

(2016) 10 MAD CK 0062

MADRAS HIGH COURT

Case No: C.R.P.(NPD). No. 1698 of 2016 and C.M.P.No. 9067 of 2016. (E.P.No. 80 of 2011 in L.A.O.P. No. 10/92 on the file of 1st Additional Sub Court, Erode)

Executive Engineer and
Administrative Officer

APPELLANT

Vs

K.P. Natarajan

RESPONDENT

Date of Decision: Oct. 20, 2016

Acts Referred:

- Land Acquisition Act, 1894 - Section 34

Citation: (2016) 6 CTC 711 : (2016) 3 MadWN(Civil) 389

Hon'ble Judges: Mr. M. Duraiswamy, J.

Bench: Single Bench

Advocate: Mr. T. Jayaramaraj, Government Advocate, for the Respondent No. 9; Mr. N. Manokaran, Advocate, for the Respondents No. 1 to 8; Mr. S.T.S. Murthy, Additional Advocate General for Mr. R. Jayaseelan, Advocate, for the Petitioner

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mr. M. Duraiswamy, J. - Challenging the order passed in E.P.No. 80 of 2011 in L.A.O.P.No. 10 of 1992 on the file of the 1st Additional Sub Court, Erode, the Requisition Body has filed the above Civil Revision Petition.

2. Heard Mr. S.T.S. Murthy, learned Additional Advocate General, appearing for the petitioner, Mr. N. Manokaran, learned counsel appearing for the respondents 1 to 8 and Mr. T. Jayaramaraj, learned Government Advocate appearing for the 9th respondent.

3. Pursuant to the Award passed in the Land Acquisition Original Petition in L.A.O.P. No. 10 of 1992 on the file of the 1st Additional Sub Court, Erode, the claimants have filed the Execution Petition in E.P No. 80 of 2011. The Executing Court allowed the

Execution Petition.

4. Earlier, the Referring Officer filed a Civil Revision Petition in C.R.P.(NPD).No. 25 of 2016 as against the order passed in the Execution Petition in E.P.No. 80 of 2011. In the said Civil Revision Petition, the only issue which arose for consideration was whether the apportionment of the amount deposited by the Judgment Debtor should be apportioned first towards the principal and then towards interest or first towards the interest and then towards the principal amount. The Executing Court found that the amount deposited by the Judgment debtor should be first apportioned towards the interest and thereafter towards the principal amount, relying upon the judgment of Hon"ble Supreme Court of India reported in **CDJ 2006 SC 909 (Gurpreet Singh v. Union of India)** wherein the Apex Court held that the amount deposited towards the compensation in land acquisition matters should be first apportioned towards the interest and thereafter, towards the principal amount. Following the ratio laid down by the Apex Court, this Court confirmed the order passed by the Executing Court and dismissed the Civil Revision Petition. After the dismissal of the Civil Revision Petition, the Requisition Body has filed the above Civil Revision Petition.

5. Mr. S.T.S. Murthy, learned Additional Advocate General appearing for the petitioner submitted that though the Requisition Body was impleaded in the Appeal in A.S.No. 965 of 2004, they were not made as parties in the Execution Petition. The said appeal was filed by the Referring Officer as against the Award passed in the Land Acquisition Original Petition in L.A.O.P.No. 10 of 1992.

6. This Court, while partly allowing the appeal, by reducing the market value of the acquired lands at Rs. 5/- per sq.ft., also observed that the claimants are entitled for proportionate solatium and interest at the rates as fixed by the Reference Court.

7. The learned Additional Advocate General submitted that the interest on solatium has to be applied only from the date of Sunder"s case dated 19.09.2001 and not otherwise.

8. In support of his contention, the learned Additional Advocate General, relied upon the following judgments :

(i) **2006 (8) SCC 457 [Gurpreet Singh v. Union of India]**, wherein the Hon"ble Supreme Court has held as follows :

"54.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 (19.9.2001) 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."

(ii) An unreported judgment of a Division Bench of this Court dated 28.11.2014 made in C.R.P. Nos. 671 to 623 of 2007, wherein the Division Bench of this Court held as follows :

"20. The claim of the respondents that the amount could be paid even prior to the date of Sunder's case (19.09.2001) owing to pendency of Execution Petitions would certainly give a cause of action to claim interest from the date of decree. For the sake of argument, if the aforesaid submissions are taken into account, then the consequences on the interest on solatium will be a far-reaching one, having serious effect on the State exchequer. Therefore, the respondents' claim of pendency of Execution Proceedings could not be a factor to be reckoned in the instant case. Thus, in our considered opinion, taking note of the facts and circumstances of the case and by applying the true interpretation made by the Constitution Bench of the Hon'ble Supreme Court, finding that the claim of the respondents is not well founded, we are of the view that interest on solatium has to be applied only from the date of Sunder's case, viz., 19.09.2001 and not otherwise."

9. Countering the submissions made by the learned Additional Advocate General appearing for the petitioner, Mr. N. Manokaran, learned counsel appearing for the respondents 1 to 8 submitted that if a decree contains a Clause in the manner in which money deposited to be apportioned, then the apportionment should be made only in that direction.

10. In support of his contention, the learned counsel for the respondents relied upon a judgment of the Hon'ble Supreme Court reported in **2014(3) CTC 35 [V. Kala Bharathi and Others v. Oriental Insurance Co Ltd., Br. Chitoor]** wherein the Hon'ble Supreme Court held that in the absence of specific direction, if decree contains a Clause in the manner in which money deposited to be apportioned, then the apportionment shall be made in that direction.

11. On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and also the judgments relied upon by the learned counsel on either side, it could be seen that with regard to the interest on solatium under Section 34 of The Land Acquisition Act, 1894, when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon from the time of taking possession until it shall have been so paid or deposited.

12. Further, as per Proviso to Section 34 of the Act, if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of 15% p.a. shall be payable 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.

13. It is pertinent to note that earlier when the Referring Officer filed the Civil Revision Petition in C.R.P.(NPD). No. 25 of 2016, the point now raised by the learned Additional Advocate General was not raised. The order passed by the Executing Court was confirmed by this Court in the Civil Revision Petition in C.R.P.(NPD). No. 25 of 2016, by order dated 20.01.2016. This Court disposed of the appeal in A.S.No. 965 of 2004, by its judgment dated 15.04.2010, directing the Referring Officer to deposit the compensation amount within a period of four months from the date of receipt of copy of the judgment.

14. In the judgment reported in **2002 (2) L.W. 39 [Sunder v. Union of India]**, the Hon"ble Supreme Court of India held as follows :

"22. In deciding the question as to what amount would bear interest under Section 34 of the Act a peep into Section 31(1) of the Act would be advantageous. That sub-section says :

"On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section." The remaining sub-sections in that provision only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the subsections thereof.

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 under Section 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 under Section 34 was not in the contemplation of the legislature when that section was framed or enacted.

15. The proviso to Section 34 of the Act makes the position clear that "if such compensation" is not paid within one year, escalated rate of interest from the expiry of one year shall be payable and there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 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 the payment of the said sum should enable the party to have interest on the said sum until he receives the payment.

16. The Division Bench of this Court in the order dated 28.11.2014 in C.R.P.(NPD). Nos. 617 to 623 of 2007 held that the interest on solatium has to be applied only from the date of Sunder's case i.e. 19.09.2001 and not otherwise.

17. The question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession of the land. It is inequitable that the person who is deprived of the possession of the land, on account of acquisition proceedings is not given the amount, which law demands to be paid to him, any delay thereafter would only be to his detriment. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made in Section 34 of the Act.

18. The Constitution Bench of the Apex Court in the judgment reported in 2002 (2) L.W. 39 [Sunder v. Union of India], cited supra, held that the claimants are entitled for interest on the solatium. The said decision of the Apex Court is binding on this Court. Therefore, the claimants are entitled to claim interest on solatium, which has been rightly claimed by them in the execution proceedings in E.P.No. 80 of 2011 in L.A.O.P.No. 10 of 1992.

19. In the judgment reported in (2006) 8 Supreme Court Cases 457 [Gurpreet Singh v. Union of India], the Apex Court held as follows :

"...

54. One 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 v. Union of India], (2001) 7 SCC 211 : 2001 Supp (3) SCR 176, 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 negatived 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 v. Union of India], (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 v. Union of India], (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 v. Union of India], (2001) 7 SCC 211 : 2001 Supp (3) SCR 176 (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."

From the above it is clear that 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 has not been made and rejected 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 laid down by the Apex Court in the judgment reported in 2002 (2) L.W. 39 [Sunder v. Union of India] 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. 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 judgment in Sunder's case (i.e.) 19.09.2001 and not for any prior period.

20. In the judgment reported in (2010) 12 Supreme Court Cases 387 [Land Acquisition Officer and Assistant Commissioner and another v. Shivappa Mallappa Jigalur and others], the Hon"ble Supreme Court of India relying upon paragraph 54 of the judgment in [Gurpreet Singh v. Union of India] (2006) 8 Supreme Court Cases 457, held as follows :

"We are unable to accept the submission and in our view the decision in Gurpreet Singh v. Union of India (2006) 8 Supreme Court Cases 457 has no application to the facts of the present cases. In paragraph 54 of the decision in Gurpreet Singh's case, the Court was considering the scope of execution proceedings and the limitations of the execution court. The three lines relied upon by Mr. Hegde must be read and understood in the context of what is said earlier. The Court clearly said that the execution court could not go beyond the decree. In the event, the claim of interest was rejected expressly or by necessary implication in the decree, it would not be

permissible for the execution court to grant interest relying upon the decision in [Sunder v. Union of India] 2002 (2) L.W. 39. But, even then the Court went on to clarify that if the award of the reference court or the appellate court was silent on the issue of solatium and interest then it would be open to the execution court to apply the ratio of [Sunder v. Union of India] 2002 (2) L.W. 39 and say that the compensation awarded would include solatium and in such an event interest on the amount could be directed to be deposited in execution. The decision in Gurpreet Singh v. Union of India (2006) 8 Supreme Court Cases 457, thus, actually enlarged the scope of execution proceeding, in a certain way, on the basis of the decision in [Sunder v. Union of India] 2002 (2) L.W. 39."

From the above judgments of the Apex Court, it is clear that when the award of the Reference Court or the Appellate Court was silent on the issue of solatium and interest, then it would be open to the Execution Court to apply the ratio laid down in [Sunder v. Union of India] 2002 (2) L.W. 39 and say that compensation awarded would include solatium and in such an event, interest on the amount can be directed to be deposited in the execution.

21. In the case on hand, the Reference Court had awarded interest on the compensation amount including on the solatium. That being the case, the claimants are entitled to claim interest as per the award passed by the Reference Court and not from the date of the judgment made in [Sunder v. Union of India] 2002 (2) L.W. 39. In the case of the Reference Court and this Court in A.S.No. 965 of 2004 remaining silent about the award of interest on solatium, then the claimants can claim interest only from the date of pronouncement of the judgment in Sunder's case (i.e.) 19.09.2001. Since the Reference Court had awarded interest on the solatium, which was also confirmed by this Court in the First Appeal, the claimants are entitled to interest on solatium without any cut off date.

22. In these circumstances, the ratio laid down by the Division Bench of this Court in the unreported order made in C.R.P. Nos. 617 to 623 of 2007 is not applicable.

23. That apart, the order passed by the Executing Court in E.P.No. 80 of 2011 was also confirmed by this Court in the earlier Civil Revision Petition filed by the Referring Officer in C.R.P.(NPD). No. 25 of 2016.

24. In these circumstances, I do not find any error or irregularity in the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No cost. Consequently, the connected miscellaneous petition is closed.