
(2009) 03 KAR CK 0005

In the Karnataka High Court

Case No : Writ Appeal No's. 3855 of 2005, 10023 to 10100 and 10102 to 10162 of 2009

The Special Land Acquisition Officer (Claims) and Another

APPELLANT

Vs

Krishnabai and Others

RESPONDENT

Date of Decision : 11-03-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 11 (2), 21 A, 23, 34

Citation : (2011) 3 KarLJ 95

Hon'ble Judges : V.G. Sabhahit, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : S.S. Kumman, for the Appellant; A.A. Magdum and G. Gangi Reddy, for the Respondent

Judgement

V.G. Sabhahit, J.—These appeals are filed by the State being aggrieved by the order passed by the learned Single Judge of this Court in Writ Petition Nos. 453 to 491 of 2004 connected with W.P. Nos. 3245 to 3254 of 2003, 13210 to 13222 of 2003, 37201 to 37220 of 2003, 39652 to 39691 of 2003, 39926 to 39945 of 2003, dated 30-7-2004 (Sri Krishnabai and Others Vs. The Special Land Acquisition Officer and Another,), wherein the learned Single Judge has allowed the writ petitions in part and has held that the writ Petitioners are entitled to interest on solatium as held in Sunder Vs. Union of India, , from the date of award till deposit or payment. However, has rejected the prayer for reference of the matter to the Civil Court for seeking enhancement.

2. All these appeals are disposed of by this common order as the appeals arise out of a common order passed by the learned Single Judge dated 30-7-2004.

3. In view of the Upper Krishna Project for building Almatti Dam, sites with Super structures belonging to the writ Petitioners were proposed to be acquired vide preliminary notification dated 2-12-1983 and thereafter a final notification was passed. In view of the provisions of Section 11(2) of the Land Acquisition Act, 1894 a compromise award was passed as the owners of the structures agreed to

receive compensation as proposed by the Government under the Land Acquisition Act and consent award was passed awarding compensation towards the sites and structures and the claimants agreed under the said compromise award the following conditions:

- (1) The Petitioners and others shall invest 50% of the compensation amount in NSC;
- (2) That the Petitioners and others shall not claim solatium;
- (3) That the Petitioners shall not approach the Civil Court for enhancement of compensation.

Accordingly, consent award was passed on 31-7-1989. However, a representation was made to the Government for awarding solatium on the compensation agreed to be received by the owners of the structures and the Government ordered that the claimants shall be paid solatium of 30% on the agreed compensation and accordingly modified award was passed on 15-7-1993 awarding compensation towards structures, solatium and 12% additional market value and total compensation to the writ Petitioners was determined under the said award. It is the further case of the Appellant-State that the writ Petitioners having received the value of the structures, solatium and additional market value as per the award dated 15-7-1993 made a representation for awarding interest and the said prayer for award of interest has been rejected in the said award itself and endorsement was also issued on 14-11-2002 rejecting the revision for grant of interest. Being aggrieved by the same, writ petition was filed contending that the claimants are entitled to interest at 12%, 9% and 15% on the solatium on the awarded amount under Sections 23, 21A and 34 of the Land Acquisition Act and a direction to be issued to the Land Acquisition Officer to refer the matter to the Civil Court for enhancement of compensation.

4. The writ petitions were resisted by the State by filing counter contending that consent award was passed on 31-7-1989 and claimants have undertaken to forego solatium amount and only on the basis of representation given by the writ Petitioners and villagers the Government thought it fit to grant solatium of 30% without any order for payment of interest and therefore the question of payment of interest would not arise and since consent award has been passed, the question of reference to the Civil Court also would not arise and interest as per Section 34 is not liable to be paid as the possession of the landed property has not been taken. Further, it was also contended that the writ Petitioners having received compensation under the consent award and also the solatium and additional market value under the modified award they are not entitled to interest or any relief as sought in the writ petitions.

5. Learned Single Judge after considering the contention of the learned Counsel for the writ Petitioners and the learned Government Advocate appearing for the Respondents in all the writ petitions, by order dated 30-7-2004 has held that the question of referring the applications for reference to Civil Court seeking for

enhancement of compensation would not arise as no reference would lie for enhancement of compensation in respect of consent award and accordingly held that the writ Petitioners are not entitled to the said prayer in view of the decision of this Court and further held that the claimants have already received solatium and additional market value and the question of interest on additional amount also would not arise in view of the decision of the Hon''ble Supreme Court in Karnataka Electricity Board Vs. The State of Karnataka and Others, . However, the learned Single Judge held that in view of the decision of the Hon''ble Supreme Court in Sunder''s case, the claimants would be entitled to interest on solatium and not entitled to interest under any other head and accordingly allowed the writ petitions in part holding that the Petitioners are entitled for interest on solatium as held in Sunder''s case from the date of award till deposit or payment, but the prayer for reference to the Civil Court was rejected. Being aggrieved by the said order passed by the learned Single Judge dated 30-7-2004 the State has preferred this appeal.

6. The claimants have not filed any appeal being aggrieved by the rejection of the prayer for referring the matter to the Civil Court seeking enhancement of compensation and for not awarding any interest on any other amount except interest on solatium as held by the learned Single Judge.

7. We have heard the learned Government Advocate appearing for the Appellant-State and the learned Counsel for the Respondents. Learned Government Advocate submitted that in view of the fact that claimants agreed to receive compensation proposed by the Land Acquisition Officer, by consent, a consent award was passed on 31-7-1989 and thereafter on the basis of the representation given by the owners of the structures, Government passed an order to award solatium at 30% on the amount agreed to be received and on consent amount there was no order for payment of interest on the said solatium and the learned Single Judge has rightly held that the Petitioners are not entitled to interest under any other head and the learned Single Judge having held that in view of the consent order no reference can be made to the Civil Court for enhancement of compensation the claimants are not entitled for interest under any other head and was not justified in awarding interest on solatium as held in Sunder''s case and to that extent the liability to be set aside and the writ petitions are liable to be dismissed.

8. In response to the arguments of learned Government Advocate, learned Counsel for the Respondents submitted that the learned Single Judge has followed the decision of the Hon''ble Supreme Court in Sunder''s case and awarded interest on solatium from the date of award till deposit or payment and therefore the said order does not suffer from any error or illegality so as to call for interference in these appeals and accordingly the appeals are liable to be dismissed.

9. We have given careful consideration to the contention of the learned Counsel for the parties and scrutinised the material on record. The material on record

would clearly show that the superior structures belonging to the writ Petitioners/ Respondents herein were acquired for UKP under the preliminary notification dated 2-12-1983 and consent award was passed on 31-7-1989. By the said consent award the writ Petitioners having consented to the said awards and conditions mentioned in the award including the condition that the claimants shall not be entitled to solatium and shall not also make an application for enhancement of compensation u/s 18 are bound by the said conditions. However, on the representation given by the claimants, the Government thought it fit to award solatium at 30% of the compensation agreed under the consent award and accordingly modified award has been passed on 15-7-1993. The material on record would also show, as observed by the learned Single Judge also, that the claimants have already received the amount of solatium and additional market value awarded under the modified award dated 15-7-1993. The learned Single Judge has rightly held that the question of referring the application for enhancement of compensation in respect of consent award would not arise and since possession of structures have not been taken the question of awarding interest would also not arise. However, having regard to the observations made by the Hon"ble Supreme Court in Sunder"s case, the learned Single Judge has held that the claimants would be entitled to interest on solatium. That is the only relief from the date of award till deposit or payment which would only mean that the claimants would be entitled to interest on solatium under modified award dated 15-7-1993 till the claimants are paid the said solatium amount of 30% and the award referred to by the learned Single Judge would not date back to 31-7-1989 as consent award would be operating from 31-7-1989 to 15-7-1993 and therefore it is not open to the State to contend that even for the belated payment of solatium they are not entitled to interest. The award was passed on 15-7-1993, the claimants became entitled to solatium they are not entitled to interest for the belated payment if any. If there is any delay in making the payment of solatium amount awarded in the modified award dated 15-7-1993, the Appellant is bound to pay interest at 9% for the first year and 15% thereafter and the said liability of the Appellant to pay interest on the belated payment of solatium which the claimants became entitled under the award dated 15-7-1993 cannot be denied. As the Government awarded solatium, they cannot contend to say that it is not open to pay interest on the belated payment of solatium as it is well-settled that interest is to be awarded for belated payment so as to compensate the claim and for the said delay in making the payment of the solatium amount. Accordingly, we hold that the claimants would be entitled to interest on solatium as already referred to above only from 15-7-1993 till they received solatium amount under the modified award dated 15-7-1993 and they would not be entitled to any other relief in the writ petitions as rightly held by the learned Single Judge. Except clarifying above said order passed by the learned Single Judge to the effect that the date of award referred to by the learned Single Judge for the purpose of payment of interest on solatium would be from 15-7-1993 and not from 31-7-1989, we do not find any ground to take a different view than the one taken by the learned Single Judge.

Accordingly, the writ appeals are disposed of with the above clarifications.