

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.6765 of 2009.

Decided on:-May 27th, 2015.

Anant Pal Singh.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate
for the petitioner.

Mr. D.R. Singla, DAG, Haryana and
Mr. Ramesh Kumar, AAG, Haryana
for the respondents.

Dr. Bharat Bhushan Parsoon, J.

This civil revision petition invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India has been preferred by the petitioner-decree holder challenging order dated 29.9.2009 (Annexure P-1) passed by the Executing Court, whereby it was held that the decree holders are liable to refund the amount received in excess in view of the provisions of Section 23 (1A) and Section 23 (2) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act).

2. It is claimed that the impugned order neither takes into account the factual matrix nor the legal position correctly. It is further pleaded that the impugned order is neither valid nor legal.

3. Counsel for the respondents, on the other hand, have urged that in terms of statutory provisions as also in view of the judicial mandate of Hon'ble Supreme Court of India in ***Gurpreet Singh Versus Union of India 2006(8) Supreme Court Cases 457***, the petitioner-decree holder had received a sum of Rs.2,72,957/- in excess from respondent-JD and the decree holder thus was liable to refund the same or may claim adjustment in the subsequent payments, if any, due from the JD to the decree holder.

4. Hearing arguments addressed by counsel for the parties while perusing the paper book and considering the attending circumstances, it is revealed that the entire dispute is with regard to extent of entitlement of the decree-holder to interest on the amount statutorily due to him from the JDs.

5. The land owner had preferred a reference claiming enhancement of compensation over and above the amount awarded by the Land Acquisition Collector (LAC) qua acquisition of his land by the State of Haryana. The compensation was enhanced by the reference court @ Rs.18/- per square yard. This Award was challenged by the State of Haryana in this Court vide RFA No.608 of 1988. Vide its verdict of 7.12.1993, this Court had upheld the Award of the District Judge i.e. the reference court.

6. Thereafter, the petitioner-decree holder had filed execution application during pendency of which, State of Haryana had filed application under Section 144 CPC for recovery of the decretal amount paid in excess claiming that interest is payable only on market value of the acquired land and not on the additional amount and solatium which were payable under Section 23(1A) and 23(2) respectively of the Act. The claimants had opposed the application of the State of Haryana tooth and nail pleading that the amount paid by the JD to the decree holder has first to be appropriated towards interest and only then to any other components of the claim.

7. Vide order dated 20.7.2002, the Executing Court had held that

calculations made by the JD were correct and sequelly, refund of the excess amount was ordered. The petitioner-decree holder challenged the said order of 20.7.2002 in civil revision petition before this Court. Sequelly, orders dated 30.5.2001 and 20.7.2002 passed by the Executing Court were set aside and the case was sent back for fresh decision.

8. Vide impugned order, it has been held by the Executing Court that in view of ***Gurpreet Singh's case (supra)***, the interest on solatium amount is permissible only w.e.f. 19.9.2001 i.e. the date of pronouncement of judgment in ***Sunder Versus Union of India AIR 2001 SC 3516***.

9. Merely the fact of payment made in excess than what was permissible under the statutory provisions and in terms of the judicial mandate, would not debar the JD to get back the excess amount paid to the decree holder. Looking from another angle, no undue enrichment can be allowed merely because the excess payment had already been made, even though the decree holder was not entitled for it.

10. At this stage, question arises as to what is the domain and sweep of "interest" awardable to the decree holder. Section 28 of the Act is the relevant provision. In short, interest is payable on the market value of the acquired land but which of course does not include 'interest' on solatium earlier to 19.9.2001 i.e. date of judgment in ***Sunder's case (supra)***.

11. Merely because excess payment has already been made, ipso facto cannot be a circumstance to be construed to debar the JD for claiming its refund. Attack of the decree holder on calculations made by the Executing Court is also misfounded. Rather, calculations made by the Executing Court depicted in detail do not suffer from any fault. At this stage, it would be relevant to refer to para 44 of ***Gurpreet Singh's case (supra)*** wherein after discussing various case laws, the proposition of law with regard, interalia, to permissibility of interest has been clarified as is given on the next page:

“44. 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 negated 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.”

12. In short, proposition of law emerging from the earlier quoted paragraph 44 of **Gurpreet Singh's case (supra)** is as under:

- (1) Executing court cannot go behind the decree and so, if interest on solatium is negated, expressly or impliedly in the Award, then claim for interest on solatium is to be rejected;
- (2) If in the Award, interest on solatium is not refused expressly or impliedly and merely interest on

compensation is awarded, then executing court can apply ratio of Sunder's case and in that eventuality, executing court can direct payment of interest on solatium also but not otherwise;

(3) However, it is necessary to mention that:

- (a) interest on solatium can be claimed only in pending executions and not in closed executions;
- (b) Payment of interest on solatium is permissible only from the date of judgment in Sunder's case i.e. 19.9.2001 and not for any prior period; and,
- (c) re-appropriation or fresh appropriation by the decree holder is not permissible.

13. It, thus, emerges that interest on additional amount is allowable only w.e.f. 19.9.2001 and not for the period prior to that.

14. In the present case, the JD had made payments in driblets and sequelly, solatium and additional charges already stood liquidated prior to 19.9.2001. It, thus, follows that in such a situation, the decree holder cannot claim interest on the components of solatium and additional charges even after 19.9.2001.

15. There is no dispute that the decree holder is entitled to solatium and additional amount but the cut off date is 19.9.2001. No interest is payable prior to this date. Award in this case was pronounced by the reference court on 15.1.1988. RFA preferred by the respondents was decided by this Court on 17.12.1993. This decision thus was much earlier to decision in *Sunder's case (supra)*.

16. When the reference was answered much prior to *Sunder's case (supra)*, the decree holder was entitled to interest on the amount of 'solatium' only for the period w.e.f. 19.9.2001 and not for any prior period. It follows that if some amount of interest has been paid in excess of the permissibility, to avoid undue enrichment and on the first principles of law, the same is liable to be returned or is to be made available for adjustment

towards their future entitlement by the decree holders.

17. The executing court very ably and competently handling the entire issue had made detailed calculations, whereafter it had held that interest only on amount of Rs.1,38,117/- i.e. the enhanced compensation, was payable. Component of solatium and additional amount of Rs.1,88,961/- was not to bear interest earlier to 19.9.2001. To clarify, interest only w.e.f. 19.9.2001 is payable. In short, amount of Rs.1,23,207/- is to be adjusted in respect of the solatium and additional amount of Rs.1,88,961/- as mentioned earlier.

18. In conclusion, as on 3.10.1988 only an amount of Rs.65,754/- was due and was payable by the JD to the decree holders towards payment of solatium and additional amount, of course, without any interest. Excess amount of Rs.2,72,957/- received by the decree holders from the JDs is liable to be refunded or adjusted.

19. Keeping in view the facts and circumstances as mentioned earlier, there is no infirmity in the impugned order dated 29.9.2009 (Annexure P-1) passed by the court below. Affirming the same, this revision petition, being devoid of any merit, is dismissed.

May 27th, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes