

(2013) 03 KL CK 0152
In the High Court Of Kerala
Case No : O.P. (C) No. 487 of 2012

Bhasi Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 28, 4(1)

Citation : (2013) 3 KLT 460

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : T. Krishnan Unni, George Varghese Perumpallikuttiiyil, A.R. Dileep, Nava Varghese and Manu Sebastian, for the Appellant; C.R. Syam Kumar), for the Respondent

Final Decision : Allowed

Judgement

Thomas P. Joseph, J.—Exhibit P17, order dated 16.03.2011 on E.A. No. 407 of 2010 in L.A.R. No. 155 of 1999 of the Sub Court, Mavelikkara is under challenge. E.A. No. 407 of 2010 is an application for cheque filed by the petitioners/decreed holders/claimants. That application was resisted by the respondent-State on various grounds, the main dispute being that interest calculated and claimed by the petitioners is not allowable as respondent had deposited the amount in the trial court on 27.03.2007. According to the respondent, from the date of that deposit petitioners are not entitled to get interest as claimed in E.A. No. 407 of 2010. Executing court accepted that contention and allowed the application for cheque for Rs. 1,43,04,75/-. Learned Senior Advocate for petitioners/decreed holders contended that Ext. P17, order is erroneous for various reasons. It is contended that deposit of Rs. 2,88,03,952/- on 27.3.2007 was not with notice to the petitioners and hence would not arrest running of interest. It is further contended that at any rate, that deposit was not unconditional, nor meant for payment to the petitioners. Application for cheque filed by the petitioners was resisted by the respondent. It is also submitted that conduct of respondent

throughout prevented petitioners from withdrawing the amount. At any rate, the award was set aside by this Court as per Ext. P9, judgment in L.A.A. No. 465 of 2006. Thereafter, reference court has passed a revised judgment. Hence the deposit made on 27.3.2007 is of no avail. It is also argued that notwithstanding the deposit on 27.3.2007 petitioners are entitled to get interest under S. 28 of the Land Acquisition Act (for short, "the Act") and as per revised decree of the Trial Court.

2. Learned Government Pleader for the respondent contended that assuming that on 27.3.2007 when the amount was deposited there was no notice to the petitioners, they got notice of the deposit immediately thereafter and made attempt to withdraw the amount. That attempt failed either for the reason of pendency of the appeal and cross objection or as petitioners did not furnish security. It is submitted that to avoid running of interest, respondent has deposited the amount and that would arrest running of interest. It is argued that the rule regarding appropriation of amount applicable to a deposit under R. 1 of O. XXI of the CPC (for short, "the Code") would not apply to an award passed by the reference court. Reliance is placed on the decision in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, .

3. 203.67 Ares of land belonging to the petitioners was acquired and Notification under S. 4(1) of the Act was issued on 17.9.1998. The Land Acquisition Officer awarded Rs. 86,485/- per Are. There was a reference which the reference court took on file as L.A.R. No. 155 of 1999. As per Ext. P1, decree dated 24.1.2005, reference court re-fixed land value at Rs. 1,48,070/- per Are, there being an enhancement of Rs. 61,585/- per Are.

4. On 25.7.2005 petitioners filed E.P. No. 167 of 2005 claiming Rs. 3,21,05,116.90. In the meantime, respondent filed L.A.A. No. 465 of 2006 against Ext. P 1. There was a cross objection filed by the petitioners.

5. While so, respondent deposited Rs. 2,88,03,952/- on 27.3.2007. It is not very much in dispute that at the time of deposit, no notice was given to the petitioners.

6. On 23.5.2007 petitioners filed Ext P3, application E.A. No. 241 of 2007 to transmit the amount in deposit to a Nationalized Bank. By order dated 30.6.2007 the executing court dismissed that application.

7. That was followed by the executing court, on 08.08.2007 dismissing the application for cheque filed by the petitioners. Petitioners challenged that order in this Court in W.P (C) No. 30225 of 2007. That Writ Petition was allowed as per Ext. P6, judgment dated 15.10.2007. This Court permitted petitioners to withdraw 50% of the amount deposited. Petitioners were permitted to withdraw the remaining 50% on furnishing security.

8. Respondent filed R.P. No. 1055 of 2007 to review Ext. P6, judgment on various grounds. Learned Judge passed Ext. P7, interim order on 26.10.2007 on R.P. No.

1055 of 2007. Exhibit P7, order directed the reference court to keep the amount in Fixed Deposit in the State Bank or other Nationalized Bank for 46 days. It was clarified that petitioners are entitled to get interest in addition to the amount deposited in case L.A.A. No. 465 of 2006 filed against Ext. P1, decree in L.A.R. No. 155 of 1999 is decided in favour of petitioners. Review Petition was finally disposed of as per Ext. P8, order dated 23.11.2007. This Court ordered that direction already issued as per Ext. P6, judgment to issue valuation certificate is confirmed and that direction to deposit the amount in fixed deposit in any Nationalized Bank was also confirmed. It was made clear that interest if any that accrued in the fixed deposit will be disbursed to the petitioners in case they succeed in L.A.A. No. 465 of 2006.

9. Later, by Ext. P9, judgment dated 6.2, 2008 the Division Bench allowed L.A.A. No. 465 of 2006 while the cross objection was dismissed. Exhibit P1, decree and judgment of the reference court were set aside and the matter was remitted to the reference court for fresh decision. Thereafter reference court answered the reference on 22.08.2008 whereby land value for 5.22 Ares" was fixed at Rs. 21, 621.25 per Are, for 106.48 Ares at Rs. 10,810.62 per Are and for 87.48 Ares at the rate of Rs. 1,081.05 per Are. Challenging that judgment and decree, petitioners filed L.A.A. No. 92 of 2009 while the State filed L.A.A. No. 870 of 2009. By a common judgment dated 10.08.2010 this Court allowed L.A.A. No. 92 of 2009 and dismissed L.A.A. No. 870 of 2009. Land value for 47 Ares was fixed at Rs. 1,35,000/- per Are, for 78.33 Ares, at the rate of Rs. 1,21,500/- per Are and for 78.33 Ares at the rate of Rs. 1,09,350/- per Are.

10. On 21.8.2010 petitioners received Rs. 35,65,166/- (amount deposited by the respondent) according to the petitioners, in partial satisfaction of the decree. On 19.12.2010 petitioners filed statement of account in terms of the revised award of this Court claiming Rs. 2,14,24,146.40 as further due to them. Petitioners also filed E.A. No. 407 of 2010 on 23.12.2010 to realize Rs. 2,14,24,146/- from the Bank. That application was resisted by the respondent along with a statement contending that only Rs. 1,43,04,749/- was due. That contention found favour with the executing court which passed Ext. P17, order.

11. The crucial question for decision is whether deposit made by the respondent on 27.3.2007 would arrest running of interest?

12. It is not very much disputed that for the deposit made on 27.3.2007, no notice was given to the petitioners. But as pointed out by the learned Government Pleader, it is clear from Ext. P3 - E. A. No. 241 of 2007 filed by the petitioners in the executing court on 23.05.2007 that at least by then, they had notice of the deposit on 27.3.2007. What then is the consequence, is the next question?

13. Though in Prem Nath Kapur v. National Fertilizers Corporation of India Ltd. (supra) the Supreme Court has held that provision regarding running of interest as in R. 1 of O. XXI of the Code would not apply so far as deposit in the LAR is

concerned, that is concerning appropriation of amount deposited. I must notice that when the Supreme Court observed in the above decision that liability of the State to pay interest cease when the amount of compensation is paid to the claimant or "deposited in court", what is meant is a deposit in court for payment to the decree holder. Therefore I am to consider whether deposit made by the respondent on 27.3.2007 was for payment to the petitioners so that the deposit would arrest running of interest at least from the date on which petitioners got notice of that deposit.

14. To decide that, it is necessary to refer to the applications petitioners preferred and the stand of respondent with reference to those applications. Though by Ext. P3, application petitioners wanted the amount deposited (on 27.3.2007) to be transferred to a Nationalized Bank, that application was dismissed by order dated 30.6.2007 and following that, the application for cheque was dismissed on 8.8.2007. For whatever reasons it be, it is certain that respondent had resisted the application for cheque. I must notice that during that time, L.A.A. No. 465 of 2006 filed by the respondent and Cross Objection filed by the petitioners were pending in this Court. That, Cross Objection filed by the petitioners was pending in this Court would not have affected right of petitioners to withdraw the amount deposited by the respondent. Obviously, application for cheque was resisted by the respondent for the reason of pendency of I.A.A. No. 465 of 2006 filed by the respondent. That application for cheque was dismissed against which petitioners preferred W.P. (C) No. 30225 of 2.007, I have already referred to Ext. P6, judgment therein which was sought to be reviewed in R.P. No. 1055 of 2007 which resulted in Ext. P7, interim order dated 26.10.2007 and Ext. P8, final order dated 23.11.2007. Suffice to say that petitioners were not permitted to withdraw the amount for whatever reason it be.

15. For better appreciation of the disputed question, led for the Judges papers in W.P. (C) No. 30225 of 2007 and R.P. No. 1055 of 2007 (the latter, filed by the respondent). It is seen from R.P. No. 1055 of 2007 that respondent prayed that this Court may be pleased to allow the Review Petition and recall Ext. P6, judgment dated 15.10.2007 by which the petitioners were permitted to withdraw 50% of the amount deposited on 27.3.2007 and the remaining 50%, on furnishing security.

16. Learned Government Pleader pointed out that in R.P. No. 1055 of 2007, main challenge was to that part of Ext. P6, judgment whereby petitioners were permitted to withdraw 50% of the amount (deposited on 27.3.2007) without security. Learned Government Pleader has also invited my attention to R.6 of Order XLI of the Code to contend that it was within the right of respondent to insist that petitioners be permitted to withdraw the amount only on furnishing security. Learned Government Pleader has also invited my attention to grounds E and F in R.P. No. 1055 of 2007.

17. Ground E stated therein is that petitioners, even though executed a bond as security and produced title deeds, the security furnished is not sufficient. Ground

F stated that if petitioners are allowed to withdraw the amount without furnishing security, respondent will be put to loss and it will be difficult for the respondent to realize the amount if ultimately the appeal preferred by the respondents against Ext. P1, decree in L.A.A. No. 155 of 1999 is allowed in favour of the respondents.

18. It is seen from ground D that respondent also referred to some vigilance enquiry regarding the award passed by the Land/Acquisition Officer and in favour of petitioners.

19. It is relevant to refer to R.6 of O. XLI of the Code. There, it is stated that where an order is made for execution of a decree from which an appeal is pending, the court which passed the decree shall, on "sufficient cause being shown by the appellant" require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property.

20. The said provision does not cast any duty on the court to impose a condition whenever a demand for withdrawal of amount is made. On the other hand, the said provision enabled the appellant to request the court to insist on the decree holder furnishing security for withdrawal of the amount.

21. It is apposite to refer the case law on the point. In *The South Indian Railway Company, Limited Vs. M.C. Mayilvahanan*, it is held where an appellant/judgment debtor deposits money into the court on condition that the money should not be paid except upon conditions to his opponent/decreed holder, he does so in order to make his own recovery of the money more easy if he should succeed in appeal and therefore, the judgment debtor at whose instance the decreed holder is hampered in his attempts to obtain payment of that money into his hands is liable to continue to pay interest as the result of his conduct. Learned Judge drew a distinction where statutory provisions required the court to compulsorily impose conditions as in the case of a next friend of a minor withdrawing the amount and R.6 of O. XXXII of the Code requiring the next friend to furnish security. Such is not the situation so far as imposing condition under R.6 of O. XLI of the Code is concerned.

22. In *O. RM. P. RM. Ramanathan Chettiar Vs. P.S.L. Ramanathan Chettiar and Others*, though referring to R.1 of O. XXI of the Code, it is held that payment must be unconditional. In paragraph 26, it is observed that if the order imposes condition on the decreed holder drawing the money like furnishing of security, there would be an impediment in the satisfaction of the decree. In *Punjab State Vs. Sardar Atma Singh*, it is held that (in that case, there was a stay of execution of the decree on condition of deposit) where the decreed holder applied to withdraw the amount, there was an order to furnish security and there was delay in furnishing security, decreed holder is entitled to get interest from the date of deposit till actual withdrawal on furnishing security.

23. The above decisions also lead me to the conclusion that when the deposit is

not unconditional and not meant for payment to the decree holder, but the deposit is made pending appeal and the respondent has hampered petitioners withdrawing the amount by insisting on furnishing of security, it cannot be treated as a deposit for payment to the petitioners thereby arresting running of interest. Here, even the judgment (Ext. P6) allowing withdrawal of amount on furnishing security was sought to be reviewed at the instance of the respondent. In R.D.O. Vs. Kurian, a Division Bench of this Court held that a deposit made in a Nationalized Bank after obtaining orders from the court (referring to R. 1 of O. XXI of the Code) is not a payment as contemplated in R.21 of O. XXI of the Code arresting running of interest.

24. In this case I stated that when there was attempt on the part of petitioners to get the amount deposited on 27.3.2007 transferred to a Nationalized Bank so that it will accrue interest, that application was resisted for whatever reason it be and got dismissed. The application for cheque filed by the petitioners for withdrawing the amount deposited on 27.3.2007 was resisted by the respondent for whatever reason it be and that application was also dismissed. I have stated that Ext. P6, judgment was sought to be reviewed in toto by the respondent-State though the main ground stated in the Review Petition was as regards furnishing security for the 50% of the amount which was allowed to be withdrawn without security. In fact, respondent wanted a review of the entire judgment (Ext. P6). Suffice to say, this Court directed deposit of the amount in a Bank with a direction that the interest that accrues will go to the petitioners in case they succeed in L.A.A. No. 465 of 2006. Unfortunately for petitioners, L.A.A. No. 465 of 2006 was allowed, cross objection was dismissed, Ext. P1, decree was set aside and the/reference court was directed to assess value of land afresh. That resulted in Ext. P10, revised judgment dated 22.8.2008 which again was subject to an appeal.

25. For the-above stated reasons I am inclined to hold that the respondent cannot take shelter under the deposit made on 27.3.2007. At any rate when Ext. P1, decree and judgment were set aside by this Court in L.A.A. No. 465 of 2006, deposit made pursuant to Ext. P1, decree does not any more remain. Nor could it be said that at least after 25.7.2005 when L.A.A. No. 465 of 2006 was allowed, amount in deposit was meant for payment to the petitioners. Viewed either way, the view taken by the learned Sub Judge is erroneous and is liable to be interfered. The above discussion leads me to the conclusion that notwithstanding the deposit made on 27.03.2007 petitioners are entitled to claim and recover interest pursuant to Exts. P10 and P12, Judgments as provided under the law and as provided under the decree.

Resultantly, the Original Petition is allowed as under:

- (i) Exhibit P17, order dated 16.3.2011 on E.A. No. 407 of 2010 in L.A.R. No. 155 of 1999 of the Sub Court, Mavelikkara is set aside.
- (ii) E.A. No. 407 of 2010 is remitted to the said court for fresh decision.

(iii) It is made clear that deposit made by the respondent in the executing court on 27.3.2007 will not arrest running of interest and that petitioners are entitled to get interest on the strength of Exts. P10 and P12, judgments and as provided under the law.

(iv) Parties may file statements in the executing court in accordance with the above directions.