

(2014) 06 KAR CK 0051

In the Karnataka High Court

Case No : Writ Petition No. 83674 of 2011 (GM-CPC)

Bhimrao

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Citation : (2014) 5 KarLJ 417

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Harshavardhan R. Malipatil, Advocate for the Appellant; Manvendra Reddy, Government Advocate, Advocate for the Respondent

Judgement

B.S. Patil, J.—Order passed by the Executive Court on 27-11-2010 on the memo of calculation filed by the decree-holder-petitioners herein is called in question in this writ petition. The land of the petitioners having been acquired, an award was passed by the Special Land Acquisition Officer (for short, "the SLAO"). On reference, the Civil Court has enhanced the compensation as per the judgment and award passed in LAC No. 591 of 1994, as modified in MFA No. 1402 of 1997 and the cross objection filed by the claimants. Petitioners filed execution petition in E.P. No. 60 of 2002. They calculated the market value and the compensation payable as enhanced along with interest on the solatium and additional amount payable apart from interest on the market value. The Executing Court considering the objections filed by the SLAO has found that as per the decision of the Apex Court in the case of Gurpreet Singh Vs. Union of India (UOI), , the claimants were entitled for interest on solatium and additional market value only from 19-9-2001. Thereafter, it has proceeded to record a finding that the claimant-decree-holders had wrongly calculated interest on solatium and additional market value for the period prior to 19-9-2001 and therefore, the memo of calculation was not sustainable in law.

2. A careful perusal of the order under challenge discloses that the judgment-debtors also did not file any memo of calculation. The Executing Court, without

finding out the actual amount due and payable by the SLAO and merely on the ground that the claimant-decree-holders had claimed interest for the period prior to 19-9-2001 which was contrary to the judgment of the Apex Court referred to supra, dismissed the memo of calculation, filed and proceeded to close the execution proceedings. This approach of the Executing Court is clearly erroneous, inasmuch as no attempt has been made to find out the actual amount due and payable by the SLAO to the petitioners, whose land has been acquired.

3. It is for this reason, this Court directed the learned Government Advocate and the respondent-SLAO, M.I.P., Gulbarga to file a memo of calculation. Pursuant to the same, a memo of calculation dated 17-1-2013 has been filed. In the said memo, it is stated that as on 26-11-2010, the actual amount to be paid to the claimants is Rs. 3,98,750/-, but excess amount of Rs. 7,84,339/- has been deposited in E.P. No. 60 of 2002 under protest.

4. It is not necessary for this Court to examine the actual amount due and payable as per the judgment and decree passed by the Civil Court as modified by this Court. The said exercise has to be undertaken by the Executing Court. It has failed to undertake such an exercise.

5. However, as rightly pointed out by the learned Counsel for the petitioners, admittedly a sum of Rs. 3,98,750/- is the amount to be paid even as per the calculation of the respondent.

6. The Executing Court has to examine the matter taking note of the memo of calculation filed by the SLAO, the memo of calculation filed by the petitioners and the revised memo of calculation to be filed by the claimants. Memos of calculation filed before this Court along with this order shall be transmitted to the Executing Court by keeping the Xerox copies of the memos in the file of this case. The Executing Court is directed to pass an order after hearing both parties and record its findings regarding the actual amount due and payable by the SLAO to the claimants and thereafter, proceed in the execution proceedings in accordance with law as expeditiously as possible. The claimants shall be immediately paid the admitted amount of Rs. 3,98,750/-. The claimants are permitted to file a revised memo of calculation reflecting the amount due as of now before the Executing Court. This petition stands disposed of accordingly.