

*** THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO**

+ C.R.P.Nos.1863, 1997, 2171, 1864 and 1873 of 2014

% Dated 10-04-2015

CRP No.1863 of 2014

The Land Acquisition Officer and RDO, Nizamabad & another

Petitioners

Vs.

\$ Badruddin (cl.No.2) died through LR's and others

Decree Holders

CRP No.1997 of 2014

The Land Acquisition Officer (RDO), Nizamabad & another

Petitioners

Vs.

\$ Smt.Fatima (Cl.No.6) died through LR's and others

Decree Holders

CRP No.2171 of 2014

The Land Acquisition Officer (RDO), Nizamabad & another

Petitioners

Vs.

\$ Abdullah Hazrami (CI.No.3) died through LRs and others.

Decree Holders

CRP No.1864 of 2014

The Land Acquisition Officer (RDO), Nizamabad & another

Petitioners

Vs.

\$ Dora Linganna (CI.No.4) died through LRs and others

Decree Holders

CRP No.1873 of 2014

The Land Acquisition Officer (RDO), Nizamabad & another

Petitioners

Vs.

\$ Abdul Rahman Bakaran (CI.No.1) died through LRs and another

Decree holders

! Counsel for the Petitioners: Government Pleader for Arbitration

^ Counsel for the Respondents: Sri P.Laxma Reddy

<GIST:

> HEAD NOTE:

? Cases referred

1. 2001(5)ALD 136(SC)

2. 2006(8) SCC 457

3. 2010(8) SCC 329

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.R.P.Nos.1863, 1997, 2171, 1864 and 1873 of 2014

–

COMMON ORDER:

C.R.P.No.1863 of 2014(E.P.No.40 of 2005), C.R.P.No.1997 of 2014(E.P.No.43 of 2005), C.R.P.No.2171 of 2014(E.P.No.41 of 2005), C.R.P.No.1864 of 2014 (E.P.No.42 of 2005) and C.R.P.No.1873 of 2014(E.P.No.39 of 2005) these five revision applications are the outcome

impugning the legality, propriety and correctness of the order dated 12.12.2013 commonly passed by the learned I Additional District Judge – cum – the Executing Court of the decree passed in L.A.O.P.No.89 of 1984 outcome of the award passed by the land Acquisition Officer in Award No.A5/1097/78-III, dated 19.10.1982. In the award for a total land of about Ac.7.26 guntas of Armur village of Nizamabad District, that was acquired for purpose of construction of a bus stand and complex by the Government, i.e. State of the then Andhra Pradesh through the Land Acquisition Officer-cum-Revenue Divisional Officer, Nizamabad for the beneficiary, the A.P.S.R.T.C. represented by its Managing Director, office at Musheerabad, the Land Acquisition Officer fixed compensation of Rs.25/- per square yard for the entire land after deduction of 30% of the area for development besides 15% solatium and 4% per annum interest from date of possession taken on 07.02.1979 till date of the award 19.10.1982. The claimants raised objection regarding the market value and on protest, undisputedly accepted whatever the amount paid towards what is due under the awards. There were originally 9 claimants and claimants 10 to 17 as beneficiaries of respective extents out of the land subsequently came on record on their applications under Order I Rule 10 CPC and 18th claimant is no other than the legal representative of the deceased first claimant, equally the claimants 19 to 24 are the legal representatives of either 2nd claimant or 3rd claimant or 7th claimant or 8th claimant or 18th claimant as the case may be. In the reference made, the civil Court by judgment and decree dated 20.08.1990 confirmed the award by answering the reference for nothing to interfere. It is impugning the same, the claimants maintained appeals in A.S.No.674 of 1992 by claimants 4 to 9 and 18th claimant being legal representative of first claimant since died, A.S.No.1380 of 1992 by the other claimants 10 to 17, and the Land Acquisition Officer also against all the claimants 1 to 18 by then preferred another appeal A.S.No.1606 of 1992. All the three appeals were commonly decided by this Court by a division bench vide judgment dated 30.06.2000 by remanding the matter for fresh disposal if necessary by recording further evidence with observation that any amount already deposited by the Land Acquisition Officer or by the A.P.S.R.T.C. is subject to the final result of the matter under remand.

2. It is pursuant to the remand order supra, the O.P.No.89 of 1984 was restored to file of the trial Court – cum – I Additional District Judge, Nizamabad and ultimately after recording further evidence and hearing afresh on merits disposed of by judgment and decree dated 06.11.2002. It is impugning the same, the A.P.S.R.T.C. for whose benefit the land was acquired by the Revenue Divisional Officer, Nizamabad, the Land Acquisition Officer preferred appeal No.2661 of 2003 and the Land Acquisition Officer also filed independent appeal No.668 of 2004. Before coming to the appeal lis as per the remand order, the reference court in answering the lis on merits on 06.11.2002 against the 24 claimants supra, held that, without deduction of 30% for development of the area for the entire land at Rs.90/- per square yard, the claimants are entitled to compensation besides solatium at 30% and also interest on the compensation including the enhanced amount and solatium at 9% for the first year from the date of taking possession (07.02.1979) and thereafter at 15% per annum. It is ordered further that for the neem, mango and tamarind trees for each Rs.500/- and for other trees each Rs.100/- the claimants also entitled and it is further ordered that (as per Section 23(1)(A) of the Land Acquisition Amended Act) the claimants are also entitled to additional market value at 12% per annum on the enhanced compensation from the date of possession on 07.02.1979 till the award passed on 19.10.1982. As referred supra, impugning said decree and judgment of the civil Court pursuant to the remand, the two appeals were maintained by the A.P.S.R.T.C. and the Land Acquisition Officer, wherein another Division Bench of this Court by common judgment dated 01.12.2004 answered the issue involved in the appeals by reducing from Rs.90/- per square yard to Rs.67.50 ps., per square yard the market value and by negated any entitlement of additional value for any of the trees and further observed that the claimants are entitled to all other statutory benefits as has been awarded by the reference Court except interest from the date of taking possession (07.02.1979) of the draft notification published (Section 4(1) notification dated 25.10.1979).

3. The sum and substance of the Division Bench judgment, which is under execution, (by Doctrine of merger by virtue of the award of the civil Court originally that was of appeal remanded and re-determined on 06.1.2002,

modified as per the common appeal judgment dated 01.12.2004); is that the market value for trees is negated, market value for the land without any deduction for development is fixed at Rs.67.50 ps per square yard (reduced from Rs.90/- per Square yard) and other statutory benefits as has been awarded by the reference Court are only conferred or ratified but for the modification only to the extent of non-entitlement of interest from 25.10.1979 and not from 07.02.1979 i.e., instead from the date of taking possession prior to the date of Section 4 (1) of notification, only from the date of Section 4(1) notification.

4. It is also necessary in this context to mention that the A.P.S.R.T.C. having been aggrieved by the Division Bench judgment of this Court dated 01.12.2004 moved the Apex Court with delay condonation application for leave to maintain appeal specially. Though the delay was condoned by order dated 02.01.2006 before admission of the special leave petition, the same was ended in dismissal vide referring No.C.C.113366/05 dated 12.01.2006.

5. Undisputedly, neither the claimants nor the Land Acquisition Officer nor the A.P.S.R.T.C. preferred any review applications against the Division Bench Judgment supra dated 01.12.2004 even after the A.P.S.R.T.C. went unsuccessful to challenge for special leave petition not admitted.

6. It is pursuant to the merger appellate Court decree with the trial Court dated 01.12.2004 with dated 06.11.2002, the respective claimants maintained the above referred execution applications E.P.39 to 43 of 2002. It is needless to mention that the A.P.S.R.T.C. after numbering of the execution petitions impugning the execution maintained C.R.P.Nos.2574 to 2578 of 2009 and there were interim stay orders obtained on 19.06.2009 subject to deposit of 1/4th of the disputed amounts and the deposits were made and all the five revision applications were disposed of by directing the executing Court to consider the objections and decide the amounts due and payable.

7. It is pursuant to which the order of the executing Court-cum-I Additional

District Judge, Nizamabad, impugning the five revision applications dated 12.12.2003 is now in issue in the five civil revision petitions. The impugned order reads as follows:

“For the foregoing reasons, it must be held that the calculation by the claimants is, and the calculation by the A.P.S.R.T.C. is not, in accordance with the ratio laid down in Gurpreet Singh’s case. The judgment debtors shall deposit Rs.77,97,631/- and further interest at 15% per annum on the balance compensation of Rs.32,91,423.20 from 24.11.2012 within 15 days, failing which further steps in the E.Ps will follow.”

8. The revisions maintained by the Land Acquisition Officer and the A.P.S.R.T.C. on hand are with the contentions that

1. The impugned common order of the learned I Additional District Judge, Nizamabad is contrary to law, evidence on record.
2. The learned executing court erroneously and without considering the judgments of Apex Court, directed the petitioner/D.Hrs. to deposit a sum of Rs.77,97,631/-.
3. It is submitted that the learned executing Court ought to have held that the respondents/D.Hrs. are not entitled to get additional market value as contemplated under Section 23(1)(A) of Land Acquisition Act, as per the judgment of Apex Court in R.L.Jain Vs. DDA, reported in (2004) 4 SCC Page 79.
4. It is submitted that even assuming and without admitting that the respondent/DHR is entitled to get additional market value, they are not entitled to get the interest on it from the date of possession but, they are entitled to get interest from 19.09.2001 which is the date of judgment in Sunder’s case reported in (2001), 5 ALD 136 (SC), wherein it is held that the interest on AMV is not awarded the claimant is entitled to get the interest from the date of judgment in Sunder’s case ie., 19.09.2001.
5. It is submitted that the learned Judge should have held that the respondent/DHR is not entitled to get additional market value and interest thereon from the date of taking possession.
6. It is submitted that the learned executing Court should have applied and considered ‘the stage wise appropriation rule’ as held in Gurupreet Singh case by the Apex Court to the payments

made by the petitioner herein to the claimants at each award stage.

7. It is submitted that the learned executing Court should have held that the calculation memo filed by the respondent/JDr is erroneous, incorrect and not in accordance with law laid down by Apex Court.

9. Heard at length the learned counsel for A.P.S.R.T.C. as well as the Land Acquisition Officer and also the counsel for the respective 24 claimants-cum-decree holders and perused the entire material referred supra apparent by record and also the provisions of the Land Acquisition Act and the expressions of the Apex Court Constitutional Bench, in **SUNDER v. UNION OF INDIA** and in **GURPREETH SINGH v. UNION OF INDIA**.

10. Now, the common points that arise for consideration in these revision applications are:

1. Whether an omission to award interest on the additional market value of 12% as per Section 23(1)(A) of the amended Land Acquisition Act 68 of 1984 is tantamount to refusal or not?
2. Whether the decree-holders-cum-claimants 24 in number of the five execution petitions can reopen to appropriate afresh the already deposited or paid compensation, before referring under Section 18 of the Land Acquisition Act on their request, for what was already received, by now filing the execution petitions with the claim and calculation to adjust towards costs and interest of amount already deposited and adjusted including towards the principle; now to say other than the principle including under any of the principles of doctrine of appropriation in the absence of specific mention either in the voluntary deposits by the Land Acquisition Officer or A.P.S.R.T.C. or involuntary deposits at the direction of the Court including with reference to Sections 59 and 60 of the Indian Contract Act?
3. Whether the impugned common order of the executing Court, for this Court while sitting in revision within its limited scope to what extent requires interference?

4. To what result?

11. POINTS 1 to 3: As points 1 to 3 are interrelated and outcome of the common disposal of the lis covered by the same reference of same award and same judgment and decree of the civil Court culminated into the appeals covered by common disposal as detailed supra, to avoid repetition of facts and propositions and principles, it is convenient for this Court as required by the parties also to take up together to decide.

12. Section 34 CPC which deals with *pendente-lite* and *post-lite* interest concerned, (which is non substantive like a *pre-lite* interest either covered by a specific statute or by Interest Act, 1978 or by a contract, if not on equity or trade, custom and usage) clearly speaks as a general principle that 'omission to award interest tantamounts to refusal'. In the Land Acquisition Act, Section 23 or even Section 34 leave about any of the sections 1 to 54 there is no any specific provision contra or otherwise than the general principle of omission tantamount to refusal of interest. What is laid down in **SUNDER's case** that is further clarified in **GURPREET SINGH's** case, which are the constitutional bench expressions of the Apex Court supra are only the guidance with reference to the above general principle under Section 34 Sub-section 2 CPC, even though Section 34 was not referred in the two constitutional bench expressions. The Sunder's expression on its perusal speaks the entitlement of interest on solatium even not specified by virtue of the expression with prospective affect. Referring to **SUNDER's case** and by clarifying the same, the other constitutional bench in **GURPREET SINGH's case** (supra) clearly held particularly in Paragraph No.54 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 the counsel to address us on that question. That question is whether in the light of the decision in *Sunder*², the awardee/deeree-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*² 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*² 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*² (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.”

13. From this expression even there is nothing in the facts to entitle the claimants – decree-holders to claim interest at any rate on the additional market value of 12% under Section 23(1)(A) for nothing even impliedly granted either from the award of the Court or from the remand order of this Court or from the re-determination and fresh award of the civil Court or common appeal judgment of this Court. Thus, their omission tantamounts to refusal but for to say following the expression in *Sunder* (supra) within the discretion of the Court, the executing Court can also hold that only from the expression of *Sunder* supra dated 19.09.2001 the claimants can claim interest on what is due and payable with effect from 19.09.2001 and not for any period prior to that. Now, coming to the appropriation when undisputedly at Rs.25/- per sq. yard no doubt excluding 30% for development out of the total land awarded as per the compensation fixed by the Land Acquisition Officer in the award dated 19.10.1982 and the amount was when paid or deposited with interest on the

market value + 15% solatium and also 4% per annum as per the law as on that day, that once received as laid down by the apex Court in Gurupreeth Singh's case supra particularly at Paragraph No.49, the claimants including on the principle of doctrine of appropriation envisaged by Section 60 of the Indian Contract Act cannot reopen much less to adjust to the interest or costs as having received towards principle and interest as on the date the amount was deposited pursuant to the award of the Land Acquisition Officer dated 19.10.1982 while referring to the civil Court covered by O.P.No.89 of 1984. It is to say whatever amount adjusted towards principle and interest that ends and again not left to the discretion of the decree-holder to reopen and recalculate but for on the enhanced compensation from the merger of the remand order of the Additional District Judge-cum-Civil Court dated 06.11.2002 modified by the appellate Court judgment dated 01.12.2004 to say for the enhanced compensation at Rs.67.50ps minus Rs.25/- = Rs.42.50ps per square yard without excluding any extent for development and solatium at 30% thereon with interest only from the date of 4(1) notification dated 25.10.1979 for one year till 24.07.1980 and thereafter at 15% till payment or deposit including with any direction of the Court to deposit in the presence of the parties as their deposit tantamounts to notice without liability for interest thereafter but for subject to the doctrine of appropriation remedy available to the decree-holder to that extent thereon; so also the additional market value under Section 23(1)(A) of the Land Acquisition Act at 12% on said Rs.67.50 ps per sq.yard. with interest only from 19.09.2001 (as per Gurupreeth Singh's case from the date of Sunder's case). It is needless to say so far as the amounts voluntarily deposited by the A.P.S.R.T.C. or the Land Acquisition Officer on behalf of the A.P.S.R.T.C. after reference to civil Court concerned, in the absence of specific say as contemplated by Section 59 of the Indian Contract Act, the decree-holders – claimants are entitled to appropriate initially towards costs and also towards interest due and balance if any remains towards the principle to claim. AS the executing Court or this Court while sitting in revision against the executing Courts order, cannot go beyond the decree, the argument of granting additional market value itself is contra to the expression in R.L.Jain, cannot find favour, for the lis without even by review made final otherwise.

14. As the impugned order of the lower Court is erroneous and unsustainable and it prejudiced the rights of the A.P.S.R.T.C. also, this Court while sitting in appeal within the limited scope under Article 227 of the Constitution can interfere as per the settled expression of the Apex Court in ***SHALINISHYAM SHETTY v. RAJENDRA SHANKAR PATIL***. Accordingly, the impugned order of the I Additional District Judge requires modification by permitting both parties to file fresh calculation and to proceed further with the execution. Accordingly, points 1 to 3 are answered.

15. POINT NO.4: In the result, the impugned common order of the execution Court is set aside by allowing the revisions in part as indicated in the above paras directing both parties to file fresh calculation and to ascertain as indicated above (in paras 12 and 13) by the Executing Court to proceed further in the execution. There is no order as to costs in the revision petitions. Miscellaneous petitions if any pending in these revision petitions, shall stand closed.

B.SIVA SANKARA RAO, J.

10th April 2015

Note: LR copy to be marked: yes

B/o. Rns