

IN THE HIGH COURT OF TRIPURA
A G A R T A L A

CRP NO.6 OF 2014
CRP NO.8 OF 2014

IN
CRP NO.6 OF 2014

Union of India,
represented by the Asstt. Defence Estate Officer,
office of the Asstt. Defence Estate Office,
Abhoynagar, P.O. Abhoynagar, P.S. East Agartala,
District West Tripura, PIN-799005.

..... Petitioner

– Vs –

Smt. Rani Madan Kumari Devi,
wife of Maharaj Kumar Sukumar Kishore Debbarma,
resident of Kunjaban, P.S. East Agartala, District West Tripura.

.....Respondent

IN
CRP NO.8 OF 2014

Union of India,
represented by the Asstt. Defence Estate Officer,
office of the Asstt. Defence Estate Office,
Abhoynagar, P.O. Abhoynagar, P.S. East Agartala,
District West Tripura, PIN-799005.

..... Petitioner

– Vs –

Smt. Gita Rani Das,
wife of Phani Bhusan Das,
resident of Abhoynagar, P.S. East Agartala, District West
Tripura.

.....Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners : Mr. A. Lodh, Advocate

For the respondents : None

Date of hearing : 25.11.2014

Date of judgment & order: 17.01.2015

Whether fit for reporting	:	<table><tr><td>Yes</td><td>No</td></tr><tr><td></td><td>√</td></tr></table>	Yes	No		√
Yes	No					
	√					

JUDGMENT & ORDER

Both these petitions filed under Article 227 of the Constitution of India, are taken up together, as by means of those petitions, identical question has been canvassed by the petitioners-Union of India. The question is, whether the interest on solatium can be paid by the executing court, if the Land Acquisition Judge has not “specifically granted” interest on the solatium from the date when the notification under Section 4(1) of the Land Acquisition Act, 1894 was issued or the payment of interest shall be restricted from the date when **Sunder Vs. Union of India**, reported in **(2001) 7 SCC 211** was pronounced in terms of the interpretation given by the apex court in **Gurpreet Singh Vs. Union of India**, reported in **(2006) 8 SCC 457**.

2. By the impugned order dated 10.04.2013, delivered in Execution (M) No.01/2006, which has been challenged in CRP No.6/2014, the executing court has directed payment of interest on the solatium from the day when the notification under Section 4(1) of the Land Acquisition Act, 1894 was issued. Similarly, by the impugned order dated 11.04.2013 delivered in Execution (M) No.12/2003, which has been challenged in CRP No.8/2014, the executing court has directed payment of interest on the solatium from the day when the notification under Section 4(1) of the Land Acquisition Act, 1894 was issued.

As stated, the said orders dated 10.04.2013 and 11.04.2013 respectively, delivered in Execution (M) No.01/2006 and Execution (M) No.12/2003, have been challenged in these writ petitions by the petitioners.

3. Mr. A. Lodh, learned counsel appearing for the petitioners, has submitted that the interest on the solatium was not "specifically granted" by the Land Acquisition Judge.

4. The Land Acquisition Judge, by the common orders dated 31.10.1997, delivered in Misc.(L.A.) No.62/1987 (**Smt. Gita Rani Das & Anr. Vs. L.A. Collector & Anr.**) and in Misc.(L.A.) No.112/1987 (**Maharaj Kumar Sukumar Kishore Debbarma Vs. L.A. Collector & Anr.**) etc., has granted compensation as under :

"In view of this background I can not but hold that all the claimant petitioners are entitled to get @Rs.24,000/- per kani for their acquired lands (flat rate). Besides that they shall also get an additional amount of 12% per annum on the market value w.e.f. the date of publication of notification under Section 4(1) of the Land Acquisition Act to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. Besides that solatium @30% per annum of the market value as determined by this court shall be paid to the claimant-petitioners. Further that the claimant-petitioners are also entitled to get interest @9% per annum from the date of taking possession of land for one year and thereafter @15% per annum on the enhanced amount."

5. As regards the interest, the Land Acquisition Judge has directed that the claimants would be entitled to interest @9% per annum from the date of taking possession of land for one year and, thereafter, @15% per annum on the enhanced amount. Prior to that, various components of the damages to be considered under Section 23 of the L.A. Act, 1894, have been depicted, but against neither of the components, interest had been granted "specifically". The solatium is essential part of the damage to be paid to the land-losers.

6. Mr. Lodh, learned counsel appearing for the petitioners, having referred to that aspect of the matter, has submitted that the interest on the solatium was not "specifically granted" by the Land Acquisition Judge. Therefore, the respondents would only be entitled to interest on the solatium

w.e.f. 19.09.2001, when **Sundar's** case was decided by the apex court. In support of this contention, Mr. Lodh, learned counsel has relied on 2(two) decisions of this court rendered in (i) the common judgment and order dated 25.06.2014 in CRP Nos. 104, 105, 106 and 108 of 2013 (Union of India Vs. Nikhil Debnath & Ors.) and (ii) the judgment and order dated 16.09.2014 in CRP No.53/2014 (Union of India Vs. Sukhlal Debbarma).

7. In **Union of India Vs. Nikhil Debnath & Ors.**, it has been observed as under :

"In all case, interest on solatium as per Sundar's case, which is reaffirmed in Gurpreet Singh's case will be admissible with effect from 19.09.2001. The Execution Court is therefore, directed to calculate the compensation taking into account the law laid down by the Apex Court in Sundar's case and in Gurpreet Singh's case (supra). In the impugned orders, learned L.A. Judge calculated the compensation taking into account the rate fixed by the L.A. Judge and thereafter, added solatium and interest and then deducted the amount already paid as per the award made by the L.A. Collector, but did not fix any interest on solatium.

Learned L.A. Judge should fix the interest on solatium with effect from 19.09.2001."

[Emphasis added]

8. In **Union of India Vs. Sukhlal Debbarma**, this court when confronted with a similar question, has considered and observed as under :

"In Sunder's case it was clearly held that unless the request for interest has been specifically rejected, even the Executing Court was bound to grant interest on solatium. However, a Constitution Bench of the Apex Court in Gurpreet Singh's case dealing with this question 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 (supra), 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 (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."

Thereafter, this court in **Union of India Vs. Sukhlal Debbarma**, has observed further that :

"The gist of the judgment of the Apex Court is as follows :

- (1) Since the Executing Court cannot go behind the decree if the land reference Judge has rightly or wrongly specifically rejected the prayer for grant of interest on solatium then the Executing Court cannot grant such interest.**
- (2) If the Land Acquisition Judge has specifically granted interest on solatium then it is payable from the date of notification issued under Section 4 of the L. A. Act, 1894.**
- (3) The Apex Court further held that there were a large number of cases where there is no specific reference to interest payable on solatium. There may also be cases where claim for interest on solatium had not been made and, therefore, there was no question of accepting or rejecting such a claim. In these cases the Apex Court held that the executing Court was free to follow the judgment of Sunder(supra) and grant interest on solatium but with the caveat**

that in such cases the interest would be awarded only from 19.09.2001 i.e. the date when Sunder's case was decided.

- (4) The Apex Court also made it clear that the executing Court could award interest on solatium only in pending executions and where the execution proceedings had been disposed of, the matter could not be re-opened." [Emphasis added]

This court has further observed in **Union of India Vs. Sukhlal Debbarma** that :

"The law laid down in Gurpreet Singh's case is very clear. In the present case I find that the operative portion of the order of the Land Acquisition Judge does not refer to grant of interest on solatium. Therefore, though the executing Court was fully justified in granting interest on solatium this interest could only be granted with effect from 19.09.2001 and not from any prior date."

9. There cannot be any amount of dichotomy so far the decision of this court in **Union of India Vs. Sukhlal Debbarma** is concerned, which one is the subsequent decision and has departed from the law as laid down by this court in **Union of India Vs. Nikhil Debnath & Ors.**, where it has been stated that :

"In all case, interest on solatium as per Sundar's case, which is reaffirmed in Gurpreet Singh's case will be admissible with effect from 19.09.2001."

The said decision, according to this court is not the correct reflection of **Gurpreet Singh's** ratio, whereas the decision in **Union of India Vs. Sukhlal Debbarma**, has correctly enunciated the law in terms of **Gurpreet Singh's** case.

10. The endeavour of Mr. Lodh, learned counsel appearing for the petitioners shall fall apart, as it has been held in **Gurpreet Singh's** case 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 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 to hold that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution.

11. The question is how to understand the clause "and merely interest on compensation is awarded"? The answer is that, when in the award, the compensation without showing the components is granted by the Land Acquisition Judge or the appellate court, it has to be understood that the compensation includes solatium. But, there is no specific direction for payment of the interest on solatium. What has surfaced in the instant

cases is that the Land Acquisition Judge has specifically stated that alongwith the other components of the compensation, the claimant-petitioners or their successors would be entitled to get solatium @30% per annum of the market value as determined by that court and shall be paid to the claimant-petitioners, with further direction that the claimant-petitioners are also entitled to get interest @9% per annum from the date of taking possession of the land for one year and, thereafter, @15% per annum on the enhanced amount. This can be interpreted in two ways: (a) there is no specific reference of payment of interest on solatium and, as such, interest though would be granted on solatium, but such interest shall be payable from 19.09.2001 and the other interpretation that is probable is that, (b) in terms of the arrangement made in the award, the solatium shall carry interest @9%per annum from the date of taking possession of the land for one year and, thereafter @15% per annum on the enhanced amount.

This Court is of the considered opinion that the direction has been framed in such a manner to specifically refer the payment of interest on the solatium and, as such, the first proposition as indicated, cannot be a reasonable proposition in the context of this case having regard to the very nature of the legislation.

12. This court is therefore of the opinion that in the impugned judgment and award there is specific reference of payment on solatium and, accordingly, in terms of **Sunder's** case, there is no illegality in the said direction and, the claimants are entitled to get the interest on the solatium from the date when the possession of the land was taken by the petitioners herein.

13. Accordingly, both these petitions, being CRP No.6/2014 and CRP No.8/2014 are dismissed. However, there shall be no order as to costs.

JUDGE

ROY