(2007) 02 BOM CK 0096

In the Bombay High Court

Case No : Miscellaneous Civil Application No. 593 of 2006

Dr. Ramesh Mulgaonkar APPELLANT

Vs

Special Land Acquisition Officer (N) and Another RESPONDENT

Date of Decision : 05-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 41 Rule 5
Land Acquisition Act, 1894 — Section 11, 18, 23(1), 23(1A), 23(2)

Citation : (2007) 02 BOM CK 0096

Hon'ble Judges : S.K. Shah, J;N.A. Britto, J

Bench : Division Bench

Advocate : Sanjay Sardessai, for the Appellant; S.R. Rivonkar, Additional Government Advocate, for the Respondent

Judgement

1. The short question for our consideration is whether the applicant is entitled to Rs. 70,744/- by way of interest u/s 28 of the Land Acquisition Act, 1894(Act, for short). In other words whether the respondents liability to pay interest at the rate of 15% in terms of Section 28 of the Act would cease after the respondents deposited the amount as per the award by the Reference Court, pending appeal before this Court? Heard the Learned Counsel on behalf of both the parties. The said question arises in the background of the following facts.

2. The applicant''s land admeasuring about 14,200 sq. meters of survey no.92/7 situated at Tivim was acquired by the respondents by virtue of Notification issued u/s 4 of the Act dated 13-10-1995 and the L.A.O. was pleased to award to the applicant compensation at the rate of Rs. 20/- per sq. meter. Dissatisfied with the said award, the applicant approached the Reference Court and the Reference Court by award dated 13-5-2003 was pleased to enhance the compensation to Rs. 110/- per sq. meter with consequential statutory benefits. The respondents being dissatisfied with the award of the Reference Court approached this Court and this Court by award dated 28-2-2005 was pleased to reduce the compensation at the rate of Rs. 50/- per sq. meter. The applicant approached the

Apex Court and the Apex Court by Judgment dated 21-7-2006 was pleased to again enhance the compensation at the rate of Rs. 75/- per sq. meter.

3. At the time of filing the appeal before this Court the execution of the award of the Reference Court was stayed by this Court by Order dated 6-11-2003 upon the applicant depositing an amount of Rs. 31,65,193/- which amount was ordered to be invested. On 10-10-2006, after the respondents gave their no objection, an amount of Rs. 20,79,993/- with accrued interest was allowed to be withdrawn by the applicant and as a result the applicant withdrew a sum of Rs. 24,50,373/- excluding T.D.S. of Rs. 37,779/-.

4. The Learned Counsel on behalf of the applicant submits that the deposit made by the respondents to stay the execution of the award did not yield any benefit to the applicant and that the deposit was in terms of Order 41 C.P.C. in that the execution of the decree was stayed upon the respondents depositing the amount of the award. In other words, the Learned Counsel submits that the said deposit was conditional and the applicant was unable to withdraw the amount deposited by the respondents. The Learned Counsel further submits that in case the said amount was deposited by the respondents before the Reference Court, being the Executing Court, and in the event the applicant was at liberty to withdraw the amount deposited, only then that the interest payable in terms of Section 28 of the Act at the rate of 15% would cease to run against the respondents. On the other hand, the Learned Counsel on behalf of the respondents submits that the respondents had deposited the decretal amount before this Court and the Court referred to in the case of Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, would be the Reference Court as well as the Appellate Court. The Learned Counsel further submits that after the deposit was made, the applicant was free to apply to this Court and obtain the amount and at no time the respondents stopped the applicant from doing so. The Learned Counsel submits that it would make no difference in which Court the amount is deposited.

5. Before we consider the submissions made, it would be necessary to refer to certain provisions of the Act and the authorities on which reliance has been placed on behalf of the applicant. Section 3(d) defines the expression "Court" to mean a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed(as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act. Section 28 of the Act, with which we are concerned, provides that the Collector may be directed to pay interest on excess compensation. It provides that, if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of 9% per annum from the date on which he took possession of the land to the date of payment of such excess into Court. Provided that the award of the Court may also direct where such excess or any

part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of 15% per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.

6. One of the questions which came up for consideration in Prem Nath Kapur and another v. National Fertilizer Corpn. of India Ltd. and others(supra)(three Judge decision of the Hon''ble Supreme Court) reported in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, was as to when the liability of State to pay interest ceased and in answering the said question the Apex Court observed in para 13 that the liability to pay interest on the amount of compensation determined u/s 23(1) continues to subsist until it is paid to the owner or interested person or deposited into Court u/s 34 r/w Section 31. Equally the liability to pay interest on the excess amount of compensation determined by the Civil Court u/s 26 over and above the compensation determined by the Collector/L.A.O. u/s 11 subsists until it is deposited into Court. Proprio vigore in case of further enhancement of the compensation on appeal u/s 54 to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into Court. The liability to pay interest ceases on the date on which the deposit into Court is made with the amount of compensation so deposited. As held earlier, the computation of the interest should be calculated from the date of taking possession till the date of payment or deposit in terms of Section 28, as the case may be. The Hon''ble Supreme Court has not specified whether the Court referred to is the Reference Court or the Appellate Court. The applicant''s contention is that the Court referred to in the aforesaid paragraph is the Reference Court whilst the contention raised on behalf of the respondent is that the deposit in the Appellate Court in terms of Order 41, Rule 5, C.P.C. would discharge the liability to pay further interest at the rate of 15%, an appeal being the continuation of the original proceedings.

7. The second question which had come for consideration in the case of Prem Nath Kapur and another v. National Fertilizers Corpn. of India Ltd.(supra) as stated in para 4 of the learned Judgment again came for consideration before the Apex Court in the case of Gurpreet Singh Vs. Union of India (UOI), before the Constitution Bench. The Apex Court in Gurpreet Singh v. Union of India(supra) approved the ratio on the aspect of appropriation in the case of Prem Nath Kapur and another v. National Fertilizers Corpn. of India Ltd.(supra) observing that the essential ratio in Prem Nath Kapur and another v. National Fertilizers Corpn. of India Ltd.(supra), on appropriation being at different stages is justified though if at a particular stage there is a shortfall, the awardee/decree-holder would be entitled to appropriate the same on a general principle of appropriation, first towards interest, then towards costs and then towards the principal, unless of course, the decree otherwise directs. The Constitution Bench also held that Prem Nath Kapur and another v. National Fertilizers Corpn. of India Ltd.(supra) also correctly indicates that when an award-decree is passed specifying the amounts

under different heads, (the decree has to do so u/s 26 of the Act) like the amount u/s 23(1), the amount u/s 23(2), the amount u/s 23(1-A) and the interest u/s 28 and the judgment-debtor makes a deposit for specified sums under these different heads, it would amount to the judgment-debtor intimating the decree-holder as to how the sum deposited is to be applied in discharge of the obligation of the judgment-debtor. Once a decree-holder receives the payment of the sums thus deposited, he would be accepting the appropriation made by the judgment-debtor under the award-decree in the scheme of the Land Acquisition Act and would not be entitled to seek an appropriation as if the judgment-debtor has not made any intimation and that he is entitled to appropriate at his own volition.

8. Earlier, another Constitution Bench in the case of Sunder Vs. Union of India, had held that interest was payable on solatium/additional compensation envisaged u/s 23(2) of the Act for the purposes of Section 28 r/w Section 34 observing that the solatium envisaged in sub-section(2) in consideration of the compulsory nature of the acquisition is thus not the same as damages on account of the disinclination to part with the land acquired.

9. Reverting to Gurpreet Singh v. Union of India (supra) the Supreme Court has observed that in the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed u/s 11. Obviously, the award takes in all the amounts contemplated by Section 23(1), Section 23(1-A), Section 23(2) and the interest contemplated by Section 34 of the Act. The whole of that amount is paid or deposited by the Collector in terms of Section 31 of the Act. At this stage, no shortfall in deposit is contemplated, since the Collector has to pay or deposit the amount awarded by him. If a shortfall is pointed out, it may be made up at this stage and the principle of appropriation may apply, though it is difficult to contemplate the partial deposit at that stage. On the deposit by the Collector u/s 31 of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and the withdrawal or acceptance of the amount with or without protest.

10. The second stage occurs on a reference u/s 18 of the Act. When the Reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable u/s 23(1), Section 23(1-A), Section 23(2) and interest on the enhanced amount as provided in Section 28 of the Act and costs in terms of Section 27. The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference. It would not be necessary to refer to the third and the fourth stages referred to by the Constitution Bench in paras 34 and 35 of the learned Judgment. In para 28, the Constitution Bench further observed that "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 enhancement given in appeal by the High Court and in the enhancement given in appeal by the Supreme Court. The mandate of Sections 34 and 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. Section 28 ensures such recompense at each stage of enhancement of compensation".

11. Admittedly, in the case at hand, the respondents did not deposit the enhanced compensation along with interest for the purpose of enabling the applicant to receive the same either in Reference Court or before this Court but did it as one of the conditions of stay of execution of the decree-award in terms of Order 41, Rule 5, C.P.C. The Court ordered the said amount to be deposited and what the applicant has been able to obtain on the amount so deposited and invested is interest at the rate of 5.5% which accrued on account of the deposit being made in the Bank. The applicant thereby has been deprived of 9.5% of interest since the law provides that interest payable on enhanced compensation after one year is 15% relatable to the date of possession being taken. The observations of the Constitution Bench in para 52 of Gurpreet Singh v. Union of India(supra)is no answer to respondent''s contention. It reads thus:

What is to happen when a part of the amount awarded by the Reference Court or by the appellate court is deposited pursuant to an interim order of the appellate court or of the further appellate court and the awardee is given the liberty to withdraw that amount? In such a case, the amount would be received by the decree-holder on the strength of the interim order and the appropriation will be subject to the decision in the appeal or the further appeal and the direction, if any, contained therein. In such a case, if the appeal is disposed of in his favour, the decree-holder would be entitled to appropriate the amount already received by him pursuant to the interim order first towards interest then towards costs and the balance towards principal as on date of the withdrawal of the amount and claim interest on the balance amount of enhanced compensation by levying execution. But on the part appropriated towards the principal, the interest would cease from the date on which the amount is received by the awardee. Of course, if while passing the interim order, the court has indicated as to how the deposited amount is to be appropriated, that direction will prevail and the appropriation could only be done on the basis of that direction.

12. The applicant was certainly free to apply to the Court to receive the enhanced compensation along with interest but under no circumstances the applicant would have been allowed to withdraw the same without further conditions being imposed upon him by way of security or otherwise. In other words, the applicant was not free to receive the amount deposited by the applicant of enhanced compensation along with interest, in terms of Order 41, Rule 5, C.P.C. In our view, interest on enhanced compensation would have

ceased to run only in case the respondents had deposited the amount with a view of paying the same to the applicant in the Reference Court. In other words, the expression Court in Section 28 of the Act or for that matter in Judgment of Prem Nath Kapur and another v. National Fertilizers Corpn. of India Ltd. and others(supra) could only be the Court as defined in Section 3(d) of the Act i.e. Reference Court. In case the applicant was ultimately not entitled to the same on account of the Respondents succeeding in the appeal filed by them then the respondents would certainly have been entitled for restitution. In our view, the liability to pay interest on enhanced compensation would cease only in case the respondents had deposited the amount of the award-decree in satisfaction of the decree and with a view to enable the decree-holder to withdraw the same. In the case at hand, the respondents deposited the amount of the award-decree as a condition for staying the execution of the decree. There can be no dispute that the applicant would have been at liberty to apply for withdrawal of the same but the same would not have been released in his favour unless he gave necessary security. By the instant deposit and its subsequent investment all that the decree-holder has been able to obtain is 5.5% interest on the enhanced amount of compensation depriving the applicant of the balance of 9.5% since the law mandates that interest is payable on enhanced compensation at the rate of 15% after the expiry of the period of one year. In this context, reliance could be placed on a three Judge decision of the Apex Court in the case of P.S.L. Ramanathan Chettiar and Others Vs. O. Rm. P. Rm. Ramanathan Chettiar, wherein the Apex Court has stated that the fact of a judgment-debtor''s depositing a sum in Court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the Order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the Court allows him to do so and on his losing the appeal putting the decretal amount in Court in terms of Order 21, Rule 1, C.P.C. in satisfaction of the decree. The Apex Court has stated that the real effect of deposit of money in Court as was done in that case was to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor. It was also contended before the Apex Court that at any rate the decree-holder cannot claim any amount by way of interest after the deposit of the money in Court and the said contention was rejected because the deposit in that case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the Order. The deposit was not in terms of Order 21, Rule 1 C.P.C. and as such, there was no question of the stoppage of interest after the deposit.

13. The same principle is also applicable in the case at hand.

14. In view of the above, the applicant is bound to after deducting 5.5% of interest paid to him. The said amount shall be paid to the applicant and the balance with accrued interest to the respondents. Application disposed of on the above terms.