
(2018) 04 MP CK 0014
In the Madhya Pradesh High Court
Case No : Writ Petition No.7263 OF 2015

Gas Authority Of India Limited	Vs	APPELLANT
Tejpal Decd. Thr. Ramesh And Others		RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 23(1), 23(1A), 28

Citation : (2018) 04 MP CK 0014

Hon'ble Judges : VIVEK RUSIA, J

Bench : Single Bench

Advocate : Jyoti Tiwari, O.P.Arya, Swati Ukhale

Final Decision : Dismissed

Judgement

THE petitioner/judgment-debtor has filed the present petition being aggrieved by the order dated 16.09.2015 passed by the learned Executing Court in

Land Acquisition Case No.58/96/2012 directing the judgmentdebtor to deposit the amount of interest.

[2] The petitioner is a Company registered under the provisions of the Companies Act which is fully owned and controlled by the Government of

India. Certain land of the Village Chikli, Tehsil Tarana, District Ujjain was acquired for construction of gas platform. After completing the process

prescribed under the Land Acquisition Act, an award was passed on 16.10.1995 in favour of the Respondents directing payment of compensation @

Rs.24,399-00 per hectare along with solatium and interest.

[3] Being dissatisfied with the amount of compensation, the land owners sought a Reference before the Collector and thereafter a dispute was

referred to the District Judge. The learned Additional District Judge rejected the reference and maintained the award passed by the Land Acquisition

Officer. Being aggrieved by the award passed by the Additional District Judge dated 13.01.2001, all the land owners preferred first appeals before this

Court. By judgment dated 01.11.2011 this Court has partly allowed the appeals by enhancing the price of the land @ Rs.93,35000 per hectare in place

of @ Rs.24,399-00 per hectare. This Court has also held that the appellants are also entitled to claim interest on solatium, to be calculated on the basis

of enhanced rate of land determined by the Court as per the rate mentioned in Section 28 of the Act. Para 17 of the judgment is reproduced below :-

â??17. In view of the aforesaid discussions all these appeals are allowed. The impugned award of reference Court is partly modified and held that -

(i) Landowners of 12.44 hectares are entitled to claim compensation for their lands, which were acquired under notification dated 8.4.1994, issued

under Section 4 of the Act @ Rs.93,350/per hectare instead of Rs.24,399/- per hectare; (ii) All the appellants are entitled to claim interest on solitium

to be calculated on the basis of enhanced rate of land determined by the Court as per the rate mentioned in Section 28 of the Act from the date on

which possession of the land was taken and 15%, if the case of the appellants falls in Proviso to Section 28 abid; (iii) Proportionate costs of the appeal

to be awarded to each claimant/landowners i.e. appellants of these appeals to the extent of enhancement made by the Court in estimate; Counsel fees

in each appeal Rs.3,000/-. A decree be accordingly drawn up in each appeal.â??

[4] After the aforesaid order passed by the High Court, the land owners approached the Reference Court by way of execution proceedings. Before

the Executing Court, the present petitioner came up with the reply that the enhanced amount as directed by the High Court has been deposited along

with the interest. The learned Executing Court after examining the calculation sheet submitted by the petitioner has closed the execution proceedings

by order dated 27.02.2013. Para 17 of the order is reproduced below :-

â??17- bl izdkj ekuuh; mPp U;k;ky; }kjk {kfr/ku jkf'k 93]350@& :i;s izfr gsDVj fu/kkZfjr dh gS tks iwoZ esa Hkw&vtZu vf/kdkjh ds }kjk 24]339@&

:i;s izfr gsDVj dh nj ls fu/kkZfjr dh xbZ Fkh ftl ij ls lksfyf'k;e jkf'k 30 izfr'kr 27]718@& :i;s vkadh xbZ gS vkSj ;g 27]718@& :i;s ij dCtk fnukad 16-06-

94 ls fnukad 16-06-95 rd ,d o""kZ dk 9 izfr'kr C;kt dh nj ls C;kt jkf'k ,oa fnukad 16-06-95 ls fnukad 30-04-12 rd dqy 6]164@& dk 15 izfr'kr dh nj ls C;kt

jkf'k vkSj vihy ykxr feykdj 2]04]142@& :i;s fu.khZr _.kh ds }kjk U;k;ky; esa

fnukad 30-04-12 dks pSd }kjk fu{ksi djf nh xbZ gSA bl izdkj ekuuh; mPp

U;k;ky; ds }kjk vius vkns'k fnukafdr 1-11-11 esa cdk mYys[k gSA ,slh fLFkfr esa fu.khZr _.kh dh vksj ls tks x.kuk i=d izLrqr fd;k x;k gS mlesa fcUnqokj x.kuk ekuuh; mPp U;k;ky; ds mijksDr fu;e dks

ns[krs gq, mfpr :i ls fd;k tkuk nf'kZr gksrk gS vkSj tks x.kuk i=d fMÃ?nkj dh vksj ls izLrqr fd;k x;k gS mlesa fMÃ?h dk [kpZ Hkh tksM+dj ml ij C;kt

yxk fn;k x;k gS tks fd mfpr ugha gSA bl izdkj fu.khZr _.kh ds }kjk ekuuh; mPp U;k;ky; ds }kjk fn, x, vihy fu.kZ; ds vkns'k fnukad 11-11-11 ds vuqlkj

vkSj vf/kfu;e esa of.kZr izko/kkuksa ds vuqlkj gh x.kuk djds mfpr :i ls {kfr/ku jkf'k tek djf nh xbZ gSA vr% vc vkSj vfrfjDr jkf'k fnykbZ tkuk mfpu ugh

gSA fMÃ?hvkj bl jkf'k dks U;k;ky; ls izkIr Hkh dj pqdk gSAâ??

[5] Being aggrieved by the aforesaid order dated 27.02.2013, the land owners filed the writ petition before this Court alleging that the present

petitioner has not paid interest on difference amount awarded by this Court which comes to Rs.92,394-00 in one case. The land owners further alleged

that the additional compensation has also not been awarded under Section 23 (1-A) of the Land Acquisition Act. By order dated 19.09.2013, this

Court has disposed of the writ petition with the direction to the Executing Court to re-consider whether the interest on the enhanced amount is paid or

not or whether additional compensation under Section 23 (1-A) of the Act is paid or not ? The operative part of the order is reproduced below :-

â??In the facts and circumstances of the case, the petition filed by the petitioner is disposed of with a short direction to the learned Court below to

redecide whether interest on the enhanced amount is paid or not or whether additional compensation u/S 23 (1-A) of the Act is paid or not. Learned

Court below after giving an opportunity of hearing to the respondents shall decide this aspect of the case in accordance with law.â??

[6] After remand, both the parties appeared before the Executing Court.

[7] The petitioner argued before the Executing Court that the Executing Court cannot go behind the award for grant of the interest. The learned

Executing Court has rejected the contention on the ground that the interest is payable under the Land Acquisition Act and for which the land owners

can claim the same in execution proceedings. The learned Executing Court has held that the land owners are entitled for interest @ 12% on enhanced

amount as well as on enhanced amount of solatium and thereafter interest @ 9%

on total amount of compensation from 16.06.1994 to 16.06.1995 and thereafter interest @ 15% from 16.06.1995 till payment. The Executing Court has also directed to adjust the amount already paid to the land owners.

[8] The petitioner has assailed the aforesaid order of the Executing Court on the ground that the amount awarded by the High Court vide order dated

01.11.2011 has already been paid. The land owners are not entitled any amount over and above. The Executing Court cannot go behind the decree or

the award passed by the Land Acquisition Officer. The Executing Court cannot reopen the entire case which has already been closed by order dated

27.02.2013. The Respondents being land owners are not entitled interest @ 12% on enhanced amount also because the same was not awarded by the

High Court.

[9] The aforesaid contention of the petitioner is not tenable because the Land Acquisition Officer vide award dated 16.10.1995 has already held that

the claimants are entitled for interest @ 12% under Section 23 (1) of the Act from the date of notification issued under Section 4 (1) of the Act till

possession or the passing of the award. The relevant para of the award is reproduced below :-

“9- vf/kfu;e dh /kkjk 23¼1½ ds vuqlkj {kfr/ku ds vfrfjDr /kkjk 4¼1½ dh vf/klwpuk izdk'ku ds fnukad ls dCtk fnukad rd ;k vokMZ fnukad

rd tks igys vk;s 12 izfr'kr vfrfjDr {kfr/ku lkykuk nj ls fnyk;s tkus dk izko/kku gSA izdj.k esa vtsZUIh izHkko ds izko/kku ykxw gksus ls vokMZ ds iwoZ

dCtk fnyk;k tk pqdk gSA vr% /kkjk 4¼1½ dh vf/klwpuk tkjh djus ds fnukad ls dCtk fnukad 12 izfr'kr vfrfjDr {kfr/ku lkykuk nj ls fnyk;k x;k gSA”

[10] The High Court in the first appeals vide judgment dated 01.11.2011 has only enhanced the value of the land from Rs.24,399-00 to Rs.93,350-00.

The remaining award has not been disturbed or set-aside. Even otherwise the Gas Authority of India did not challenge the award passed by the Land

Acquisition Officer, therefore, any claim awarded in favour of the land owners by Land Acquisition Officer or Reference Court cannot be taken away

in the appeal filed by land owners. Therefore, the Executing Court has not committed any error of law while directing the petitioner to pay the interest

payable under Section 23 (1-A) of the Act because the same has already been awarded by the Land Acquisition Officer.

[11] The Constitution Bench of the Supreme Court in the case of Gurpreet Singh

v/s Union of India [(2006) 8 SCC 457] has held that when in appeal the High Court enhanced the compensation, the enhanced compensation would also bear interest on the enhanced portion of the compensation. Para 32, 33 and 34 are reproduced below :-

32. While making one third deduction towards development cost, the learned single Judge did not keep in view the two essential components of deduction for development. Deduction for development consists of two components:- firstly, appropriate deduction to be made towards the area required to be utilized for roads, drains and common facilities like parks etc.; secondly, further deduction to be made towards the cost of development, that is cost of levelling the land, cost of laying roads and drains, erection of electrical poles and water lines etc. For deduction of development towards land and development charges, the nature of development, conditions and nature of the land, the land required to be set apart under the Building Rules for roads, sewerage, electricity, parks, water supply etc. and other relevant circumstances involved are required to be considered.

33. In Haryana State Agricultural Market Board And Anr. vs. Krishan Kumar And Ors., (2011) 15 SCC 297, it was held as under:

10. It is now well settled that if the value of small developed plots should be the basis, appropriate deductions will have to be made therefrom towards the area to be used for roads, drains, and common facilities like park, open space, etc. Thereafter, further deduction will have to be made towards the cost of development, that is, the cost of leveling the land, cost of laying roads and drains, and the cost of drawing electrical, water and sewer lines.

34. Consistent view taken by this Court is that one third deduction is made towards the area to be used for roads, drains, and other facilities, subject to certain variations depending upon its nature, location, extent and development around the area. Further, appropriate deduction needs to be made for development cost, laying roads, erection of electricity lines depending upon the location of the acquired land and the development that has taken place around the area.

[12] In the case of Mehrawal Khewaji Trust v/s State of Punjab [(2012) 5 SCC 432] the Apex Court has held as under :-

(24) The other grievance of the appellants is that interest on solatium and

additional market value was not granted.

(25) This aspect has been considered and answered by the Constitution Bench in the case of *Sunder vs. Union of India*, (2001) 7 SCC 211. While

considering various decisions of the High Courts and approving the decision of the Punjab and Haryana High Court rendered in *State of Haryana vs.*

Kailashwati, AIR 1980 P&H 117, this Court held that the interest awardable under Section 28 would include within its ambit both the market value

and the statutory solatium. In view of the same, it is clear that the person entitled to the compensation awarded is also entitled to get interest on the

aggregate amount including solatium.

(26) The above position has been further clarified by a subsequent Constitution Bench judgment in *Gurpreet Singh vs. Union of India*, (2006) 8 SCC

457. Based on the earlier Constitution Bench decision in *Sunder* (supra), the present Constitution Bench held that the claimants would be entitled to

interest on solatium and additional market value if the award of the Reference Court or that of the appellate Court does not specifically refer to the

question of interest on solatium and additional market value or where the claim had not been rejected either expressly or impliedly.

(27) In view of the same, we hold that the appellants are entitled to interest on solatium and additional market value as held in the above referred two

Constitution Bench judgments.â??

[13] The aforesaid view has been followed in the judgment of Apex Court in the case of *Major General Kapil Mehra v/s Union of India* [(2015) 2

SCC 262]. Para 48 and 49 are reproduced below :-

â??48. By going through the judgment of reference court as well as the High Court, we find that the appellants were awarded interest in terms of

Section 34 and Section 28 of the Act. Section 4(1) notification was issued on 19.02.1997. The reference court has not enhanced the compensation

amount; but has only confirmed the award passed by the Collector. However, while dismissing the reference, reference court held that the appellant

shall be entitled to get interest in terms of the provisions of the Act for the period from 19.02.1997 till the date of payment, meaning thereby that the

statutory interest in terms of Section 34 of the Act is payable.

49. When the High Court enhanced the compensation, the High Court held that the appellants shall be paid interest in terms of Section 28 of the Act.

On the enhanced compensation, High Court ordered payment of interest at the rate of 9% from 19.02.1997 to 18.2.1998 and thereafter at the rate of

15% per annum till the date of payment. The relevant portion of the judgment of the High Court reads as under:-

“On the enhanced market value, the appellant shall be paid interest under Section 28 of the Act @ 9% per annum from 19.02.1997, the date of

issuance of Section 4 notification for the first year ending on 18.02.1998 and thereafter, @ 15% per annum till the date of tender of compensation.

Interest shall also be paid on the solatium and the additional amount in view of the judgment of the Supreme Court in the case of Sunder Vs. UOI

reported as 93(2001) DLT 569 (SC).”

Since the statutory interest under Section 34 and also the interest in terms of Section 28 of Act had been awarded to the appellants, we find no merit

in the grievance of the appellants as to the payment of interest.”

[14] In view of the above, I do not find any infirmity or illegality in the order.Â Hence, the petition is dismissed. Since the execution case is still

pending before the Executing Court, therefore, both the parties are directed to appear before the Executing Court.