
(2019) 07 UK CK 0188

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 573 Of 2017

U.P. Awas Evam Vikas Parishad

APPELLANT

Vs

Jagdish Lal & Others

RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1A)
Code Of Civil Procedure, 1908 — Section 47

Citation : (2019) 07 UK CK 0188

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : B.S. Adhikari, Siddartha Singh

Final Decision : Dismissed

Judgement

Manoj K. Tiwari, J

1. U.P. Awas Evam Vikas Parishad/petitioner acquired 3-15-0 Bigha land belonging to the respondents/claimants in District Haridwar for developing a township. Possession of the land, so acquired, was taken by petitioner on 23.03.1982. The Special Land Acquisition Officer (in short 'SLAO') awarded compensation to the respondents @ Rs.53,853.09 per Pucca Bigha and solatium was allowed at the rate of 15% amounting to Rs.30,292.36. Thus, the total amount payable to the respondents/ claimants in terms of award given by SLAO was Rs.2,32,241.44 with interest @ 6% per annum.

2. The respondents were dissatisfied with the amount of compensation determined by the SLAO, therefore they sought reference under Section 18 of the Land Acquisition Act. The reference court i.e. Additional District Judge, Saharanpur enhanced the amount of compensation, payable to the respondents, to Rs.1,17,399.74 per Pucca Bigha. The Reference Court further held that the claimants shall also be entitled to solatium at the rate of 30% per annum upon this amount, which comes to Rs.2,67,547.00 alongwith interest at the rate of 9%

per annum from the date of possession, vide judgment and order dated 22.01.1986. Petitioner challenged the judgment, rendered by Reference Court, by filing First Appeal No. 780 of 1986, which was dismissed by Hon'ble Allahabad High Court vide judgment and order dated 12.08.1999. Petitioner thereafter filed SLP, which too was dismissed by Hon'ble Supreme Court on 01.05.2003. Thus, the judgment given by reference court attained finality.

3. Respondents/claimants put the judgment and order, passed by Reference Court to execution. The Executing Court closed the execution proceedings vide order dated 20.01.2011 on the ground that since payment has been made, therefore, nothing was left for execution. The respondents challenged the order passed by executing court by filing Civil Revision No. 21 of 2011, which was allowed vide judgment and order dated 13.05.2015 and the matter was remitted back to the executing court for re-calculation and for deciding the execution application in the light of the judgment of reference court. Para 4 and 5 of the said judgment are extracted below:-

"4) The calculation made by the respondent Avas Vikas Parishad as Annexure-5, therefore, is based on some misconception which is apparent on the face of record, whereas the calculation made by the decreeholder in Annexure-3 appears to have some relevance. It may be noted here that the argument advanced by learned counsel for the respondent Avas Vikas Parishad before this Court in terms of Section 23(1A) of the Land Acquisition Act cannot be taken into reckoning in the light of the award, which has attained finality.

5) All the civil revisions are, therefore, allowed. Order passed on 20.01.2011, by the Executing Court in Execution Case no. 03 of 2004, Execution Case no. 14 of 1993 and Execution Case no. 07 of 1987 are hereby set aside. The matter is remitted back to the Executing Court for re-calculation and for deciding the execution application in the light of the judgment of the reference court. Parties are directed to appear before the Executing Court on 29.05.2015."

4. Before the executing court, petitioner filed an objection under Section 47 of C.P.C. along with calculation chart stating that he has paid an amount, much in excess of the amount ordered to be paid by the Reference Court. It was further stated that excess amount of Rs.8,16,050.00 has been paid. The claimants/respondents disputed the contention made by petitioner and they contended that they are entitled to a further amount of Rs.15,79,423/-.

5. Learned Executing Court rejected the objection filed by petitioner under Section 47 of C.P.C. along with calculation chart submitted by the petitioner and allowed the claim made by the respondents/decreed holders vide order dated 17.10.2016. The reason for rejecting the objection filed by the petitioner recorded by the executing court was that the petitioner in his calculation chart had calculated interest only from 20.09.2001, whereas the interest payable before the said date was not calculated. The order passed by the Executing Court, was put to challenge by petitioner by filing WPMS No. 3181 of 2016 before

this Court. A coordinate Bench of this Court dismissed the said writ petition by judgment and order dated 02.12.2016. Relevant extract of the said judgment is reproduced below:-

"It is not found on record that any additional interest has been paid to the claimants, as argued by learned advocate appearing for the petitioner- U.P. Awas & Vikas Parishad on solatium. The impugned order has taken into consideration the reference decided by learned District Judge in Reference Case No.193 of 1983 as well as the judgment rendered by Hon. High Court of Allahabad. The court below has rightly applied the ratio of 2001 (45) ALR 397 in the case of 'Sunder v. Union of India' as well as the ratio laid down by the Hon. Apex Court in 2013 All. C.J. 1399 in the case of Meerut Development Authority, Meerut v. J.D. Singhal & others while pronouncing the order on 17.10.2016.

Learned District Judge has also considered the ratio laid down by Their Lordships in 2007 (1) Supreme 521 in the case of 'Gurpreet Singh v. Union of India'. The Hon. Supreme Court has held that the claimants were entitled to get interest @9% per annum for the first year and @15% per annum for the subsequent years.

This Court has already upheld the calculations made by the claimants and at the same time, has rejected the calculations made by the judgment debtor. The issues, which have already been adjudicated upon, cannot be permitted to be raked up again. Accordingly, there is no merit in this petition and the same is hereby dismissed at the threshold itself."

6. The aforesaid judgment, rendered by this Court, was challenged by the petitioner by filing SLP (Civil) No. 6674 of 2017, which was dismissed by Hon'ble Supreme Court by order dated 03.03.2017. The order passed by Hon'ble Supreme Court in said SLP is extracted below:-

"We find no reason to entertain this Special Leave Petition which is, accordingly, dismissed.

Prayer for liberty to apply for calculation of compensation before the High is allowed.

Pending applications, if any, stand disposed of."

7. This writ petition has been filed seeking following relief:-

"An order or direction for re-calculation of the compensation pursuant to Misc. Case no. 03/2006 (execution case no. 14/1993) "Jagdish Lal Vs Collector" pending in the Court of District Judge-Haridwar."

8. Heard learned counsel for the parties and perused the record.

9. Although petitioner has filed this writ petition seeking a direction to re-calculate the compensation pursuant to Miscellaneous Case No. 03 of 2016 (Execution Case No. 14 of 1993), however, no afresh calculation chart has been

produced by the petitioner. As stated earlier, the calculation chart submitted by petitioner before the Executing Court along with his application under Section 47 of C.P.C. was adjudicated upon and the calculation chart submitted by the claimants/respondents was accepted and the order passed by executing court was unsuccessfully challenged by the petitioner before this Court and the SLP filed by him has been dismissed, therefore, the decision on his earlier calculation chart attained finality.

10. The order passed by executing court on 17.10.2016 is thus not open to challenge in these proceedings, moreso when petitioner has not produced any fresh calculation chart despite the liberty given by Hon'ble Supreme Court to him. Thus, the relief sought by the petitioner in this writ petition cannot be given to him.

11. Accordingly, the writ petition fails and is hereby dismissed. The executing court shall release the amount deposited by the petitioner, to the respondents/claimants, within six weeks from the date of production of certified copy of this order.