

(2011) 12 GAU CK 0017
In the Gauhati High Court
Case No : Crp. No. 62 of 2011

Union of India and Others

APPELLANT

Vs

Rai Mohan Mallik and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Constitution of India, 1950 — Article 141, 142, 227
Land Acquisition Act, 1894 — Section 11, 18, 23, 23(1), 23(1A)

Citation : (2011) 12 GAU CK 0017

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : A. Nandi, for the Appellant; P. Deb Paul, Advocate and Ms S. Acharjee, Advocate In CRP No.62 of 2011 and In CRP No.71 of 2011, Mr. D. R. Choudhury, Advocate and Mr. D. Deb, Advocate In CRP No.69 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra

1. By three separate petitions filed under Article 227 of the Constitution of India, the petitioner Union of India has challenged the (1) order dated 16-11-2010 passed by the learned L.A. Judge, Court No.4, West Tripura, Agartala in case No.Misc (Review) 167 of 2010 in Ex (M) 12 of 2001 arising out of Misc(L.A.) 18 of 1987 (in CRP No.62 of 2011), (2) order dated 11-3-2011 passed by the learned L.A. Judge, Court No.2, West Tripura, Agartala, in Execution (M) No.04 of 2006 arising out of Misc L.A. No.114 of 1987 (in CRP No.69 of 2011) and (3) order dated 11- 3-2011 passed by the learned L.A. Judge, Court No.2, West Tripura, Agartala, in Execution (M) No.25 of 2006 arising out of Misc (LA) 128 of 1992 (in CRP No.71 of 2011).

2. All these petitions are taken together as the identical questions of law are involved therein. The questions as common to all the cases are (a) whether the solatium as granted u/s 23(2) of the Land Acquisition Act shall carry interest and

(b) whether the execution court can appropriate interest from the judgment debtors on the solatium, if not expressly directed by the Land Acquisition Judge in the reference cases u/s 18 of the Land Acquisition Act.

3. Let us have a brief survey as to the position of law in regard to payment of interest on the solatium for purpose of determining the question(a). In Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, the Apex court laid down that

Equally, the contention that the claimant is entitled to interest on solatium is also not warranted by express provisions u/s 23(2), i.e "in addition to" market value, solatium was required to be paid. Section 34 or Section 28, as the case may be, fastens liability to pay interest only on amount of compensation or such excess amount of compensation or part thereof determined u/s 23(1). In other words, by virtue of the language of Section 23(2), viz, "in addition to the market value", as provided in Section 23(1), solatium becomes payable. Compensation u/s 23(1), by necessary implication, excludes the liability to pay interest on solatium. Equally, the question of payment of solatium on additional amount was also considered by this court in P. Ram Reddy Vs Land Acquisition Officer where it was held that no solatium is payable on additional amount payable u/s 23(1-A). So too, no interest is payable on additional amount u/s 23(1-A) on other components except on compensation or excess compensation or part thereof determined u/s 23(1) over and above the award u/s 11, by Civil Court u/s 26 or on appeal u/s 54, respectively.

4. Prem Nath (supra) was considered by a constitution Bench of the Supreme Court on reference in Sunder Vs. Union of India, In that case, their Lordships also considered Mir Fazeelath Hussain and others Vs. Special Deputy Collector Land Acquisition, Hyderabad [OVERRULED], wherein it was observed that solatium is not a part of the award. Hence, interest is not claimable thereon. But, in that decision, the ratio of Union of India (UOI) Vs. Shri Ram Mehar and Others, was not referred to. In Sunder (supra) the Apex court extensively considered the issue whether the solatium as part of compensation shall carry statutory interest as per provisions of Section 34 of the Land Acquisition Act.

The Apex court in Sunder (supra) observed and lays down the principles in contra Prem Nath (supra) as follows:

24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount u/s 23 of the Act to

reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest u/s 34 was not in the contemplation of the legislature when that section was framed or enacted.

25. We may also point out that different High Courts have taken the same view in the following decisions: G. Venkatesh Vs. Special Land Acquisition Officer, Commissioner of Income Tax B., Bangalore,), B. Ravinder Reddy Vs. Special Deputy Collector, Land Acquisition (Industries), Hyderabad, , State of Haryana Vs. Kailashwati and Others, and Hindustan Aeronautics Limited, Bangalore Vs. Muniswamy Reddy deceased by L.Rs. 1(a) M. Narayana Reddy and others,

26. We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division bench of the Punjab and Hayana High Court in State of Haryana Vs Kailashwati:

Once it is held as it inevitably must be that the solatium provided for u/s 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable u/s 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorize the grant of interest on solatium as well.

27. In our view the aforesaid statement of law is in accord with the sound principles of interpretation. Hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly

(Emphasis added)

5. The learned counsel appearing for the petitioner-Union of India to highlight his case has placed heavy reliance on a decision of the larger Bench of the Apex court in the matter of Gurpreet Singh Vs Union of India as reported in AIR 2006 SCW 5813 to drive home that Gurpreet (supra) has culled out that the solatium will not carry any interest and unless the reference court makes express accommodation for interest on the solatium, the execution court cannot appropriate the interest on account of solatium. He referred to the para 44 in particular which is extracted hereunder:

On 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 negative 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. The learned counsel appearing for the Union of India further submits that the awards of the reference court do not provide any interest on the solatium expressly and as such the execution court has got no jurisdiction to appropriate interest from the petitioners on account of solatium. He also takes this court through the awards passed in all the connected reference cases. Profitably, the operative parts of the awards as passed by the learned Land Acquisition Judge are extracted for purpose of scrutiny :-

In CRP No.62 of 2011

In the result, I also enhance the rate of compensation @ Rs.12,000/- (rupees twelve thousand) only per kani and accordingly, the claimant-petitioner is entitled to get compensation @ Rs.12,000/- (rupees twelve thousand) only per kani for acquisition of his land.

Besides this, the claimant-petitioner is also entitled to get (1) interest @ 12% per annum from the date of notification till taking over possession of the acquired land, (2) interest @9% per annum upto one year from the date of possession, (3) interest @ 15% per annum after one year of possession till payment of the award money to the claimant and also (4) 30% solatium, on the enhanced compensation. (From the judgment and award dated 23-9-1992 in Misc (LA) 18 of 1987)

In CRP No.69 of 2011

This is being the position of the case it seems to this court that the judgment and order passed by the learned L.A. Judge in both the cases stands as it is. No fresh evidence adduced by any of the parties. The referring-claimant however, examined one Piyari Mohan Debnath, Deed Writer on 30-1-1999 and exhibited certified copy of the sale deed as well as a copy of the judgment of Misc.(L.A.) 35 of 1986 in Misc (LA) 114 of 1987. It appears from the said sale deed that land at Kunjaban was sold for Rs.9000/- of a land measuring 3 ganda, thereby comes to approximately Rs.60,000/-/- per kani. But the judgment of Misc (LA) 35 of 1985 as relied upon by the referring-claimant shows that price was assessed at Rs.24,000/- per kani. This court, therefore, finds no reason for deviation of the said assessment as made by the learned L.A. Judge and, therefore, I hold that the price of the land at Kunjaban area is Rs.24,000/- per kani. This price is also shall be similar in case No.Misc (LA) 104 of 1987.

Besides the referring-claimant shall be entitled to 30 percent solatium per annum the market value as determined by this court. They shall be entitled to additional amount of 12 percent per annum on the market value with effect from the date of publication u/s 4(1) of L.A.Act to the date of award by the Collector or the date of taking over possession of the land whichever is earlier. They shall also be entitled to get interest 9 percent per annum from the date of taking over possession of land for one year and thereafter 15 percent per annum on the enhanced amount. (From the judgment and award dated 17-8-2004 in Misc (L.A) 114 of 1987)

In CRP NO.71 OF 2011

It is worthwhile to note it here that Ld. L.A. Judge initially passed judgment on 31-8-93 fixing the market value of the acquired land to Rs.12,000/- per kani for all classes of lands. An appeal was preferred before the Hon''ble High Court but in the appeal the Hon''ble High Court did not interfere with the assessment made by the Ld. L.A. Judge and dismissed the appeal. There was an SLP before the Hon''ble Supreme Court. The Hon''ble Supreme Court remitted back the said cases with a direction allowing the parties a liberty to adduce such legal evidence as is necessary to determine the true and correct market value of the land.

The said position is reflected on the photocopy of the order filed as per firsti dated 25-11-02. Accordingly, opportunity afforded to the parties for adducing evidence. But the claimant and L.A. Collector side did not adduce any evidence and submitted that there is no need of adducing further evidence by them. The O.P No.2 however prayed time for one month to adduce evidence and accordingly, time was allowed.

But one next date the O.P. No.2 filed additional written statement along with evidence by affidavit. The date thereafter fixed for facilitating cross-examination of the evidence filed through affidavit but none appeared to facilitate cross examination. Thereafter also an opportunity was given to adduce the O.P.W to

facilitate cross-examination but of no result. Accordingly, arguments were heard.

The evidence already on record have been taken into consideration. The evidences as are available on record have been perused by me and also heard arguments as placed.

In all the cases the claimant sides have relied upon the undisputed and unchallenged judgment of the Ld. L.A. Judge Sri P. K. Choudhury which has been marked as Exbt.1. The aforesaid judgment was passed on 31-8-88. One Manindra Debbarma examined himself as ZPW 1. According to him lands were acquired for Army purpose by notification in the year 1983. The other side cross-examined the said witness and suggested that the acquired land are not adjacent lands of the Exbt.1 and further that those lands were covered with jungles. One Prahlad Majumder an employee/Amin, Officer of the D.M. & Collector West Tripura was examined as OPW 1 who stated that the L.A. Collector has rightly awarded the compensation on the basis of documents. He added in the cross-examination that the acquired land of mouja D.C. Nagar under sheet No.7 and adjacent to Nandan Nagar Mouja. Said Nandan Nagar is a business center and Minibuses ply through the G.B. Hospital to Nandan Nagar Road. It is, therefore, seen from the said evidence of OPW 1 that the lands acquired from Mouja D.C.Nagar are not the land of remote areas. But it seems from the case record that the L.A. Collector has assessed the market value of the land as under.

@ Rs.19,000/- per acre for Bastu class of land;

@ Rs.16,000/- per acre for bhati class of land;

@ Rs.12,500/- per acre for tilla class of land.

On perusal of the Exbt.1, it seems to this court that the flat rate of Rs.12,000/- per kani has been assessed without any classification of the lands. Since the lands at D.C. Nagar are not at the remotest area, the valuation of Rs.12,000/- per kani, seems to be reasonable and not the higher price. This court, therefore, finds no cogent ground to deviate from the said valuation.

Having regard to the discussion noted above, this court also finds it convenient to assess the market value of the acquired land irrespective of any class thereto @ Rs.12,000/- (rupees twelve thousand) only per kani which the referring claimants are entitled to get. The market value of the land is, therefore, assessed accordingly.

The referring claimants shall also be entitled to solatium @ 30% of the market value of the lands as are determined by this court and shall be entitled to get interest 9% per annum till the date of possession for one year thereafter @ 15% per annum till payment is made. (From the judgment and award dated 16-10-2004 in Misc (L.A) 128 of 1992)

7. Learned counsel appearing for the respondents while countering the submission of Mr. A. Nandi, learned counsel for the Union of India referred a

judgment of the Apex court in General Manager, Oil and Natural Gas Corporation Ltd. Vs Rameshbhai Jivanbhai Patel, reported in AIR 2008 SCW 5947. In that case, the Apex court held:

Subsequent to the decision of the High Court, a Constitution Bench of this court in *Sunder Vs. Union of India*, held that the amount awarded for the purpose of interest will include not only the market value but also the additional amount u/s 23(1A) and solatium u/s 23(2) of the Act. In *Patel Joitaram Kalidas and Others Vs. Spl. Land Acquisition Officer and Another*, this Court held that the calculation of interest on the additional amount u/s 23(1A) and 23(2) is automatic and consequential, even in the absence of any specific appeal by the claimants in respect of non-grant of such interest. At all events, as we are reducing the compensation from Rs.17.10 to Rs.13 per sq. meter, the claimants are entitled to support and sustain the award for the higher amount as per the decision of reference court and High Court on other factors.

We accordingly allow these appeals in part and make the following modification to the award made by the Reference Court confirmed by the High Court. The claimants/respondents will be entitled to compensation at the rate of Rs.13/- per sq.m with additional amount u/s 23(1A) and solatium u/s 23(2) as awarded. The respondents-claimants will be entitled to interest at the rates awarded by the reference court (9% per annum for one year and 15 percent per annum thereafter) on the total compensation amount including additional amount u/s 23(1A) and solatium u/s 23(2). Parties to bear their respective costs.

8. The said ratio is reiteration of the ratio as decided by the Apex court in *Sunder (supra)*. It is no more *res integra* after *Sunder (supra)* in particular that solatium shall also carry interest automatic and consequential @ 9% per annum for one year and thereafter 15% per annum till the appropriation is made. Therefore, the sole question remains apposite to be answered is that whether payment of awards under reference directed interest on solatium in the touchstone of *Gurpreet (supra)* or not.

9. A careful reading of *Gurpreet (supra)* would show that there is no negation of appropriation of interest on solatium. It holds that when the reference court has negated payment of interest on solatium either expressly or by necessary implication, the execution court will not have any authority to entertain such claim of interest on solatium on the principle that execution court cannot go beyond the decree. But the Apex court did not stop there but appended a clarificatory note for a different situation. It lays down that if the award of the reference court or that of the appellate court does not specifically refer to the question of payment of interest on solatium or in cases where claims had not been made and had not been 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 compensation awarded does include the component of solatium and in that event, interest on solatium could be pressed or directed

to be appropriated in execution.

10. From close readings of the awards (para 6), it emerges that the reference court has accommodated a direction for payment of interest on the compensation which includes solatium at 9% for one year and 15% per annum on expiry of one year till payment. Therefore, both the grounds as resorted to in these petitions under Article 227 of the Constitution of India fail to survive the test of law. Accordingly, the revision petitions are dismissed. No order as to cost.

11. To dispel any modicum of confusion, it is made clear that there is no infirmity in the impugned orders of the execution court which are directly or indirectly under challenge by the Union of India and that solatium being a component of compensation u/s 23 of the Land Acquisition Act (Sunder, supra) shall carry interest. The execution courts are directed to complete execution for appropriation of compensation with interest as expeditiously as possible.

12. Interim order, if any, stands vacated. There shall be no order as to cost.