

(2004) 06 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : CMP (C) No's. 264 of 2002 and 160 of 2003

Raj Kumar Raman Dev Singh and Others	APPELLANT
Vs	
Union of India (UOI) and Another	RESPONDENT

Date of Decision : 10-06-2004

Acts Referred:

Jammu and Kashmir Land Acquisition Act, 1990 — Section 16, 23, 23(1), 28, 34

Citation : (2005) 2 JKJ 246

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Advocate : J.P. Singh, for the Appellant; S.S. Nanda, Sr. CGSC, for the Respondent

Judgement

S.K. Gupta, J.—On the basis of final judgment dated 30-05-2002 passed by this Court, while disposing of CIA No. 42 of 1999 and CIA

(Cross Appeal) 2/2000, the petitioners (decree holders) preferred an application claiming recovery of an amount of Rs. 3,05,20,624,30.00. It was

during the currency of the execution petition of the petitioners (decree-holders), the judgment debtors deposited an amount of Rs. 2,70,49,377/-

through a Cheque and the same was allowed to be released pending finality of the execution application. It is stated that the Cheque amount has

been received after deducting Rs. 35,000/- as collection charges by the Bank. The collection charges were required to be borne by the judgment

debtors (respondents) as they were required to pay the decretal amount in terms of the judgment passed by this court. The petitioners have filed

another application being CMP No. 160 of 2003. In this application, the petitioners (decree-holders) have given details of the accounts in para

No. 4 of the application, facilitating the Court to determine the actual amount,

still payable to the decree holders which reads and is reproduced as under;

(1) Amount of compensation awarded by the Rs. 1,74,72,534.00
Collector

(2) 15% Solatium on the aforesaid amount Rs. 26,20,880.10
comes to

(3) Amount received from the Collector Rs. 2,00,93,414.00

(4) Amount of compensation awarded by the Rs. 3,53,96,700.00
Hon'ble High Court

(5) Solatium. @ 15% comes to Rs. 53,09,505.00

(6) Total amount awarded by the Hon'ble High Rs. 4,07,06,205.00
Court as compensation to the decree holders

(7) Deducting the amount received by the decree Rs. 2,06,12,791.00
holders from the Collector, the net amount
payable by the judgment debtors to the
decree holders come to

(8) The possession of the property had been with
the judgment debtors even at the time of the
award of the Collector. Calculating the
amount of interest payable by the judgment
debtors to the decree holders w.e.f. the date
of award, the amount of interest comes as
follows:

Interest on an amount of is Calculated as Rs. 2,06,12,791
follows:

(a) For the first year from 16.7.1996 to Rs. 12,36,767.40
15.7.1997 @ 6% p.a.

(b) For the next five years from 16-07-1997 Rs. 1,03,06,395.00
to 15-07-2002 @ 10% in terms of Section 35 of
the Jammu and Kashmir Land Acquisition

Act.

(c) For the next 8 months from 16-07-2002 to Rs. 13,74,186.00

15-03-2003 @ 10%

(d) For the remaining 16 days from 16-03- Rs. 90,357.44

2003 to 1st April, 2003 @ 10%

Total interest on the amount of Rs. 1,30,07,705.00

Compensation awarded by the court

9. Grand total amount of compensation

awarded by the Hon'ble Court and interest

thereon is summarized as follows:

(a) Total amount of compensation awarded Rs. 2,06,12,791.00

by the Hon'ble Court and due to the

petitioners.

(b) Total interest on amount of Rs. 1,30,07,705.00

Compensation awarded by the Hon'ble Court

till date of deposit.

(c) Amount of cost awarded by the Hon'ble Rs. 99,582.00

Court.

(d) Amount of compensation thus payable Rs. 3,37,20,078.00

comes to

(e) Amount received by the petitioners Rs. 2,70,14,377.00

Amount payable by the judgment Debtors to Rs. 67,05,701.00

the petitioners.

2. The decree holders (petitioners) further prayed for a direction to the judgment debtors to pay Rs. 67,05,701.00 alongwith interest @ 10% p.a.

claimed under the decree made in the aforesaid judgment. Judgment debtors (Union of India), respondents in their reply admitted that an amount of

Rs. 2,70,49,377/- was deposited in the name of the Registrar Judicial through Cheque. The Bank has wrongly deducted collection charges of an

amount of Rs. 35,000/- and refuted the liability to pay the collection charges. In reply to para-4, the Union of India (respondents), judgment

debtors, admitted the claim of the decree holders specified in subparagraphs (i) to (iii). With regards to subparagraph-(iv), the amount of compensation awarded by the High Court was also not disputed, but, however, submitted that cost of moveable property of Rs. 1,56,700.00/-, as was awarded, is not covered under the provisions of J&K Land Acquisition Act (hereinafter referred to as "the Act"). Sub-paragraph-(v) of the petition was also not denied. As regards to Sub- paragraph-(vi), though contents are not denied, but submitted that total amount awarded by the High Court works out to Rs. 4,07,06,205/-including the cost of moveable property which is not covered under the provisions of Jammu & Kashmir Land Acquisition Act. It is further stated that the amount of Rs. 2,06,12,791/- payable to the decree holders includes the balance solatium of Rs. 26,88,625/- out of Rs. 53,09,505/- minus Rs. 26,20,880/- already paid. The judgment debtors further submitted that the formal possession of the property was taken over on 06-01-1997 u/s 16 of Land Acquisition Act. Whereas rental compensation of the property had already been paid up to 5.1.97, the interest, therefore, is stated to be payable only with effect from 6.1.1997 on Rs. 1,79,24,166/- (excluding Solatium) i.e. Rs. 2,06,12,791/- minus balance solatium Rs. 26,88,625/- as per the decree of the High Court dated 30.5.2002. The interest according to the judgment debtors is, therefore, payable from 6.1.1997 to 31.3.2003 i.e. the date when compensation was released/deposited by the Union of India, judgment debtors (respondents) for payment @ 6% under the provisions of Section 28 of the Jammu & Kashmir Land Acquisition Act which works out to Rs. 67,00,201/-. Thereafter the liability of the judgment debtors ceases to pay the interest on the date on which the deposit was made. The judgment debtors, (respondents), therefore, prayed for the settlement of the Court decree as per the statement of accounts indicated in paragraph-4 in their reply.

3. I have heard the learned counsel for the respective parties and also perused the record meticulously.

4. Mr. S.S. Nanda, learned Sr. CGSC appearing on behalf of the judgment debtors, (respondents) vehemently urged that the rental compensation has been paid up to 5.1.1997, so the interest is payable with effect from 6.1.1997. His further submission is that no interest is payable to solatium.

To support his contention he has relied upon the judgment of the Apex Court in case reported as Yadavrao P. Pathade (Dead) by Lrs. and Others

Vs. State of Maharashtra, . His further submission is that Section 28 does not comprehend payment of interest of solatium when it expressly

mentions payment of interest on compensation u/s 28 referable to Section 23(1) of the Act. The judgment relied upon by Mr. S.S. Nanda, Sr.

CGSC has been over-ruled by a subsequent decision of the Apex Court rendered as Sunder Vs. Union of India, , where it is held that interest

under Sections 34 and 28 is payable on solatium. Amount awarded in Section 34, means aggregate amount of compensation calculated in

accordance with the provisions of all the sub sections of Section 23 and hence includes solatium. The intention of the legislature is to ensure that the

amount calculated u/s 23 reaches the person concerned at the time of passing of award or taking over possession of the land. Any delay in the

making of such payment, entitles the person to receive interest on the whole amount including solatium. Therefore, submission made by Mr. Nanda

that interest on solatium is not payable does not merit acceptance. It was further submitted by Mr. Nanda that Bank having wrongly deducted Rs.

35,000/- as collection charges, Respondents Union of India, (judgment debtors) are not liable to pay this amount. I do not find any substance in

this contention of Mr. S.S. Nanda as the judgment debtors are under an obligation to ensure that amount calculated u/s 23 of the Act reaches the

person concerned at the time of passing the award or taking over possession of the land. Any expenses, incurred in the mode adopted by the

judgment debtors for payment of the amount awarded, are to be borne by the judgment debtors themselves and not by the decree holders. Taking

an instance that, if the payment is to be made by a Bank draft, all the expenses for preparing the Bank draft of the award amount, payable to the

person concerned, are to be borne by the judgment debtors and not the decree holders. u/s 23 of the Act, the decree holders are entitled to

receive the award amount calculated. The collection charges i.e. Rs. 35,000/- are, therefore, also to be borne by judgment debtors and they

cannot shirk their liability to pay the same to the decree holders. Mr. Nanda, however, during arguments fairly admitted that the cost of moveable

property amounting to Rs. 1,56,700/- included in the amount of award passed by the High Court is payable by the judgment debtors.

5. According to Mr. Nanda, the interest in terms of Section 35 of the Act is payable on the awarded amount only with effect from 6.1.1997 as the rental compensation had already been paid upto 5.1.1997. In this case award has been passed on 16.7.1996. Since the contention of Mr. Nanda has not been rebutted by the decree holders by filing a reply to it, it is taken that rental compensation has been paid up to 5.1.1997. In such circumstances, interest on the awarded amount shall become payable from the date of passing of the award i.e. 16.07.96 and not from 06-01-1997 as the possession of the land undoubtedly was with the judgment debtors. The contention of Mr. Nanda, therefore, is without substance and does not merit acceptance.

6. Consequently, it is ordered that the interest in terms of the Land Acquisition Act on the awarded amount, including salotium shall become payable from the date of the award i.e. 16.7.1996. This shall become payable after giving credit of the amount of award already deposited by the Union of India. The interest on the balance amount shall become payable from the date of the passing of award. As regards the payment of rental compensation up to 6.1.1997, it is clarified that such amount paid after the passing of the award as rental compensation by the Union of India (judgment debtors) shall be appropriated towards the interest component to be paid on the balance awarded amount as worked out and calculated by the decree holders in their application. The awarded amount with interest shall be deposited by the judgment debtors within a period of three months from today, failing which the decree holders shall be entitled to proceed against the respondents, (judgment debtors) for realization of the awarded compensation in accordance with law.

7. The CMP alongwith execution petitions are, accordingly, disposed of.