

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2401 of 2016
and C.M.P.No.12368 of 2016

The Land Acquisition Officer,
Yanam.

... Petitioner

Vs.

1.Kotha Venkata Narayana

2.Kotha Venkata Ramarao

3.Kotha Nageswararao

4.Kotha Badrinath

5.Kotha Subhashini

6.Kotha Shalini (Minor)

rep by her mother and natural guardian
Kotha Subhashini

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 01.12.2014 made in E.P.No.19 of 2008 in L.A.O.P.No.1 of 1999 on the file of the Subordinate Judge, Yanam.

For Petitioner : Mr.A.Tamilvanan,
Government Advocate
For Government Pleader (Pondicherry)

For Respondents : Mr.M.Ravi

ORDER

Challenging the order passed in E.P.No.19 of 2008 in L.A.O.P.No.1 of 1999 on the file of the Subordinate Judge, Yanam, the Judgment Debtor has filed the above Civil Revision Petition.

2.The Reference Court, by its Award dated 11.03.2008, passed the following decree:

“1)That the reference be and the same is hereby partly allowed;

2)That the claimants are entitled to enhanced compensation at the rate of Rs.62.50 per sq.m. for the lands, a sum of Rs.1,77,670/- towards the value of trees, and a sum of Rs.30,500/- towards the value of constructions (Total Rs.20,25,000 + 1,77,670 + 30,500 = 22,33,170), less the amount already awarded with 30% solatium (Rs.6,69,951/-) and additional amount of Rs.12% per annum from the date of 4(1) Notification (26.01.1988) to the date of Award (31.10.1990) (i.e. Rs.9,63,040/-)

3)That the respondent shall deposit the enhanced compensation within two months from this date, with interest at the rate of 9% p.a. for one year from the date of Award (31.10.1990) and thereafter at the rate of 15% per annum till the date of deposit.

4)That the Asst. Government Pleader is entitled to get his fees as per rules i.e. Rs.5,000/- and

5)That the parties will bear their own costs.”

3.Pursuant to the decree passed in L.A.O.P.No.1 of 1999, the claimants

filed Execution Petition in E.P.No.19 of 2008. Before the Executing Court, the Decree Holders filed a memo of calculation stating that a sum of Rs.39,96,791/- is due and payable by the Judgment Debtor. The Judgment Debtor also filed a memo of calculation before the Executing Court stating that a sum of Rs.16,12,682/- has been paid in excess of the Award amount. The Executing Court, taking into consideration the case of both parties and also relying upon the judgment of the Hon'ble Supreme Court of India reported in ***(2006) 8 Supreme Court Cases 457 [Gurpreet Singh Vs. Union of India]*** and came to the conclusion that the Judgment Debtor is liable to pay a sum of Rs.39,96,791/- as claimed by the Decree Holders with subsequent interest on Rs.35,46,442/- from 03.01.2014 till the date of payment. Further, the Executing Court directed the Land Acquisition Officer to deposit the amount within one month and also made it clear that on failure to deposit the amount, necessary orders will be passed. Challenging this order, the Judgment Debtor - Land Acquisition Officer has filed the above Civil Revision Petition.

4.The Hon'ble Supreme Court of India in ***(2006) 8 Supreme Court Cases 457 [Gurpreet Singh Vs. Union of India]*** held as follows:

“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 Vs. Union of India [(2001) 7 Supreme Court Cases 211 : 2001 Supp (3) SCR 176]*, 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 Vs. Union of India [(2001) 7 Supreme Court Cases 211 : 2001 Supp (3) SCR 176]* 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 Vs. Union of India [(2001) 7 Supreme Court Cases 211 : 2001 Supp (3) SCR 176]* 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 Vs. Union of India [(2001) 7 Supreme*

Court Cases 211 : 2001 Supp (3) SCR 176] (19-9-2001) 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.”

5. According to the petitioner, the calculation memo filed by the Decree Holders is against the decree passed by the Reference Court wherein the Reference Court had clearly decreed that from the enhanced compensation of Rs.22,33,170/- awarded by it, the amount already awarded by the Land Acquisition Officer has to be deducted and for the balance 30% solatium to be calculated at Rs.6,69,951/- and additional amount on 12% per annum from the 4(1) Notification passed on 26.01.1988 to the date of Award (i.e.) 31.10.1990, Rs.9,63,040/- has to be paid to the claimants.

6. The contention raised by the petitioner cannot be accepted in view of the settled position of law. The ratio laid down by the Hon'ble Supreme Court in the above referred judgment squarely applies to the facts and circumstances of the present case. Further, in the calculation memo filed by the Land Acquisition Officer, the amounts were apportioned towards principal amount at first and interest amount thereafter. Applying the principles laid

down by the Hon'ble Supreme Court, the Executing Court has rightly directed the Land Acquisition Officer to deposit a sum of Rs.39,96,791/- together with subsequent interest on Rs.35,46,442/- from 03.01.2014 till the date of payment.

7.I do not find any error or irregularity in the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed.

8.The learned Government Advocate appearing for the revision petitioner submitted that pursuant to the order passed by the Executing Court, the Land Acquisition Officer had already deposited a sum of Rs.47,54,660/- to the credit of E.P.No.19 of 2008 in L.A.O.P.No.1 of 1999. The claimants are permitted to withdraw the amount deposited by the Land Acquisition Officer. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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01.09.2016

To

The Subordinate Judge,
Yanam.

M.DURAISWAMY,J.
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