
(2015) 09 SHI CK 0070
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 94 of 2015

Chief Executive Officer-cum-Secretary	APPELLANT
Vs	
Kewal Singh and Others	RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Constitution of India, 1950 — Article 141, 142
Land Acquisition Act, 1894 — Section 11, 23 (1A), 23(1A), 28, 31

Citation : (2015) 09 SHI CK 0070

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : C.N. Singh, for the Appellant

Final Decision : Allowed

Judgement

Sureshwar Thakur, J—Respondents despite service not present either personally or through authorized counsel. Hence, proceeded against ex-parte. The instant civil revision petition is directed against the impugned order rendered by the learned Additional District Judge-1, Solan, Camp at Nalagarh on 9.10.2014 in an execution petition preferred before it, by the respondents herein.

2. The learned Additional District Judge, Solan while adjudicating upon the execution petition preferred before it by the respondents-claimants proceeded to allow the claim ventilated therein by the respondents-claimants, by applying the ratio of the judgement of the Hon'ble Apex Court reported in Gurpreet Singh v. Union of India 2007(1) Apex Court Judgements 751 (SC). The relevant para 44 stands extracted hereinafter:--

"44. One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in Courts all over the country, we permitted counsel to address us on that question. That question is whether in the light of the decision in Sunder (supra), the awardee/decreed holder would be entitled to claim interest on

solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negated either expressly or by necessary implication by the judgment or decree of the reference court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on *Sunder* (supra) on the ground that the execution court cannot go behind the decree. But 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* (supra) 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. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery from the date of the judgment in *Sunder* (September 19, 2001) and not for any prior period. We also clarify that this will not entail any re-appropriation or fresh appropriation by the decree-holder. This we have indicated by way of clarification also in exercise of our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question."

An expostulation exists therein of the Executing Court being empowered to award interest on solatium when the award of the Reference Court or that of the Appellate Court omits to explicitly or expressly bespeak the factum of awarding of interest on solatium or when the aforesaid claim is unventilated therein besides it having been rejected either expressly or impliedly by both the Reference Court or the Appellate Court, whereas merely interest on compensation stands awarded. The empowerment of the Executing Court to award interest on solatium in the wake of occurrence of the afore referred eventualities is not plenary rather is trammled by the existence of a rider thereon imposed by the relevant portion of the judgement of the Hon'ble Apex Court extracted hereinabove, inasmuch as the entitlement of the claimants to canvass for the awarding of interest on solatium before the Executing Court would be barred or thwarted, in the event of non existence of the eventualities aforesaid or in the event of a claim for interest on solatium when ventilated having stood negated either expressly or by necessary implication by the awards of both the Reference Court or the Appellate Court. Besides, in the wake of the execution petition having stood terminated it would be impermissible for the Executing Court to award interest on solatium even when the contingencies spelt out by the Hon'ble Apex Court in the relevant portion of its judgement which stands extracted hereinabove prevail or exist for constraining the Executing Court to award interest on solatium. In other words, the claim aforesaid would be open to be canvassed by the claimants only during the pendency of an execution

petition. In the instant case, the learned counsel for the petitioner has drawn the attention of this Court to the factum of the petitioner herein in satisfaction of the renditions of both the Reference Court and of the Appellate Court having, as mentioned in para 4 of the instant revision, tendered a sum of Rs. 35,135/-. In sequel, the renditions of both the Reference Court and Appellate Court stood satiated besides fully satisfied hence executed. In the face of the petitioner herein having satisfied the renditions of the Reference Court as well as of the Appellate Court, as such, having executed the awards of both the Reference Court as well as of the Appellate Court, there was no occasion for the claimants to have instituted an execution petition claiming therein the award of interest on solatium in tandem with the verdict of the Hon''ble Apex Court. In other words, the deposit by the petitioner of the entire awarded amount of compensation determined by both the Reference Court and by the Appellate Court is construable to be constituting execution by it of the awards of both the Reference Court and the Appellate Court. Moreover, with the factum of deposit by the petitioner in compliance with the renditions of both the Reference Court and the Appellate Court of the entire awarded amount of compensation assessed in favour of respondents-claimants, the relief as canvassed by the petitioner herein, fell rather within the ambit of the trammel or fetter to the empowerment created in the executing Court by the afore referred verdict of the Apex Court, to the awarding of interest by it on solatium in the event of its having been not claimed besides necessarily neither standing rejection impliedly or expressly by both the Reference Court and the Appellate Court, inasmuch as it stood encompassed within the domain of the exception to it, constituted in the executing Court being disempowered to accord the relief as afforded by it in favour of the respondents-claimants in the impugned order, in the event of execution of the award of both the Reference Court and the Appellate Court for reasons aforesaid no longer subsisting. Now, in the face of the petitioner herein having by its act of depositing the entire awarded amount of compensation in pursuance to the renditions of the Reference Court and the Appellate Court, hence executed the awards aforesaid in entirety, the launching of an execution by the claimants for award of interest on solatium on the strength of the principle mandated in the judgement of the Hon''ble Apex Court, would tantamount to not only sequestering infraction of the mandate of the verdict of the Hon''ble Apex Court interdicting its being awarded in favour of the claimants when the execution of the award both in reference as well as by this Court stood hence satisfied besides closed besides would result in the reopening of the amount awarded by both the Reference Court and the Appellate Court, which would be grossly impermissible. In coming to the conclusion that once the petitioner herein has deposited the entire amount of compensation as comprised in the awards of both the Reference Court and of the Appellate Court it constitutes execution by it of the awards aforesaid hence estopping the respondents-claimants besides barring them to seek reopening of the amount assessed, determined and deposited by the petitioner herein, this Court gains succor from paragraph 28 of the judgement of the Hon''ble Apex Court reported in Gurpreet Singh (Supra), which stands extracted hereinafter:--

"28. Going by this principle and for the moment keeping out the scheme of the Land Acquisition Act, it appears to us that on payment or deposit of the amount awarded by the Collector in terms of Section 11 read with Section 31 of the Act, the claimant cannot thereafter claim any interest on that part of the compensation paid to him or deposited for the payment to him once notice of deposit is given to him. Thereafter, when the reference court enhances the compensation with consequential enhancement in solatium and interest under Section 23(1A) of the Act and further awards interest on the enhanced compensation in terms of Section 28 of the Act, the claimant/deGREE holder can seek an appropriation of the amounts deposited pursuant to that award decree, only towards the enhanced amount so awarded by the reference court. While making the appropriation, he can apply the amount deposited, first towards the satisfaction of his claim towards interest on the enhanced amount, the costs, if any, awarded and the balance towards the land value, solatium and the payment under Sections 23 (1A) of the Act and if, there is a shortfall, claim that part of the compensation with interest thereon as provided in Section 28 of the Act and as covered by the award decree. Once the sum enhanced by the reference court, along with the interest is deposited by the State, there will be no occasion for the claimant/awardee to seek a reopening of the amount awarded by the Collector, substituted by the amount awarded by the reference court and seek to have a re-appropriation of the amount towards what is due. Same would be the position in a case where the amount awarded by the reference court, including the interest is deposited, but the amount is further enhanced in appeal by the High Court. Again, the same principle would apply. The principle would continue to apply when the Supreme Court awards further enhancement in a further appeal to that Court. But if after the award by the reference court the amount is not deposited by the State, interest would run on the compensation in terms of Section 28 of the Act on that amount as provided in Section 28. The same would be the position regarding the enhancement given in appeal by the High Court and in the enhancement given in appeal by the Supreme Court. The mandate of Section 34 and Section 28 that interest would run from the date the Collector takes possession till the particular amount is deposited as provided in those sections ensures that the claimant is recompensed adequately. Section 28 ensures such recompense at each stage of enhancement of compensation."

3. For the foregoing reasons, there is merit in the petition. The same is allowed and the impugned order is set-aside.