HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 2531 of 2003

Order:

This Civil Revision Petition arises out of an order in O.P. No.58 of 1985 dated 08.11.2001 passed by the Principal Senior Civil Judge, Chittoor.

The facts of the case are that a notification under Section 4(1) of the Land Acquisition Act (for short 'the Act') was issued for acquiring an extent of Ac.10.51 cents in Palamaner for establishment of APSRTC bus station and possession was taken on 08.02.1978. The Land Acquisition Officer passed an award fixing the market value at Rs.45,000/- per acre and an amount of Rs.6,29,498.44 ps., was paid on 09.05.1980. On a reference made under Section 18 of the Act the market value was enhanced to Rs.50,000/- per acre in O.P. No.58 of 1985 dated 15.12.1987. Pursuant to the said order an amount of Rs.5,34,184.32 ps., was deposited on 10.08.1988. Against the said order dated 15.12.1987 passed in O.P.No.58 of 1985, the claimants came to this Court in A.S.No.2173 of 1988 and batch and this Court fixed the market value at Rs.75,000/- per acre on 15.04.1992. The Execution Petition Nos.10, 11, 12 and 16 of 1988 were filed and orders of attachment were passed on 27.08.1990. It is the case of the Land Acquisition Officer that by that time the entire amount was paid, but however an amount of Rs.4,75,776/- was deposited in the Court on 29.09.1991 under protest. Challenging the said order of attachment, C.R.P. Nos.9, 1231, 3671 and 3762 of 1991 were filed before this Court and they were dismissed by a common order dated 26.11.1991. Then SLP Nos.15535 to 15540 of 1996 were preferred. Thereafter, an amount of Rs.7,98,367.89 ps., was deposited on

07.01.1993 in excess of the amount. Ultimately, the Hon'ble Supreme Court allowed the SLPs on 05.12.1996 remanding the matter to the executing Court for hearing both the parties on a date fixed and then to recalculate the decretal amount which is payable to the claimants after taking into consideration the amounts which were already deposited or paid to the respondents. Pursuant to the order of remand, calculation memos were filed by the Land Acquisition Officer as well as by the claimants. The executing Court passed an order on 08.11.2001 holding that the claimants are entitled to a sum of Rs.10,86,003/- as on 27.09.2000, challenging which the present Civil Revision Petition was filed.

Learned Government Pleader appearing for the Land Acquisition Officer submits that the order ought not to have been passed in the main OP when what was remanded to the lower Court is only the order in E.P. Nos. 10, 11, 12 and 16 of 1988 out of which C.R.P. Nos. 9, 1231, 3671 and 3762 of 1991 were preferred. He further submits that there was an error committed by the executing Court while extracting the operative portion of the decree of this Court in the appeals preferred by the claimants which clearly show that the claimants were held not to be entitled to the benefit under Section 23(1)(A) of the Amended Act 68 of 1984. He further submits that the calculation memo filed by the Government is correct and the Government is entitled to recover an amount of Rs.21,09,033/- from the claimants.

Whereas learned Senior Counsel appearing for the claimants submits that based on a decision reported in Gurpreet Singh v. Union of India[1], the claimants are entitled for the enhanced market value.

[1] 2006(8) SCC 457

This Court carefully perused the decree dated 15.04.1992 passed by this Court in A.S. No.2173 of 1988 and batch preferred against the order in O.P.No.58 of 1985 dated 15.12.1987 and it reads as follows.

> "1. That, the amount of compensation of Rs.50,000/- per acre as awarded by lower court be and hereby is enhanced to Rs.75,000/- per acre and that the claimants shall be entitled to the aforesaid enhanced rate of compensation of Rs.75,000/- pre acre and that, the value of the wells as fixed at Rs.70,000/- each is retained;
> 2. That the respondents claimants shall not be entitled to the benefit under Section 23(1-A) of the Amended L.A. Act 68 of 1984;
> 3. That in addition to the market value of the land the claimant shall also be entitled to solatium, a sum of 30% on such market value, as stipulated under Section 23(2) of the said Act;
> 4. That if the amount of compensation is not paid or deposited on or before taking possession of the land, the claimant shall be entitled to interest on such amount at the rate of 9% p.a. from the time of taking possession until it shall have been paid or deposited and that if such compensation or any part thereof is not paid or deposited within a period of one year from the date of taking possession, interest at the rate of 15% p.a. shall be paid from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited as provided under Section 34 of the said Act;
> 5. That, subject to the modifications as stated supra, the decree of the lower court do stand confirmed in all other respects; and
> 6. That there be no order as to costs in all the Appeals."

In Gurpreet Singh's case (supra), after surveying the entire case law, the Constitution Bench of the Hon'ble Supreme Court held in the concluded portion of the judgment as follows.

> "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 v. Union of India (2001 (S3) SCR 176), the awardee/decree 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."

A reading of the above conclusion makes it clear that when there is a specific order of the reference Court or appellate Court negativing the claim for interest on solatium, the executing Court had to reject the claim for interest on solatium based on Sunder's case (supra). In view of the same and in view of the decree passed by this Court, there cannot be any doubt with regard to non-entitlement of the benefits under the amended Act to the claimants. The executing Court in the impugned order had omitted Para 2 of the decree extracted above and has not considered the entitlement of the claimants for the benefits under the amended Act. The payments made by the Land Acquisition Officer are not in dispute. In the circumstances and in the light of the law laid down as above, the executing Court should have verified the calculations made by both the parties and passed an order.

In the circumstances, this Court is inclined to set aside the impugned order dated 08.11.2001 passed in O.P. No.58 of 1985 and remand the matter to the learned Principal Senior Civil Judge, Chittoor to pass fresh order after hearing both the parties on the basis of calculation memos already filed within a period of three (3) months from the date of receipt of a copy of this order.

The Civil Revision Petition is, accordingly, allowed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 02.12.2016
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