

(2011) 11 DEL CK 0308
In the Delhi High Court
Case No : CM (M) No. 883 of 2010

Shri Jasrath and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-11-2011

Acts Referred:

Constitution of India, 1950 — Article 141, 142
Land Acquisition Act, 1894 — Section 18, 28

Citation : (2011) 11 DEL CK 0308

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : I.S. Dahiya and Sunil Dahiya, for the Appellant; Sanjay Poddar with Mr. Sanjay Kumar Pathak, Mohitrao Jadhav and Ms. Navlin Swain, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—The issue to be decided is as to whether the interest on solatium under the Land Acquisition Act, 1894 (hereinafter referred to as the "LAC Act") is payable in the instant case.

2. Arguments addressed by both the parties have been appreciated.

3. Order impugned is the order dated 22.12.2009 vide which the review application filed by the decree holder seeking amendment and modification of the order dated 29.4.2009 had been served.

4. Certain dates are undisputed. The Award was passed by the Land Acquisition Collector pursuant to which a reference petition u/s 18 of the LAC Act had been filed; which was disposed on 25.8.1989. The decree holder was dissatisfied with this order; he had filed an appeal before the High Court which was disposed of on 21.5.1999. The original decree was admittedly silent about interest on solatium; the High Court had only granted interest on compensation. On 19.5.2005 the applicant/decreed holder filed a revised statement of account and

sought a re-appreciation of the decretal amount; this was before the executing court. Executing court vide order dated 29.4.2009 accepted this application and in terms of the judgment of Gurpreet Singh Vs. Union of India (UOI), granted this benefit to the applicant which benefit was to accrue to him w.e.f. 19.9.2001; the Nazir was asked to calculate interest. The review petition against this order was dismissed by the impugned order.

5. Contention of the decree holder/applicant is that he should have been granted interest on solatium from the date of his dispossession u/s 28 of the LAC Act and not from 19.9.2001 (date of the pronouncement of the judgment of Sunder Vs. Union of India,). This has rightly been negatived in the impugned order in view of the law pronounced by the Apex Court in the case of Gurmeet Singh (supra). Relevant extract of the said judgment reads as under:

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/decreet 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.

6. This judgment clearly specifies that interest on solatium can be granted in pending executions only from the date of the judgment in the case of Sunder Singh which was delivered on 19.9.2001; not from any period prior thereto; the decree holder will also not have any right for a re-appreciation or a fresh

appropriation. In these circumstances the impugned order suffers from no infirmity. Dismissed.