

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2017

Coram:

The Honourable Mr. Justice N. SESHASAYEE

W.P.No.446 of 2017
and
W.M.P.No.472 of 2017

1. K. Hemavathy
 2. K. Devi
 3. K. Kiran Kumar
 4. K. Kishore Kumar
- Petitioners

Versus

1. The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.
2. The Secretary to Government,
Government of Tamil Nadu,
Highways and Minor ports,
(HW2) Department,
Fort St. George,
Chennai - 600 009.
3. The Principal Secretary and
Commissioner of Land Administration,
Chepauk, Ezhilagam,
Chennai - 600 005.
4. The District Collector,
Tiruvallur District, Tiruvallur.
5. The District Revenue Officer,
Tiruvallur District,
Tiruvallur.
6. The Tahsildar,
Ambattur Taluk,
Ambattur, Chennai - 600 053.

7. The Chief Engineer,
Highways Department,
Chepauk,
Ezhilagam,
Chennai - 600 005.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the entire records of the first respondent in Letter No.558/LA1 (1)05-2 dated 11.03.2005 and quash the same.

For Petitioners: Mr. M. S. Subramanian

For Respondents: Mr. A. Zakir Hussain,
Government Advocate

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorari to quash the impugned order of the first respondent dated 11.03.2005 in Letter No.558/LA1(1)/05-2 and to make further direction to apply the principles declared by the Hon'ble Supreme Court in Gurupreet Singh Vs. Union of India reported in 2006 (8) SCC 457.

2.1. The petitioners in this case are the legal representatives of one deceased Kumar, who is the owner of a land measuring an extent of 1.55 acres in Survey Nos.604/1A1A1 and 604/1A1A3 in Ambattur Village. This property was acquired by the Government for the purpose of widening Villivakkam - Avadi Road and Ambattur Bye Pass Road by the Highways and Rural Works Department, as the case may be. After completing the process of acquisition, Award No.2 of 1988 was passed on 04.03.1988, wherein, the total compensation payable to the property of the petitioners was fixed at Rs.2,24,276.20/-.

2.2. Dissatisfied with the quantum of compensation awarded, the aforesaid Kumar moved the Collector for referring the matter under Section 18 of the Land Acquisition Act, 1894 to the concerned Civil Court and the same was so referred which the Sub-Court, Poonamallee, had taken on to its file in LAOP.No.209/88. Vide its Order and decree dated 26.10.1995, the Sub-Court, Poonamallee, enhanced the compensation payable from Rs.872/- per cent to Rs.5,600/- per cent. Challenging the same, the Land Acquisition Authorities had preferred A.S.No.962 of 1997 before this Court. The petitioners herein also filed separate appeal in A.S.No.265 of 2000 seeking further

enhancement of compensation. This Court by its judgment dated 06.11.2009, dismissed the appeal filed by the Land Acquisition Authorities and partly allowed the appeal of the Kumar and fixed the market value at Rs.6,312/- per cent.

2.3. Be that as it may, when the appeal was pending before this Court, the Land Acquisition Authority sought to stay of operation of the decree of the Sub-Court, Poonamallee, and the same was granted on the condition that the entire amount with accrued interest should be deposited before the Court concerned and this was done. Subsequently, the petitioners herein have filed a C.M.P.No.10779 of 1999 to permit them to withdraw the said amount and were allowed to withdraw 25% of the amount deposited without furnishing the security and another 25% was allowed to be withdrawn on furnishing security and the balance 50% was directed to be invested in a Bank by an order dated 21.07.1999. The petitioners have withdrawn only 25% of the amount deposited without furnishing the security.

2.4. After the disposal of the First Appeal by this Court, the petitioners were constrained to file the Execution Petition in E.P.No.61/2012, since the compensation enhanced by this Court was not deposited. The Execution Court also passed an order of attachment and it was moved on 09.06.2014 following which, the respondents have deposited a sum of Rs.3,23,646/-.

2.5. The petitioners immediately conveyed their objection about the correctness of the amount deposited before the Execution Court. It then had come to light that the aforesaid Rs.3,23,646/- was arrived at pursuant to the letter of the first respondent No.558/LA1(1)/05-2 dated 11.03.2005, whereunder the Land Acquisition Authorities were directed to follow the judgment of the Supreme Court in the case of Prem Nath Kapoor and Another Vs. National Fertilizer Corporation of India Limited and others [1996(2)SCC 71]. This is highlighted in Paragraph No.2 of the aforesaid communication which is as follows:

"2. Now, the Hon'ble Court, Chennai in its order dated 28.02.2003 in A.S.No.49 of 2002 (Land Acquisition Officer cum Deputy Collector, Revenue, Karaikal Vs. Aagelia Devadoss) had ordered the following ruling on the month of appropriating amount deposited into the court which in turn is relied on the Supreme Court of India ruling of the Bench consisting of Three Judges in the case namely Prem Nath Kapoor and another etc Vs. National Fertilizer Corporation of India Limited and others:

"The latest ruling of the Supreme Court (the Bench consisting of three Judges) is to the effect that the amount deposited is to be first adjusted towards the amount due towards

the market value (i.e. land value), Solatium and then towards the amount payable under Section 23(1A) (i.e.) Additional Market Value of the Land Acquisition. At, 1894 and thereafter, the interest payable under Section 28 of the Land Acquisition Act. The further principle laid down is once the amount is paid or deposited in Court, the interest will stop running."

All the District Collectors/Land Acquisition Officers are therefore instructed to follow the method of appropriating the amount of enhanced compensation deposited in the Court on the lines of the Ruling of High Court, Chennai/Supreme Court of India referred as above."

3. In this petition, the learned counsel alleged that the ratio in Prem Nath Kapoor case decided by a Bench of three Judges of the Supreme Court and referred to and relied on by the first respondent in the correspondence now impugned in these proceedings has since been overruled by a Constitutional Bench of the Supreme Court in the case of Gurupreet Singh Vs. Union of India [(2006) 8 SCC 457]. Hence, this aforesaid correspondence of the first respondent is no more valid and is contrary to the principles governing the area, and the Land Acquisition Authorities were wrong in following the direction given in the impugned correspondence.

4. Mr.A.Zakir Hussain, the learned Government Advocate entered appearance for the respondents and no counter affidavit has filed by them.

5. The learned counsel for the petitioners submitted that even as on 06.11.2009, when the First Appeal was disposed of by this Court, the principles laid down in the authority in Gurupreet Singh Vs. Union of India [(2006) 8 SCC 457] has come to have force and hence, the calculation of interest by the authorities on the basis of the law that was since overruled is bad.

6. A careful reading of the judgement of the Hon'ble Supreme Court in Gurpreet Singh case does indicate that it actually overturns the entire ratio in Premnath case, though there is limited overruling. In the context of case at hand, the principles which the Supreme Court has declared in Gurpreet Singh case are:

- Where a part payment of compensation was received, the decree-holder/the erstwhile owner of the land can first adjust it against the interest, then the cost and then the principal amount payable out of it.

- Where this appropriation has been done once, later when the balance amount is paid, the appropriation earlier made cannot be reopened and the entire transaction cannot be reworked by recalculating the interest payable on the whole and fresh appropriation towards interest, cost and principal based thereon cannot be done.
- In cases when part of the amount awarded by the Reference Court or by the appellate Court is deposited pursuant to an interim order of the appellate Court or of the further appellate court and the awardee withdraws the same, and subject to the fact that such appeal is decided in his favour,
 - the decree-holder would be entitled to appropriate the amount already received by him pursuant to the interim order first towards interest, then towards costs and the balance towards principal as on date of the withdrawal of the amount and claim interest on the balance amount of enhanced compensation.
 - However, on the part amount already appropriated towards principal, the interest would cease from the date on which the amount is received by the awardee.
 - If however, the Court passes the interim order enabling withdrawal of part amount has indicated the mode of appropriation then that would prevail.

7. It is therefore evident that whatever direction was given under the letter dated 11.03.2005 of the first respondent directing the sixth respondent to calculate the interest in terms of the principles initiated in the case of Premnath case to the extent the same is at variance with the decision of the Supreme Court in Gurpreet Singh case [(2006) 8 SCC 457] cannot be sustained.

8. It should not forgotten that what is now impugned is only an administrative letter and not any Executive Order and it need not be even set at naught. In stead it is sufficient to direct the first respondent to issue a fresh administrative communication in terms of the ratio in Gurpreet Singh case. However, this is optional, since when law is declared by the Supreme Court nothing contrary to what is so declared can have force.

9. In these circumstances, this Court allows the petition with a modification and directs the petitioners to approach the sixth

respondent with a fresh representation with a calculation detailing the amount deposited, amount withdrawn, mode of appropriation of the same to facilitate the sixth respondent to ascertain if petitioner's case fall within the ratio in Gurupreet Singh Vs. Union of India case, within four weeks from the date of receipt of copy of this order, thereupon, the sixth respondent is directed to dispose of the same within a period of four weeks thereafter.

10. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To :

1. The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George,
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2. The Secretary to Government,
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6. The Tahsildar,
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7. The Chief Engineer,
Highways Department,
Chepauk,
Ezhilagam, Chennai - 600 005.

+1cc to the Government Pleader Sr.90817
+1cc to Mr.M.S.Subramanian, Advocate Sr.91044

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