* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 23.11.2011*

\+ **CM (M) No. 739/2010**

SHRI NEKI RAM ..... Petitioner

Through: Mr. I.S. Dahiya and Mr. Sunil Dahiya, Advocates.

Versus

UNION OF INDIA .....Respondent

Through: Sanjay Poddar, Sr. Advocate with Mr. Sanjay Kumar Pathak, Mr. Mohitrao Jadhav and Ms. Navlin Swain, Advocates for respondent No.1.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. The issue to be decided is as to whether the interest on solatium under the Land Acquisition Act, 1894 (hereinafter referred to as the 'LAC Act') is payable in the instant case.

2. Arguments addressed by both the parties have been appreciated.

3. These proceedings were proceedings under the LAC Act. The impugned order is dated 21.07.2009. Certain dates are undisputed.

The Reference Petition under Section 8 of the LAC had been disposed of by the Reference Court on 12.05.1994. The applicant had been granted solatium @ 30% on the enhanced market value under 23 (2) of the Act. Thereafter an application had been filed by the applicant/decree holder under Section 151 of the Code of Civil Procedure (hereinafter referred to as the 'Code') seeking interest on the said solatium which admittedly did not form a part of the judgment dated 12.05.1994. His contention was that this judgment had been modified by the subsequent order passed by the learned ADJ on 14.09.2004 vide which interest on solatium had been granted to him.

4. This order dated 14.09.2004 is non-est. It had been passed on an application under Sections 151 & 152 of the Code which was admittedly without notice to the other side. In *State of K.S. Paropooran Vs. State of Kerala* (1994) 5 SCC 593, the Apex Court had noted that the Reference Court has no power to entertain an application under Section 151 of the Code which has become final

or to independently pass an order enhancing solatium and interest as amended by the Act of 68 of 1984. Relevance extract of the said order passed by the Apex Court reads as under:-

> "That the reference court or the High has no power or jurisdiction to entertain any application under Section 151 CPC to correct any decree which has become final or to independently pass an award enhancing the solatium and interest as amended by the Act of 68 of 1984. Thus, the High Court granting enhanced solatium @ 30% under section 23 (2) and interest @ 9% for one year from the date of taking possession and thereafter 15% till the deposit under Section 28 as amended under Act 68 of 1984 is clearly without jurisdiction, therefore, a nullity. The order being a nullity can be challenged at any stage."

5. In *Bijay Kumar Saraoji Vs. State of Jharkhand* IV (2005) SLT 151 had in this context made the following observations:-

> "We find no reason to interfere with the order of the High Court because a bare perusal of section 152 makes it clear that section 152 can be invoked for the limited purpose of correcting clerical or arithmetical mistake in the judgment. The section cannot be invoked for claiming a substitute relief which was no granted under the decree."

6. It is thus clear that the order dated 14.09.2004 amending the original decree is a non-est order; the Executing Court cannot go behind the decree and cannot amend it. In this case admittedly no interest on solatium had been awarded in the original decree. The executing proceedings in the instant case stood closed on 19.08.1998 and at the time when the application under Sections

151 & 152 of the Code had been filed, there was no execution pending. Interest on solatium was thus not permissible to the present applicant.

7. This is clear from the ratio of the judgment of *Gurpreet Singh vs. Union of India* (2006) 8 SCC 457; the ratio of which is extracted here-in-below:-

"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 (supra), the awardee/decree 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 (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."

8. A reading of this paragraph clearly shows that the Apex Court has clarified that interest on solatium can be claimed only in pending executions and not in closed executions.

9. The impugned order thus not granting interest on solatium suffers from no infirmity.

Dismissed.

INDERMEET KAUR, J.

NOVEMBER 23, 2011
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