IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 681 OF 2015

1. State of Goa,
   Represented by the
   Executive Engineer, Work Div. VI,
   PWD, Fatorda, Margao, Goa.

2. Dy. Collector & Sub-Divisional Officer
   Quepem-Goa. …... Petitioners

Versus

1. Mr. Laxmikant D. Naik Karmali,
   House no. 709,
   Near St. Joaquim Chapel,
   Borda, P. O. Fatorda,
   Margao-Goa 403 602.

2. Mr. Bhaskar D. Naik Karmali,
   House no. 68, Bansal, Cacora,
   P.O. Curchorem, Goa, 403 706.
   All are major of age,
   Above all are the registered
   addreses of respective parties. …... Respondents

Mr. Sagar Dhargalkar, Addl. Government Advocate for the Petitioners.

Mr. P. A. Kholkar, Advocate for the Respondents.

Coram :- **C. V. BHADANG, J**

Date: **03.05. 2016**

JUDGMENT

Rule, made returnable forthwith. Learned Counsel for the Respondents waives service. Heard finally by consent of the parties.

2. By this Petition, the State takes exception to the Order dated 15.10.2014 passed by the learned Principal District Judge, South Goa, at Margao, in Execution Application no. 93 of 2013. By the impugned Order, the Executing Court has held that the Petitioners/Judgment Debtors would be liable to pay the amount as computed by the Respondents/Decree Holders. The amount recoverable is to the tune of Rs.1,38,227/- as on 31.08.2014.

3. The precise question is whether the liability of the State to pay interest would cease, when the decretal amount is deposited in pursuance of or as a condition of grant of stay. The question is no longer res integra as it is covered by decision of the Hon'ble Supreme Court in the case of ***P. S. L. Ramanathan Chettiar & Ors. vs. O. R. M. P. R. M. Ramanathan Chettiar*** reported in ***AIR 1968 SC 1047*** and in the case of ***Prem Nath Kapur & anr. vs. National Fertilizers Corpn. Of India Ltd. & Ors.*** reported in ***(1996) 2 SCC 71*** as also a decision of this Court in ***MCA no. 593 of 2006*** in the case of ***Dr. Ramesh Mulgaonkar vs. Special Land Acquisition Officer (N) & anr.*** Dated 05.02.2007.

4. The compensation paid to the Respondents was enhanced by this Court vide Judgment and Order dated 06.06.2008 in First Appeal no. 44 of 1999 whereunder the market value payable to the Respondent was enhanced from Rs.22/- per square metre to Rs.84/- per square metre with all statutory and consequential benefits. Indisputably, this was challenged by the Petitioners before the Hon'ble Apex Court in SLP no. 13585-13586 of 2010 in which the Hon'ble Apex Court had granted interim stay on 10.09.2010 in following terms :

> "…. By way of ad-interim relief, the operation of the impugned order is stayed on the condition that the Petitioner deposits the entire enhanced amount together with statutory benefits before the High Curt within eight weeks from today. On amount being deposited, the claimants would be entitled to withdraw 50% of the amount without furnishing security and rest of the amount after furnishing security to the satisfaction of the High Court."

5. It is further a matter of record that subsequently by an Order dated 30.07.2012, the SLP has been dismissed and, consequently, the Judgment and Order of this Court in First Appeal no. 44 of 1999, has attained finality. It is further undisputed that whatever deposit of the compensation is made by the Petitioners, was in terms of the ad-interim Order passed by the Supreme Court on 10.09.2010. The question is whether in such circumstances, the Petitioners can justify claim that the liability to pay interest on the compensation would cease.

6. The learned Addl. Government Advocate has pointed out from the Order dated 30.07.2012 that despite service of the notice in the SLP, the Respondents had not appeared. It is pointed out that thus the Petitioners were put to notice about the interim Order. It is submitted that the Executing Court thus erroneously found that there was no notice.

7. The said submission cannot be accepted for more reasons than one. The notice contemplated under Order 21 Rule 1(2) of Civil Procedure Code, cannot

be equated with the notice of SLP in a challenge at the instance of the State. The notice contemplated under Order 21 Rule 1(2) of Civil Procedure Code, is about deposit of the amount in Court. That apart, the principal question as stated earlier is whether the deposit made by the State in pursuance of and compliance of the conditions of the Order of stay, can stop the liability to pay interest. It would be apposite to re-produce the observations of the Hon'ble Apex Court in case of ***P. S. L. Ramanathan Chettiar & Ors.*** (supra) at para 12, thus :

> "12. On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order, but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 Rule 1 C.P.C. in satisfaction of the decree."

8. In the case of ***Prem Nath Kapur & anr.*** (supra) it was inter alia, held that provisions of Order 21 Rule 1 of Civil Procedure Code are not applicable to cases under the Land Acquisition Act.

9. The Division Bench of this Court after considering the Judgments in the case of ***P. S. L. Ramanathan Chettiar & Ors.*** (supra) and ***Prem Nath Kapur &***

anr. (supra) had, inter alia, held that the interest on the enhanced compensation can cease to run only in case the Respondents had deposited the amount with a view to pay the same to the Decree-holder in the Reference Court and not as a condition for staying the execution of a Decree. In this case, it is clear that the deposit of the compensation was made in compliance of the conditions of stay granted, by the Supreme Court not towards satisfaction of the award with a view to pay the same to the Respondents/Claimants.

10. The learned Addl. Government Advocate has further placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Major General Kapil Mehra & Ors. vs. Union of India & anr.*** reported in the case of ***(2015) 2 SCC 262*** in order to submit that there is a distinction between grant of interest under Section 28 and Section 34 of the Land Acquisition Act. The learned Addl. Government Advocate points out the observations in para 45 in order to submit that while award of interest under Section 34 is mandatory in so far as interest under Section 28 of the Act is concerned, it is discretionary power vested in the Court.

11. I find that this cannot be an issue which can be gone into in the Execution case as the executing Court cannot go behind the Decree. This was also not raised before the executing Court and furthermore the Judgment and Order enhancing the compensation passed by this Court, has already attained finality.

12. I have carefully gone through the impugned Order and I do not find

that it exhibits any jurisdictional error so as to warrant interference. In the result, the Writ Petition is hereby dismissed. Rule is discharged with no Order as to costs.

13. The amount deposited before this Court along with interest, if any, shall be made over to the executing Court which shall deal with the same and pass appropriate orders in accordance with law.

C. V. BHADANG, J.

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