UOI), has approved the ratio laid down in Sunder''s case.

9. The Executing Court has chosen to grant interest, but, however, from the date of decision rendered by the Apex Court in Sunder''s case. Both the Counsel would submit that all three decisions which are referred to above are applicable to the facts of the case. However, the moot question is whether there is any specific issued by the Reference Court in the award to the effect that the decree-holder is

entitled for interest on solatium and on additional market value. In this regard, it is useful to refer to the provisions of Section 23 of the Act.

10. Section 23 would speak about matters required to be considered in determining compensation. We are more concerned with Section 23(2) of the Act. Section 23(2) of the Act would deal with payment of solatium. Indeed, it states that in addition to the market value as determined by the Reference Court or the Land Acquisition Officer, the owner is entitled for 30% additional sum on such market value in consideration of compulsory nature of acquisition. Thus, the owner of the land is entitled for 30% solatium in addition to market value. Indeed it would carry interest at the rate of 9% as contemplated u/s 34 of the Act. Another provision which would relate to the payment of additional market value is Section 23(1A) which was introduced pursuant to Act No. 68 of 1984, with effect from 24-9-1984. In addition to the compensation determined including the solatium and the interest thereon, the owner of the land is also entitled for 12% interest p.a. on such market value for the period commencing from the date of publication of the notification u/s 4(1) i.e., from the date of award of the Collector or the date of taking possession of the land whichever is earlier. The Executing Court has chosen to peg down the payment of interest only from the date of judgment in Sunder''s case and not for any period prior to the same.

11. The award is extracted. A perusal of the award would clearly disclose that the petitioners are entitled to receive interest at the 9% from the date of taking of possession of the land acquired, 30% solatium and 12% p.a. on the market value on the enhanced compensation which would necessarily mean that the Reference Court has specifically awarded interest at the rate of 9% p.a. on solatium and also 12% p.a. on the market value. Thus, I am of the view that there is no ambiguity in the award passed by the Reference Court. Indeed, the Apex Court in Sunder''s case has specifically observed that the payment of the interest would be from the date of the decision rendered by it. But, however, the said decision fell for consideration which has been approved in Gurpreet''s case. But, however with certain modifications. Indeed, the Apex Court in Gurpreet''s case has observed that the Executing Court shall not go beyond the decree passed by the Reference Court. Indeed, that is the settled law. But, however, if the award of the Reference Court or that of the Appellate Court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the Appellate Court, and merely interest on compensation is awarded, then it would be open to the Execution Court to apply the ratio of Sunder''s case and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not. Indeed such an interest on solatium can be claimed only in a pending execution and not in closed executions and that the Executing Court will be taking from the date of judgment in Sunder''s case. In the case on hand, it has to be noticed that there is specific direction by the Reference Court for

payment of interest at the rate of 9% on solatium and also 12% interest on additional market value. Indeed, the Apex Court in Gurpreet''s case was of the opinion that another question is required to be answered though not referred to it. The Apex Court observes that since these questions would arise in various cases pending in Courts all over the country, the said question was once again addressed and the view of the Sunder''s case has been approved. But, however, once again indicating that the Executing Court cannot go behind the decree and if there is no specific denial of awarding interest either specifically or by implication, the Executing Courts are entitled to award interest. Having regard to the law declared by the Apex Court, I am of the dew that the Executing Court was correct in awarding interest. But, however was not justified in pegging down to the date in Sunder''s case. Indeed it has to be noticed that the award may not be in specific terms indicating that the interest at 9% p.a. is awarded on solatium. But however 30% solatium is awarded in view of Sunder''s case which would carry interest at the rate of 9%. Hence, I am of the view that Executing Court was not justified in holding that the decree-holders are entitled to interest only from the date of Sunder''s case.

12. Having given my anxious consideration, I am of the view that the petitioners-decree-holders are entitled to succeed. Consequently the following order is passed:

This petition is allowed. The impugned order is set aside only to the extent indicating that the decree-holders are entitled for interest from the date of Sunder''s case. Petition stands disposed of accordingly.

