(2020) 09 MP CK 0180

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2250 Of 2020

State Of M.P. & Another APPELLANT

Vs

Narpat Singh RESPONDENT RESPONDENT

Date of Decision : 16-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 4, 6(1), 18, 23(1), 23(1A), 23(2), 27, 28, 31, 34
Code Of Civil Procedure, 1908 — Order 21 Rule 11 (2)

Citation : (2020) 09 MP CK 0180

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Shreya Raj Saxena, Gaurav Singh Chouhan, Lokesh Arya

Final Decision : Allowed

Judgement

1. This writ petition is filed against the order dated 9.1.2019, passed by the Executing Court, whereby statement of calculation submitted by the land-owners has been upheld and issued a direction to the petitioner/ State of Madhya Pradesh to pay the shortfall amount.

Facts of the case, in short, are as under:-

2. That, the Government of Madhya Pradesh initiated land acquisition proceedings under section 4 of the Land Acquisition Act (hereinafter referred to as "the LA Act") by publishing a notification dated 20.4.2007, thereafter issued a declaration under "section 6 (1), identifying the land admeasuring 18.827 hectare of Village - Khadi and area 51.154 hectare Village - Barodapanth, Total 69.981 hectare of Depalpur Tehsil of Indore District.

3. That, the Land Acquisition Officer by award dated 25.02.2009 assessed the market value for Khadi Village @ Rs.2,36,993/-per hectare for irrigated land and Rs. 1,57,995/- per hectare for unirrigated land. Similarly for Barodapanth Village @ Rs.2,25,315/- per hectare for irrigated land and Rs,1,50,210/- per hectare for

unirrigated land. The Land Acquisition Officer also awarded statutory solatium at the rate of 30% under section 23(2) and additional compensation at the rate of 12% under section 23(1A).

4. The respondents/landowners being dissatisfied with the award of Land Acquisition Officer applied section 18 of the Act, which in turn referred to the District court i.e. the Reference Court for adjudication. Vide award dated 01-11-2011 the learned Reference Court partly allowed the claim by determining the market value of the land @ Rs.3,46,426/- per Hect. for un-irrigated land and Rs.5,19,639/- per Hect. for irrigated land.

5. The respondents/landowners as well as the State Government being dissatisfied with the award passed by the reference Court filed the numbers of First Appeals before this the High Court. Vide common Judgment dated 06.09.2013 passed in F.A. No. 413/2011 and other connected first appeals Division Bench of this court redetermined the market value of the irrigated land @ Rs. 8,00,000/ per hectare and Rs.6,00,000/ per hectare for unirrigated land of both the villages and awarded the proportionate cost of the appeal to each of the appellants/ Claimants/ landowners to the extent of the enhancement made along with Counsel fees in each appeal Rs.1,000/.

6. That, being aggrieved by the above judgment the petitioner/ State made unsuccessful attempts by filling SLPs before the Hon'ble Supreme Court of India

7. According to the petitioner in compliance with the above decisions the balance enhanced amount of compensation Rs.3,71,051/-has been paid on 24.11.2017 to the respondent by depositing before the learned executing court but the respondent by misinterpreting the judgment dated 06.09.2013 passed in F.A.No. 413/2011 has filed the application for the execution of the decree under Order 21 Rule 11 (2) of the Civil Procedure Code for the recovery of the amount balance amount of compensation as on 24. 11. 2017 and interest till its payment.

8. According to the claimants/landowners, still, there is shortfall even after the amount of compensation paid to them therefore, in the execution proceedings, they submitted a statement of calculation to recover the balance amount. The petitioners/State submitted oral objection and also submitted the statement of calculation in respect of the amount calculated and paid to the land-owners. Vide order dated 9.1.2019, learned executing Court has upheld the statement of calculation submitted by the respondents/land-owners and directed the petitioner to pay the shortfall amount, hence the present petitions.

9. There is a delay of more than 1½ years in approaching this Court by way of present Misc. Petition and for which the state of Madhya Pradesh has given an explanation in Para 4 of the petition. Keeping in view the reasons mentioned in the petition and the fact that there is no limitation prescribed for filing the petition under Art 227 of the Constitution of India, the delay in filing the petitions is hereby ignored.

10. According to the petitioner, the respondents have approached to the Executing Court for the recovery of the balance amount based on wrong and erroneous assessment/calculation. That, the amount awarded under Section 23 (1) (A) of the Land Acquisition Act, 1894 is already an interest at the rate of 12% but the respondents have calculated interest on interest, which is impermissible.

11. Shri Shreya Raj Saxena learned Dy. Advocate General and Shri Gourav Singh Chouhan learned penal lawyer appearing for the petitioners/State submitted that the respondents have not submitted the proper calculation and the learned executing Court has misinterpreted the judgment dated 6.9.2013 passed by the Division Bench of this Court. The petitioner State Government is not liable to pay interest on the amount payable as per provisions of section 23(1-A) of the LA Act. The respondents/landowners have also not made a proper appropriation of the amount deposited by the Collector, in view of the Judgment passed by the constitution bench of Apex Court in the case of Gurpreet Singh V/s. Union of India: 2006 AIR SCW 5813 and the learned executing Court has reopened the entire calculation and wrongly appropriated the amount first towards the interest, then towards costs, and then towards the principal and wrongly accepted the statement of calculation submitted by the decree-holder, hence, the impugned order is liable to be quashed and the execution proceedings are liable to be dropped by treating the decree as satisfied.

12. On the other hand, Shri Lokesh Arya, learned counsel appearing for the respondents/landowners, argued that the respondents have rightly calculated the amount payable to them because the amount awarded u/s. 23(1-A) is an additional amount of compensation, not the interest, which becomes part of the compensation u/s. 11, hence the interest payable u/s. 23 and 31 is also liable to be paid on this additional amount of Compensation. The landowners are not claiming the interest on interest. The Division Bench has wrongly used the word 'interest' while awarding the additional compensation u/s. 23(1-A) of the LA Act. So far as appropriation is concerned, as per provisions of Order 21 of the C.P.C. and as per the judgment of Apex Court in the case of Gurpreet Singh (supra), the amount deposited in installments by the Collector is liable to be adjusted first towards the cost then interest and finally towards the principal amount if there is a shortfall, hence no interference is called for and the petition is liable to be dismissed.

I have perused the record and considered arguments advanced by the parties.

13. The Land Acquisition Officer vide award dated 25.2.2009 had assessed the compensation @ Rs.1,50,210/- per Hect. for un-irrigated land and Rs.2,35,315/- per Hect. for irrigated land and also awarded an additional amount of compensation as per 23(1-A) of the LA Act. The Collector after calculating compensation disbursed/deposited it before the competent authority, hence the first stage comes to an end as per the aforesaid Apex court judgment, because there cannot be any shortfall, after all, the collector is bound to deposit the entire amount of compensation.

14. Vide award dated 23.6.2010, learned Additional District Judge, Indore reassessed the market price of the acquired land @ Rs.3,46,426/- per Hect. for un-irrigated land and Rs.5,19,639/- per Hect. for irrigated land and ordered to pay solatium @ 30%. additional compensation u/s. 23(1A) of the LA Act @ 12% from the date of Gazette Notification u/s. 4(1) till the date of the award i.e. 25.2.2009 by the LAO. The learned Reference Court also awarded the interest u/s. 28 of the LA Act @ 9% from 2.4.2009 to 2.4.2010 and thereafter @ 15% per annum till the date of payment of compensation. Since the state, as well as landowners, had filed the first appeals before this court hence above enhanced amount could not have been deposited after completion of stage two.

15. Vide common judgment dated 6.9.2013, the Division Bench of this Court allowed all the first appeals filed by the landowners by further enhancing the market price @ Rs.6.00 Lakhs per Hect. for un-irrigated land and Rs.8.00 Lakhs per Hect. for irrigated land for both the villages. In Para 17 of the judgment, the Division Bench has observed that the land-owners (appellants therein) shall be awarded the interest @ 12% per annum u/s. 23(1-A) of the LA Act regarding the awarded amount from 2.4.2007 to 25.2.2009 and the solatium @ 30% awarded by the Reference Court does not require any interference. The Division Bench also awarded the proportionate cost of the appeal to be awarded to each of the claimant/appellant to the extent of enhancement made by this Court under various heads in the compensation along with counsel fees in each appeal at Rs.1,000/-. After completion of the third stage, the Collecter deposited the enhanced amount of compensation before the Executing Court. Since there is no enhancement of compensation by the Supreme Court of India hence the fourth stage did no reach.

16. The respondents being dissatisfied with the amount of compensation deposited by the petitioner hence they continue to pursue the execution proceedings. As per the statement of calculation submitted by the respondents/ landowners, they have calculated the compensation as per the valuation of the acquired land assessed by the Division Bench of this Court vide the order dated 6.9.2013, thereafter, added the additional compensation u/s. 23(1-A) of the LA Act and solatium @ 30% u/s. 23(2) thereafter appropriated the amount of compensation paid by the Collector in compliance with the award dated 25.2.2009 by the LAO out of the total sum. Thereafter respondents also calculated the interest from 2.4.2009 till one year @ 9% per annum and from 2.4.2010 till 26.3.2016 @ 15% per annum on an extra amount of compensation. They have also erroneously calculated the cost of reference; execution and appeal on the total amount of compensation. The respondents have appropriated the amount deposited by the Collector from the interest amount and thereafter further calculated the interest from 26.3.2016 to 22.11.2017 @ 15% and again appropriated the amount of compensation deposited by the Collector from the interest and thereafter deducted the excess amount from the principal amount and accordingly calculated the shortfall amount payable by the state/petitioner.

17. In my considered opinion, the mode of appropriation projected by the respondents/ landowners is not as per the judgment passed by the Supreme Court of India in the case of Gurpreet Singh (supra). The Apex Court has explained the mode of appropriation in Para 26 to 30 of the judgment, which are reproduced below :

"26. On 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. Obviously, the award takes in all the amounts contemplated by Section 23(1) of the Act, Section 23(1A) of the Act, Section 23(2) of the Act 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 have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage. On the deposit by the Collector under Section 31 of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest.

27. The second stage occurs on a reference under Section 18 of the Act. When the reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under Section 23(1), Section 23(1A), 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.

28. The third stage occurs, when in appeal, the High Court enhances the compensation as indicated already. That enhanced compensation would also bear interest on the enhanced portion of the compensation, when Section 28 is applied. The enhanced amount thus calculated will have to be deposited in addition to the amount awarded by the reference Court if it had not already been deposited.

29. The fourth stage may be when the Supreme Court enhances the compensation and at that stage too, the same rule would apply.

30. Can a claimant or decree holder who has received the entire amount awarded by the reference court or who had notice of the deposit of the entire amount so awarded, claim interest on the amount he has already received merely because the appellate court has enhanced the compensation and has made payable additional compensation? We have already referred to Order XXI and Order XXIV of the Code to point out that such a blanket re-opening of the

transaction is not warranted even in respect of a money decree. Section 28 of the Act indicates that the award of interest is confined to the excess compensation awarded and it is to be paid from the date of dispossession. This is in consonance with the position that a fresh re-appropriation is not contemplated or warranted by the scheme of the Act. But if there is any shortfall at any stage, the claimant or decree holder can seek to apply the rule of appropriation in respect of that amount, first towards interest and costs and then towards the principal, unless the decree otherwise directs." (Emphasis supplied)

18. According to the aforesaid verdict of the Apex Court, there are four stages for assessment of compensation and its disbursement by way of appropriation. The first stage comes after the passing of the award by the LAO; the second stage comes after the award passed by the Reference Court; the third stage comes after the Order passed by the High Court in the first appeal and the fourth stage comes after the order passed by the Apex Court subject to any enactment in market price of the acquired land. According to the Hon'ble Apex Court, at the first stage, after passing of the award passed by the LAO, which takes care of all the amounts contemplated by Section 23(1), 23(1A), 23(2) and interest u/s. 34 of the LA Act the Collector is liable to deposit the whole of the amount u/s. 31 of the LA Act and at this stage, there can't be any shortfall in deposit of amount and the first stage comes to an end. This assessment of compensation is not liable to be reopened or disturbed even after enhancement or reassessment of market price by the Reference Court or High Court or Supreme Court of India.

19. Thereafter second stage occurs after passing of the order passed by the Reference Court subject to the enhancement the amount of compensation by taking note of the amount payable u/s. 23(1), 23(1A), and 23(2) and the interest on the enhanced amount as provided in Section 28 and cost in terms of Section 27. The Collector has to deposit the aforesaid amount and in case of shortfall in deposit of the amount, the appropriation comes into play.

20. The third stage comes after further enhancement of compensation by the High Court if any and the enhanced amount would bear interest u/s. 28 of the LA Act and the enhanced amount so calculated will have to be deposited in addition to the amount awarded by the Reference Court. The fourth stage comes when the apex Court enhances the amount of compensation. In the present case, the fourth stage did not arise.

21. In Para 30 of the judgment rendered in the case of Gurpreet Singh (supra), the Apex Court has held that the claimant who has received the amount calculated and deposited by the Collector after the award passed by the LAO and thereafter re-opening of the transaction is not warranted after enhancement by the Reference Court as well as by the High Court. Therefore, fresh re-appropriation is not contemplated or warranted by the scheme of the Act and if there is any shortfall at any stage, the claimant/decree-holder can seek to apply the rule of appropriation in respect of that amount, first towards interest and

costs and then towards the principal, unless the decree otherwise directs. Therefore, the amount awarded by the LAO and paid by the Collector is not liable to be re-opened. That amount is liable to be calculated separately and liable to be deposited by the Collector and, if any shortfall comes, then the amount so deposited by the Collector is liable to be appropriated from that additional amount of compensation so calculated.

22. That finally in para 39 of the judgment the Apex Court has held that the Code of Civil Procedure,1908 or the general rule does not contemplate payment of further interest by the judgment debtor on the portion of principal he has already paid and he is under obligation to pay interest on the balance principal remaining unpaid as adjudged either by the reference cour of the first appellate court.

23. In the present case, in the execution proceedings, the respondents/ landowners have calculated the compensation afresh based on the market rate of land fixed by the Division Bench of this Court and including Section 23(1A) and 23(2) of the LA Act and thereafter appropriated the deducted amount already received by them (i.e. first stage). Now calculating the interest on the difference of the amount.

24. That after fixing the market rate of the acquired land by the High Court the balance amount of compensation payable is liable to be calculated from the difference of the market rate i.e. Rate fixed by the High Court - Rate assessed by the LAO = difference of rate. The statutory interest is liable to be calculated on the difference of Market rate. After deposit of the amount of compensation by the collector if there is any shortfall comes then the principal of appropriation would apply.

25. The main ground on which the present petition is filed is in respect of the claim of interest on an additional amount of compensation awarded u/s. 23(1A) of the LA Act by the High Court. The interest u/s. 23(1A), as well as 23(2) of the LA Act, had already been awarded by the Reference Court and the Division Bench of this Court has only mentioned that the landowners shall be awarded interest @ 12% per annum u/s. 23(1A) regarding the awarded amount from 2.4.2007 to 25.2.2009, hence they are only entitled to claim interest on an enhanced amount of compensation. The apex court did award additional interest the first time, but only upheld the additional amount of compensation u/s. 23(1A) and 23(2) of the LA Act as awarded by the Reference Court.

26. The Apex Court in the case of Mehrawal Khewaji Trust V/s. State of Punjab & others : (2012) 5 SCC 432 has held that the claimant would be entitled to interest u/s. 28 on both market value and the statutory solatium and further held that the claimant would be entitled to interest on the solatium and the additional market value if the award of Reference Court or the appellate Court does not specifically refer to the question of interest on solatium and additional market value. Para 24 to 27 of the said judgment are reproduced below :

"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 for 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."

Therefore, in view of the above, there is no such perception of awarding interest on the interest amount, hence ground raised by the petitioner is hereby turned down. After calculation of the total compensation, the additional compensation 23(1A) and solatium u/s. 23(2) becomes part of the compensation and if any interest is liable to be awarded u/s. 28 of the LA Act, that would be on all the total amount of compensation. Hence, the contention of learned Dy. Advocate General is liable to be rejected that the respondents/claimants have wrongly calculated the amount of interest awarded u/s. 23(1A) of the LA Act and no further interest is liable to be given.

27. Hence the writ petition is liable to be allowed as the respondent did appropriate the amount of compensation already paid by the collector hence there is a mistake in the assessment of the calculation submitted by the respondents. The entire reassessment is libel to be done by taking the difference of the amount of market price of the land assessed by the High Court and Land Acquisition Officer. The amount of compensation already received after the award passed by the Land Acquisition Officer is not liable to be reopened. Resultantly the impugned order is quashed with the direction to recalculate the shortfall in depositing the amount due to the respondent. The Executing Court is hereby directed to do all the exercise as per aforesaid findings.

No order as to cost.

