

(2011) 5 ALD 599 : (2011) 8 RCR(Civil) 303

Andhra Pradesh High Court

Case No: Civil Revision Petition No"s. 741, 743 and 752 of 2007

The Special Deputy
Collector, L.A.O
(NTPC) LA Unit (RDO)
and The NTPC Ltd. rp.
by its G.M.

APPELLANT

Vs

Muthyam Agaiah

RESPONDENT

Date of Decision: April 28, 2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 47 Rule 1, 151#Constitution of India, 1950 â€”
Article 141, 142#Land Acquisition Act, 1894 â€” Section 23(2), 28, 34

Citation: (2011) 5 ALD 599 : (2011) 8 RCR(Civil) 303

Hon'ble Judges: G. Bhavani Prasad, J

Bench: Single Bench

Advocate: K.V. Subrahmanya Narusu, for the Appellant; S.R. Ashok and N. Kamala Mehar, for
the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G. Bhavani Prasad, J.

The orders passed on 19-01-2003 in E.P. No. 32 of 2003 in O.P. No. 96 of 1988, E.P. No.
33 of 2003 in O.P.

No. 244 of 1987 and E.P. No. 40 of 2003 in O.P. No. 210 of 1987 on the file of the Senior
Civil Judge"s Court, Karimnagar led the Special

Deputy Collector, Land Acquisition Officer concerned/judgment debtor to prefer these
three civil revision petitions, which involve identical

questions of fact and law and are, hence, being disposed of by this common order. The National Thermal Power Corporation Limited, the

beneficiary of the acquisition, is the 2nd revision Petitioner in C.R.P. Nos. 741 and 743 of 2007.

2. When the compensation for the acquired lands was enhanced in O.P. No. 96 of 1988, the Land Acquisition Officer filed A.S. No. 705 of 2000

before the High Court, in which interim orders were passed in C.M.P. No. 5720 of 2000 for payment of decretal amount. Difference of

enhanced compensation, interest and solatium at 30% on the enhanced compensation were deposited in E.P. No. 20 of 1999 on 29-01-2000.

Later the High Court dismissed the appeal and the cross-objections by the decree holder. E.P. No. 20 of 1999 was closed by the executing Court

observing that the entire execution petition amount was deposited. The decree holder claimed in E.P. No. 32 of 2003 Rs. 55,038/- towards

interest on solatium on the enhanced amount, which claim was resisted by the judgment debtor. Enhanced compensation and interest on solatium

and additional market value were claimed as per the decree of the High Court, dated 27-12-2000 as per the judgment in State of Andhra Pradesh

and Others Vs. Nallamilli Rami Reddi and Others, The executing Court considered the ratio of the decision to be applicable to the facts of the case

and held the decree holder to be entitled to interest on solatium. Hence, the judgment debtor was directed to pay the execution petition amount

together with interest accrued thereon within one month.

3. In O.P. No. 244 of 1987 also, compensation for lands and sendhi trees was enhanced by the reference Court on 17-06-1996. The Land

Acquisition Officer filed an appeal in A.S. No. 153 of 2000 and as per the interim orders of the High Court in C.M.P. No. 14982 of 1999, the

judgment debtor deposited the difference of amount of enhanced compensation, interest thereon and solatium at 30% in E.P. No. 3 of 2000. Later

the High Court dismissed the appeal and allowed the cross-objections. E.P. No. 3 of 2000 was closed by the executing Court observing that the

entire execution petition amount was deposited. The claimants sought for interest on solatium in E.P. No. 33 of 2003 and the executing Court

observed that the execution petition was filed on the enhanced compensation as per the decree of the High Court, dated 27-12-2000 and interest

on solatium and additional market value as per *Sundar v. Union of India* (1 supra). Observing that *Sundar*'s case is clearly applicable to the facts,

the executing Court directed the judgment debtor to pay the execution petition amount together with interest accrued thereon within one month.

4. In O.P. No. 210 of 1987, the reference Court enhanced the compensation for lands and sendhi trees on 17-06-1996 and the judgment debtor

preferred A.S. No. 829 of 2000. The High Court ordered in C.M.P. No. 15369 of 1999 payment of decretal amount and the judgment debtor

deposited the difference of enhanced compensation, interest thereon and solatium at 30% in E.P. No. 2 of 2000 on 22-04-2000. The appeal was

dismissed by the High Court and the cross-objections were allowed enhancing the compensation and E.P. No. 2 of 2000 was closed by the

executing Court stating that the entire execution petition amount was deposited. The decree holder filed E.P. No. 1 of 2002 claiming interest on

solatium, which was directed to be paid and the judgment debtor preferred C.R.P. No. 3210 of 2002, which was dismissed. SLP No. 13117 of

2003 was dismissed on 04-08-2003 and then the judgment debtor deposited an amount of Rs. 11,82,730/- only as against Rs. 17,22,841/-

claimed in E.P. No. 1 of 2002. The execution petition was closed by the executing Court observing that the execution petition amount was paid.

The executing Court noted in the impugned order that the present execution petition was filed for the balance amount and interest accrued thereon

basing on the High Court decree, dated 27-12-2000 for enhanced compensation along with interest on solatium and additional market value as per

Sundar v. Union of India (1 supra). The executing Court felt that the ratio of *Sundar v. Union of India* (1 supra) is clearly applicable to the facts

and hence, directed the judgment debtor to pay the execution petition amount with interest accrued thereon within one month.

5. The civil revision petitions are directed against the said similar orders passed by the executing Court contending that the earlier execution

petitions were closed on complete satisfaction of the decree and another execution petition cannot be allowed to be filed. The judgment in *Sundar*

v. Union of India (1 *supra*) was rendered long after disposal of the references and the appeals and no interest on solatium was granted in the

decrees of the reference Court or the appellate decrees and hence, the judgment and decree in the appeal and the cross-objections, which have

become final, cannot be unsettled. The executing Court cannot go beyond the decree in granting interest on solatium, which was not granted by the

original order and decree. In *Bai Shakriben (dead) by Natwar Melsingh and Others Vs. Special Land Acquisition Officer and Another*, the Apex

Court pointed out that when the decree was allowed to become final, the executing Court or the reference Court cannot go behind the decree to

amend the same under Order XLVII Rule 1 and Section 151 of the Code of Civil Procedure. The omission to award additional amounts u/s 23(1-

A), enhanced interest u/s 28 and solatium u/s 23(2) was considered to be not clerical or arithmetical mistakes but amounts to non-award. The

decision in *Sundar v. Union of India* (1 *supra*) cannot be made applicable to earlier decrees, which have become final. Even assuming that interest

on solatium is payable, the amounts claimed in execution petition are exorbitant. Hence, the revision Petitioners desired the impugned orders to be

reversed. In C.R.P. No. 752 of 2007, it was further contended that interest on solatium was already deposited by the revision Petitioners. The

correctness of the calculations made was not adjudicated at all.

6. Sri K.V. Subrahmanya Narasu, learned Counsel for the revision Petitioners and Sri S.R. Ashok, learned Counsel for the decree holder are

heard.

7. The point for consideration is whether the claimants are entitled to claim interest on solatium as claimed in the execution petitions.

8. All the questions that may arise concerning the right of the claimants in land acquisition references to interest on the amount of solatium are no

longer res integra being the subject of binding precedents from the Apex Court referred to hereunder:

Sundar v. Union of India (1 supra) by a five Judge Bench of the Supreme Court considered the liability of the State to pay interest on the amount

envisaged u/s 23(2) of the Land Acquisition Act, 1894. The reference of the question of interest on solatium was about calculation of interest as

mentioned in Sections 34 and 28 of the Land Acquisition act, 1894 including or excluding the amount of solatium in or from the sum on which

interest is liable to be paid. Conflicting views in earlier decisions were considered in depth and it was made 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 was

observed that 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. The Supreme Court stated the law to be that the person entitled to the compensation

awarded is also entitled to get interest on the aggregate amount including solatium.

9. In Gurpreet Singh v. Union of India (2006) 8 Supreme Court Cases 457, another five Judge Bench of the Supreme Court was considering the

rule of appropriation in case of an award decree under the Land Acquisition Act and incidentally, the Apex Court considered whether in the light

of the decision in Sundar v. Union of India (1 supra), the awardee/decreree-holder would be entitled to claim interest on solatium in execution though

it is not specifically granted by the decree. The Supreme Court held that it is well settled that an execution Court cannot go behind the decree and

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 the appellate Court, the execution Court will have necessarily to reject the claim for interest on

solatium based on *Sundar v. Union of India* (1 supra) on the ground that the execution Court cannot go behind the decree. The Apex Court further

held that if the award of the reference Court Supreme Court Cases 457 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 *Sundar v. Union of*

India (1 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. The Supreme Court also clarified 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 *Sundar v. Union of*

India (1 supra) i.e. 19-09-2001 and not for any prior period. They also clarified that this will not entail any reappropriation or fresh appropriation

by the decree-holder. The indication by way of clarification is also stated to be in exercise of the power of the Supreme Court under articles 141

and 142 of the Constitution of India with a view to avoid multiplicity of litigation. This judgment in *Gurpreet Singh* was rendered on 19-10-2006.

10. In *Food Corporation of India v. Yarlagadda Narayana Apparao* 2008 (8) SCJ 178 , the observations in *Gurpreet Singh* (3 supra) approving

Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, were reiterated.

11. In *Land Acquisition Officer and Assistant Commissioner v. Shivappa Mallappa Jigalur* 2010 (1) Decisions Today (SC) 316, the effect of

Sundar (1 supra) and *Gurpreet Singh* (3 supra) was considered and the Supreme Court divided the appeals under consideration into four sub-

groups on the basis of the respective facts. The first sub-group of cases were those where the award of the Collector or the decree of the civil

Court is put to execution and payments are made in terms of the award or decree of the civil Court and in that sense the award or the decree is

satisfied. Nevertheless, an appeal against the award or the decree of the civil Court may still remain pending either before the High Court or even

before the Supreme Court and in appeal, the superior Court may enhance the compensation which would lead to enhancement of solatium and

consequently, the interest on the additional amounts of compensation and solatium. In such a situation, the landowner/claimant would be bound to

go back to the execution Court for realization of the additional amounts in terms of the modified decree and the execution proceedings cannot be

deemed to be closed. The Supreme Court also observed that the direction regarding interest on solatium being granted only subsequent to 19-09-

2001, the date of the decision in Sundar (1 supra), is a limitation on the power of the execution Court, but not the Court dealing with the main

proceeding relating to enhancement of compensation. It was pointed out that the appeal being continuation of the original proceeding, there can be

no question of accrual of interest only after the date of the decision in Sundar (1 supra). In the fourth sub-group of cases, the civil Court expressly

rejected the land owner's claim for interest on solatium and the decision of the civil Court was not taken any further and was allowed to rest at that

stage. The Supreme Court refused to permit a concluded and closed proceeding being revived by the device of filing a review petition and then

filing a revision against the order dismissing the review petition in view of the observations in Gurpreet Singh v. Union of India (3 supra).

12. A reading together of the relevant precedents from the Apex Court, thus, makes it clear that a person who is entitled to compensation awarded

is also entitled to get interest on the aggregate amount including solatium u/s 23(2) of the Land Acquisition Act, 1894. In cases where the claim for

such interest on solatium was made and negatived expressly or by necessary implication by the reference Court or the appellate Court, the

execution Court will have to necessarily reject the claim for interest on solatium, as it cannot go behind the decree. If the question of interest on

solatium was not raised or referred to or rejected expressly or impliedly by the reference Court or the appellate Court, it would be open to the

execution Court to apply Sundar (1 supra) and direct interest on the amount of solatium also to be deposited in execution treating such solatium as

being included in the compensation awarded. The same would be available in pending executions and not in closed executions as per Gurpreet

Singh v. Union of India (3 supra) rendered on 19-10-2006 and recovery was permitted only from 19-09-2001, the date of judgment of Sundar v.

Union of India (1 supra). Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, and Sundar v. Union of India (1

supra) were not considered to be in conflict in Food Corporation of India v. Yarlagadda Narayana Apparao (4 supra). The award of the Collector

or the decree of the civil Court might have been the subject of execution, in which some payments were made in terms of the award or the decree

satisfying them in that sense during the period of pendency of an appeal before the High Court or the Supreme Court. In such a situation, the land

owner/claimant has the right to go back to the execution Court for realization of the additional amount in terms of the modified decree of the High

Court or the Supreme Court. The execution proceedings cannot be directed to be closed within the meaning of Gurpreet Singh v. Union of India

(3 supra) in such an event and interest on solatium can be claimed and recovered. Such interest on solatium is recoverable in terms of the power of

the Court dealing with the main proceeding relating to enhancement of the compensation, which is not confined to the period after the decision in

Sundar v. Union of India (1 supra). The stipulation that any interest on solatium can only be subsequent to 19-09-2001, the date of the decision in

Sundar v. Union of India (1 supra), is a limitation only on the executing Court and not on the reference Court or the appellate Court.

13. The factual matrix behind the questions in controversy in these civil revision petitions has to be examined in the light of the above legal position.

14. A.S. No. 705 of 2000 against the award in O.P. No. 96 of 1988 was dismissed without costs on 27-12-2000. A.S. No. 153 of 2000 against

the award in O.P. No. 244 of 1987 was also dismissed on 27-12-2000. After disposal of the appeals, petitions for condonation of delay in filing

cross-objections by the claimants were allowed and the cross-objections were dismissed without costs on 16-04-2002.

15. Hemraj and Ors. v. Musammat Bibi Kuar Vol.XXXIX Indian Cases 947, Lt. Col. P.H. Choudhary Vs. Altaf Ahmed and Another,

Superintending Engineer v. B. Subba Reddy AIR 1999 SUPREME COURT 1747, and Rashida Begum v. Union of India 2001 AIHC 2507 were

referred to against the maintainability and determination of the cross-objections after the disposal of the appeals. But in so far as these revision

petitions are concerned, the appeals or the cross-objections or the orders passed therein cannot be the subject of consideration nor can this Court

go into and determine such questions against the orders of the Division Bench in appeals or cross-objections. The reference to the appeals and the

cross-objections is limited to the purpose of knowing till which time the main proceedings for determination of compensation either by way of

appeals or cross-objections were pending before the appellate Court for the purposes of determining the applicability of the benefit of the principle

of Sundar (1 supra). While the appeals in A.S. Nos. 153 of 2000 and 705 of 2000 appeared to have been disposed of prior to Sundar (1 supra),

the cross-objections were decided much later to Sundar (1 supra).

16. In E.P. No. 20 of 1999 in OP. No. 96 of 1988, a specific objection was taken before numbering the execution petition as to how interest can

be claimed on the solatium and on hearing the counsel for the decree-holder about such entitlement, the executing Court numbered the execution

petition and while it was posted for payment of balance and issuance of attachment warrant for movables, it was ultimately closed on 27-11-2002.

17. In E.P. No. 32 of 2003, it was stated that E.P. No. 20 of 1999 was closed with part satisfaction.

18. In E.P. No. 2 of 2000 in O.P. No. 210 of 1987, the order passed on 11-12-2001 was ""amount deposited. E.P. is terminated"". A memo also

appeared to have been filed by the advocate for the decree-holder into Court stating that the execution petition may be closed by reserving rights

to the decree-holder to file an execution petition as per the decree of the High Court and the decision of the Supreme Court.

19. In E.P. No. 40 of 2003 in O.P. No. 210 of 1987, E.P. No. 2 of 2000 was stated to have been closed in part satisfaction and E.P. No. 1 of

2002 was stated to be pending as per the decree of the High Court.

20. In E.P. No. 3 of 2000 in O.P. No. 244 of 1987, the endorsement on 04-10-2002 is that ""amount already deposited. Hence, the E.P. is

closed.

21. In E.P. No. 33 of 2003 in O.P. No. 244 of 1987, it was stated that E.P. No. 3 of 2000 was closed with part satisfaction.

22. Patently, in none of the execution petitions, full satisfaction has been recorded so far.

23. C.R.P. No. 3210 of 2002 was filed by the National Thermal Power Corporation Limited through its General Manager/the beneficiary against

the order in E.P. No. 1 of 2002 in O.P. No. 210 of 1997, dated 26-04-2002 and the same was decided on merits by a learned Judge of this

Court by the order, dated 10-06-2003. The learned Judge was dealing with the controversy as to whether the claimant was entitled to 15%

interest on the compensation amount of solatium, as the Land Acquisition Officer and the beneficiary were disputing such entitlement. The learned

Judge noted that A.S. No. 829 of 2000 filed against the order in O.P. No. 210 of 1987 was dismissed on 27-12-2000, while on the cross-

objections, the compensation was enhanced. The learned Judge also noted that in E.P. No. 2 of 2000, interest on solatium was claimed and after

closure of E.P. No. 2 of 2000 on 11-12-2001, E.P. No. 1 of 2002 was filed on 02-01-2002 for payment of interest on the solatium amount. The

learned Judge referred to Sundar (1 supra) and also noted that no memo of full satisfaction of the decree was filed in E.P. No. 2 of 2000 and the

closure of the execution petition by the executing Court does bring about any alteration in the rights or privileges of either party in view of the

enhancement of the compensation ordered by the High Court during the pendency of E.P. No. 2 of 2000. The learned Judge also considered the

entertainment of E.P. No. 1 of 2002 as right holding that the Petitioner is entitled to interest on the solatium amount. The pendency of E.P. No. 2

of 2000 by the date of Sundar (1 supra) and continuation of the said proceedings in E.P. No. 1 of 2002 claiming interest on solatium throughout

made the learned Judge conclude in favour of the claimant, more so in view of the decision in Sundar (1 supra). This order in C.R.P. No. 3210 of

2002 had admittedly become final on the dismissal of SLP No. 13117 of 2003 by the Apex Court on 04-08-2003.

24. The findings on merits on C.R.P. No. 3210 of 2002 by this Court confirmed by the Apex Court should conclude the matter not only in respect

of C.R.P. No. 752 of 2007 arising out of the same land acquisition O.P. No. 210 of 1987 in respect of identical claim being made in the

subsequent execution petition No. 40 of 2003, but the identical questions involved in the other two civil revision petitions also, to which the same

land acquisition officer and beneficiary are parties, which also cannot be decided in any other manner.

25. Even otherwise, Sundar (1 supra) decided about the right to interest on solatium, while Gurpreet Singh (3 supra) decided that when the

reference Court or the appellate Court do not specifically refer to the question of interest on solatium or even where the claim was not made and

rejected expressly or impliedly by reference Court or appellate Court, it would be open to the executing Court to apply Sundar (1 supra). In the

present cases also, there was silence on the aspect in the award of the reference Court or the judgment of the appellate Court and the question

was not raised or decided expressly or impliedly. As pointed out in Land Acquisition Officer and Assistant Commissioner v. Shivappa Mallappa

Jigalur (5 supra), where the Court was dealing with the main proceeding relating to enhancement of compensation, the limitation imposed by

Gurpreet Singh (3 supra) to restrict the interest from the date of the judgment of Sundar (1 supra) i.e. 19-09-2001 in pending executions, has no

application. While in respect of OP. No. 210 of 1987, the same was made clear in C.R.P. No. 3210 of 2002 confirmed by the Apex Court, the

same is the factual matrix in the other two cases also. Therefore, the impugned orders in all the three execution petitions about the entitlement of the

Respondents herein to interest on solatium cannot be interfered with and the civil revision petitions have to fail.

26. However, like the directions given in Land Acquisition Officer and Assistant Commissioner v. Shivappa Mallappa Jigalur (5 supra) in respect

of the first sub-group of cases, any grievance with regard to calculation of the amounts of solatium or interest can be the subject of objections by

the judgment debtors (either the land acquisition officer or the beneficiary), if it is otherwise permissible in law, which will be decided by the

executing Court on merits. The executing Court did not appear to have gone into the question of correctness of the quantum of solatium and

interest on solatium claimed in the execution petitions.

27. Accordingly, the civil revision petitions are dismissed without costs, but the executing Court shall entertain and determine in accordance with

law on merits any objections to the calculation of the amounts of solatium or interest to which the claimants are entitled, if the Land Acquisition

Officer or the beneficiary raise any such objections.