
(2021) 01 SC CK 0024

Supreme Court Of India

Case No: Civil Appeal No. 94 of 2021

Tamil Nadu Housing
Board

APPELLANT

Vs

Abdul Salam Sarkar
And Others

RESPONDENT

Date of Decision: Jan. 13, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 141, 142

Citation: (2021) 2 Scale 63 : (2021) 1 RCR (Civil) 668 : (2021) 219 AIC 247

Hon'ble Judges: Dr. Dhananjaya Y Chandrachud, J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: M. Yogesh Kanna

Final Decision: Disposed Of

Judgement

Dr. Justice Dhananjaya Y Chandrachud

1 Leave granted.

2 The only question which arises in the present appeal is whether the respondents are entitled to interest on solatium for the acquisition which took

place under the provisions of the Land Acquisition Act 1894. This issue turns on an interpretation of the judgment of the Constitution Bench of this

Court in Gurpreet Singh vs Union of India (2006) 8 SCC 457 (Gurpreet Singh).

3 By an order of this Court dated 1 December 2020, the issue was crystallized by observing that the Court will "examine the question whether

(the) matter is covered by the judgment of this court in the case of Gurpreet Singh.⁴

4 In the present case, the reference court by its decision dated 26 July 1990, allowed for the grant of interest on solatium at the rate of 12% per annum.

5 When the matter was carried in appeal, a Division Bench of the Madras High Court by its judgment dated 12 July 2001, issued the

following clarification on the aspect of interest on solatium:

“It is further made clear that the claimants are not entitled to interest on solatium and additional amount. Further, the issue regarding grant of

interest on solatium is pending before the Larger Bench of the Hon'ble Supreme Court. Hence, depending on the outcome of the cross before the

Supreme Court, the claimants are permitted to fill an appropriate petition before the concerned sub-court.

6 The Special Leave Petitions against the judgment of the Division Bench were dismissed on 22 March 2004. The review petition filed by the

Revenue Divisional Officer was also dismissed on 2 August 2006. It is in this background that we have to assess the tenability of the claim for interest

on solatium based on the decision of the Constitution Bench in Gurpreet Singh (supra).

7 In paragraph 54 of the judgment in Gurpreet Singh (supra), the above issue was considered specifically in the context of the earlier decision in

Sunder vs Union of India (2001) 7 SCC 211. Dealing with the issue, Justice P K Balasubramanyan speaking for the Constitution Bench observed thus:

“54. That question is whether in the light of the decision in Sunder (2001) 7 SCC 211 : 2001 Supp (3) SCR 176,] the awardee/deGREE-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 negated 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 [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176]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 [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176]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 [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176](19-9-2001)

and not for any prior period. We also clarify that this will not entail any reappropriation 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.~(emphasis supplied)

8 The test which Gurpreet Singh (supra) mandates is that interest on solatium would be payable if the reference court has either not referred to it or

has not rejected it expressly or by necessary implication. Moreover, the claim can only be made in pending execution proceedings. In the present case,

the claim for interest on solatium had not been rejected by the reference court. In an appeal arising from the decision of the reference court, the High

Court, In its judgment dated 12 July 2001, observed that since the matter was pending before a larger bench of this Court, the issue as to whether

interest on solatium would be granted would depend on the outcome of those proceedings and it would be open to the claimants to move an application

before the Sub Court. It was after the judgment of this Court in Gurpreet Singh (supra), which was delivered on 19 October 2006, that the respondents

moved an application for the grant of interest on solatium. The High Court by its impugned judgment has come to the conclusion that such an

application was tenable in view of the judgment in Gurpreet Singh (supra). As a matter of principle, we see no reason to take any other view since it is

in accord to the judgment of the Constitution Bench.

9 The submission which has been urged on behalf of the appellant is that in the present case, the claim was made in 2008 after the earlier execution

petition was closed and the original award and the enhanced compensation were deposited and appropriated by the claimant. This, in our view, would

not dis-entitle the claimant for the grant of interest on solatium. The claim for interest on solatium was not rejected and was expressly kept open by

the High Court in its judgment dated 12 July 2001. The liberty which was granted by the High Court to institute proceedings before the Sub Court after

the matter was resolved by the larger bench of this Court was the subject matter of a Special Leave Petition. The judgment of the High Court was

affirmed by the dismissal of the Special Leave Petition. The review petition by the Revenue Divisional Officer was also dismissed. Hence, inter

partes, the claimants were entitled to apply for the grant of interest on solatium, particularly having regard to the fact that the claim had not been

rejected at any antecedent stage and had been kept open.

10 In the above view of the matter, we confirm the direction of the High Court to the effect that the claimants-respondents would be entitled to the

payment of interest on solatium. However, insofar as the exact mathematical computation is concerned, it would be appropriate to leave it to the

reference court to verify the computations and to pass appropriate orders. Since during the pendency of these proceedings, a deposit has been made

by the appellant in terms of the interim orders, the amount which has been deposited will be permitted to be withdrawn by the respondents and shall be

given due credit for in arriving at the final amount which is due and payable. We also clarify that in terms of the judgment of the Constitution Bench in

Gurpreet Singh (supra), interest on solatium will be payable with effect from the date of the judgment in Sunder vs Union of India (19 September 2001).

11 The appeal is accordingly disposed of. The costs of Rs 5 lakhs which have been deposited in this Court in pursuance of this Court's order, shall also be disbursed to the claimants.

12 Pending applications, if any, stand disposed of.