

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.748 of 2009
and
M.P.No.1 of 2009**

The Special Tahsildar (L.A.III),
Tamil Nadu Housing Board Scheme,
Nandanam, Madras-35.

.. Petitioner

Vs.

Padmalakshmi Ammal

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 26.03.2007 made in E.P.No.18 of 1996 in LAOP.No.116 of 1987, on the file of the learned VI Assistant Judge, City Civil Court, Chennai.

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For Petitioner : Mrs.Jayasree
Government Advocate

For Respondent : Mr.A.Kanagasabapathy

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order dated 26.03.2007 made in E.P.No.18 of 1996 in L.A.O.P.No.116 of 1987, on the file of VI Assistant Judge, City Civil Court, Chennai.

2.The Special Tashildar (LA-III) has filed this Civil Revision Petition as against the order made in E.P.No.18 of 1996 in L.A.O.P.No.116 of 1987, dated 26.03.2007 directing the revision petitioner to deposit the balance compensation amount of Rs.5,16,164.60.

3.It is the case of the revision petitioner that land in T.S.No.107/2, Block No.21 measuring an extent of 0.34.20.0 hectares in Arumbakkam Village was acquired by the Government under Land Acquisition Act, 1894, for the purpose of providing house sites under Tamil Nadu Housing Board. After following the procedure laid in the land acquisition Act, the land was acquired and an award in Award No.1 of 1979 dated 20.06.1979 was passed arriving, the market value at Rs 4,000/- per ground. Aggrieved over the quantum of compensation by Land Acquisition Officer, the claimant/ respondent sought for reference under Section 18 of Land Acquisition Act, 1894

before the learned VI Assistant Judge, City Civil Court, Chennai and the same was taken on file in L.A.O.P No.116 of 1987.

4.After conducting enquiry the learned subordinate Judge by an order dated 30.01.1991 enhanced the compensation from Rs.4000 to 8000 per ground with interest at the rate of 12 % per annum from the date of 4(1) notification to till the date of Award dated 20.06.1979. For the above said enhancement of compensation solatium at the rate of 30% per annum was awarded for one year from the date of taking possession and thereafter at 15% interest till the date of payment compensation.

5.Aggrieved over the enhancement of compensation fixed by the Learned Sub-ordinate Judge, the revision petitioner has filed on appeal before this Court in A.S.No.755 of 1991, in the said appeal the respondent herein filed a cross objection for further enhancement. This Court by a judgment dated 08.03.1995 dismissed both the appeal of the petitioner as well as the cross objection filed by the respondent.

6.Therefore, the respondent herein in order to realize the compensation amount filed an execution petition in E.P.No.18 of 1996,

before the learned VI Assistant Judge, City Civil Court, Chennai. In the Execution Petition, the respondent herein filed the calculation memo arriving at a value of Rs.5,44,08.74, which includes the interest on solatium. Whereas the calculation memo filed by the revision petitioner it was arrived as Rs.3, 2057.97/- by excluding the interest on solatium.

7.The Learned Sub Judge after considering the judgment of the Hon'ble Apex Court reported in **2001 (7) SCC 211**, concluded that the calculation memo filed by the respondent herein as proper and vide order 26.03.2007 directed the respondent to pay a sum of Rs.5,16164.60 within a period of 1 month. Aggrieved over the same the revision petitioner has filed the present civil revision petition.

8.I heard Mrs.Jayasree, learned Government Advocate appearing for the petitioner and Mr.A.Kanagasabapathy, learned counsel appearing for the respondent and perused all the relevant records.

9.It is an admitted fact that the revision petitioner has acquired the land of the respondent. After acquisition, enquiry was conducted and award was passed on 20.06.1979 vide Award No.1 of 1979.

Aggrieved over the quantum of compensation fixed by the Land Acquisition Officer, the respondent herein sought reference before the Sub-Court under Section 18 of the Land Acquisition Act and the same was taken on file in L.A.O.P.No.116 of 1987. The Sub-Court has enhanced the compensation at the rate of Rs.8,000/- per ground with usual interest and solatium as contemplated under the Land Acquisition Act. Aggrieved over the enhancement of compensation, the State has filed appeal before this Court in A.S.No.755 of 1991 and the respondent herein filed Cross Appeal. Both the appeal and cross appeal were dismissed by the Hon'ble Division Bench of this Court. Thereupon the respondent herein filed E.P.No.18 of 1996 to realize the compensation amount fixed by the Learned Sub-Judge. Pending execution petition the Hon'ble Apex Court in a Five Judge Bench reported in **2001 (7) SCC 231** in the case of **Sundar v. Union of India**, answered the reference that the landowners are entitled to get interest on solatium. Therefore the respondent herein calculated the amount with interest for solatium as per the Judgment of the Hon'ble Apex Court mentioned supra. The execution Court also ordered the same. Questioning the same, the state has come up with this civil revision petition.

10. The only question requiring consideration by this Court in the present Civil Revision Petition is as to whether the respondent / claimant is entitled for interest on solatium or not. The position prior to the year 2001 is different that the claimants are not entitled to receive interest on Solatium, but after the decision of the Hon'ble Apex Court reported in **2001 (7) SCC 231** in the case of **Sundar v. Union of India**, the position has become different. In the said Judgment it is held as follows:

“24. The proviso to section 34 of the Act makes the position further clear. The proviso says that “ if such compensation” is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15%per annum 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 before the date of such expiry” It is inconceivable that the solatium amount would attract only the escalated rate of interest on solatium during the preceding period. what the legislature intended was to make the aggregate amount under section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of

the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under section 34 was not in the contemplation of the legislature when that section was framed or enacted.

25.

26. we think it useful to quote the reasoning advanced by chief justice S.S.Sandhawalia of the division Bench of the Punjab and Haryana high Court in state of Haryana v. Kailashwatti (SCC P.119, Para 10)

“Once it is Held as it Inevitably must be that the solatium provided for under section 23(2) if the Act forms an integral and statutory part of the compensation awarded and not merely on the market value of the land. Indeed the language of section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus

evident that the provisions of section 28 in terms warrant and authorise the grant of interest on solatium as well”.

27. In our view the aforesaid statement of law is in accord with the sound principles of interpretation. Hence the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium.

The reference is answered accordingly”.

Thus it is needless to reiterate that the claimants are entitled for interest on solatium.

11. Therefore the calculation Memo filed by the respondent in the above execution petition by calculating interest on solatium on basis of the decision of the Apex Court is found proper.

12. The Learned counsel for the revision petitioner drawn attention of this Court to the various Judgments of the Hon’ble Apex Court reported in **1996 (2) SCC 570 and 1997 (1) SCC 240**. However, the above decisions referred by the petitioner’s counsel holding that the claimants are not entitled for interest on solatium do not occupy the field now, in view of the Five Judge Bench of the Hon’ble Apex Court held in 2001 (7) SCC 231. The position of law has

been changed now. Therefore the decisions cited by the petitioner are inapplicable to the present circumstance.

13. In the case of acquisition of land, the Government will have to pay the compensation to the landowners without any delay. In this case, the government having acquired the land of the respondent in the year 1979, so far has not paid the entire compensation amount to the landowner is not proper. The persons who lost their land, cannot be allowed to suffer without paying compensation to them for years together.

14. Therefore in the considered opinion of this Court, the execution Court has not committed any error in allowing execution petition filed by the respondent. Hence, I do not find any merits in the civil revision petition and same is deserves to be dismissed and accordingly dismissed. सत्यमेव जयते

15. In the result, the civil revision petition is dismissed and the order made in E.P.No.18 of 1996 in L.A.O.P.No.116 of 1987, dated 26.03.2007 on the file of the VI Assistant, City Civil Court, Madras is hereby confirmed. The revision petitioner is directed to pay the

balance amount of compensation as ordered by the Execution Court to the respondent herein, if already not paid within a period of four weeks from the date of receipt of copy of this order. No cost. Consequently, connected miscellaneous petition is closed.

23.10.2017

Note: Issue order copy on 03.11.2017

vs

Speaking Order

Index: Yes

To

The VI Assistant Judge,
City Civil Court, Madras.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.748 of 2009
and
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