
(2011) 01 P&H CK 0117

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3808 of 2010 (O and M)

Hansi Improvement Trust

APPELLANT

Vs

Narinder Kumar Jain and Others

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Constitution of India, 1950 — Article 141, 142, 227

Citation : (2011) 01 P&H CK 0117

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Judgement

Ram Chand Gupta, J.—The present revision petition has been filed under Article 227 of the Constitution of India for quashing of order dated 19.05.2010, Annexure P7, passed by learned Civil Judge(Senior Division), Hisar in the execution petition filed by the present Respondents holding that the Petitioner-judgment debtor is still liable to pay an amount of Rs. 67,59,796/-as per the calculation upto 25.01.2010 alongwith interest till its realization and the date has been fixed for payment on 31.05.2010.

2. I have heard learned Counsel for the parties and have gone through the whole record including the impugned order passed by learned trial Court.

3. It has been contended by learned Counsel for the Petitioner-judgment debtor that learned executing Court while passing impugned order has calculated interest on solatium from the date of award whereas the same should have been calculated from 19.09.2001 in view of pronouncement of judgment by Hon''ble Supreme Court in 2008(2) RCR 207, Gurpreet Singh v. Union of India. Hence, it is contended that impugned order, Annexure P7 passed by learned executing Court be modified to this extent only.

4. On the other hand, it has been contended by learned Counsel for the Respondents No. 1 to 24 that in this case the interest on solatium has been specifically allowed by learned reference Court as well as by this Court and that

hence, ratio of Gurpreet Singh's case (supra) is not applicable to the facts of the present case and hence, it is contended that learned executing Court has rightly calculated the interest on solatium from the date of award.

5. Admitted facts are that, after passing of award by learned reference Court, Civil Writ Petition No. 5290 of 1983 was filed by Respondents-Petitioners for enhancement of compensation which was decided by this Court vide order dated 11.10.2006. The operative para is reproduced as under:

In view of the fact that it has been held that the belting system was not warranted in the facts of the present case and that the compensation of the entire land would be at a uniform rate, therefore, I award a compensation at the rate of Rs. 150/-per sq. yard for the entire land acquired. The Petitioners are also held entitled to solatium at the rate of 30% per annum and interest at the rate of 9% for the first year and 15% thereafter. The petition is accordingly allowed in the above terms. The awards of the Tribunal and the Assessors (Annexures P-4 & P-5) are accordingly set aside and compensation is awarded to the Petitioners in the manner indicated above.

6. The judgment passed by learned reference Court has been merged into the judgment passed by this Court vide which market value of the acquired land was enhanced and the Respondents-Petitioners were granted compensation at the rate of Rs. 150/-per sq. yard for the entire land acquired. Against the said judgment Petitioner also filed SLP before Hon''ble Supreme Court and however, the same was dismissed.

7. The operative part of relevant paragraph of Gurpreet Singh's case (supra), reads as under:

54. 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 negatived 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.

8. Hence, as per the aforementioned observation of Hon"ble Apex Court, if interest on solatium has not been specifically allowed by learned reference Court or by learned appellate Court, Petitioner was entitled for interest on solatium from the date of judgment in Sunder v. Union of India 2001(4) RCR 727 i.e. 17th September, 2001 and for not any period prior to that.

9. Perusal of aforementioned judgment passed by this Court shows that interest on solatium has not been specifically allowed by this Court. Rather Respondents-Petitioners were held to be entitled to solatium at the rate of 30% and interest at the rate of 9% for the first year and 15% thereafter on the enhanced rate of compensation i.e. at the rate of Rs. 150 sq.yards for the entire land acquired. There is force in the argument of learned Counsel for the Petitioner that learned executing Court should have calculated the interest on solatium from 19th September, 2001 and not from the date of award.

10. In view of the above discussion, the present revision petition is accepted to this extent and the impugned order is modified to the extent indicated above that Respondents are entitled for interest on solatium from 19th September, 2001 and not from the date of award.

11. The revision petition is disposed of accordingly.