

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3810 of 2014

ORDER:

This revision is filed by the judgment debtor (the Defence Estates Officer, for whose benefit the land is acquired) to call for the records and to set aside order dated 23.06.2014 in EP.No.80 of 2005 in OP.No.140 of 1986 on the file of Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

2. The claimants filed OP.No.140 of 1986 against the Special Deputy Collector, Land Acquisition under Section 18 of Land Acquisition Act (for short 'the Act') for the determination of market value of the acquired land in survey Nos.101, 102 and 103 to an extent of Ac.16.30 gts, Ac.13.28 gts and Ac.18.25 gts respectively (total Ac.49.03 gts = 237523 square yards) situated at Kowkoor village taken possession for the defence authority in the year 1964. After publishing notification under section 4(1) of the Act dated 20.08.1977 and after causing notices by Land Acquisition Officer (LAO), the claimants claimed at Rs.50/- per square yard for the acquired land on various grounds. The LAO however awarded Rs.6000/- per acre for dry land and Rs.8000/- per acre for wet lands on 30.01.1984 of the possession was taken in the year 1964. The claimants received the awarded amount under protest requesting the LAO to refer the matter u/s 18 of the Act for the determination of reasonable market value of the acquired land on the date of notification. The Principal Senior Civil Judge on 13.08.1991 allowed the OP by enhancing the compensation of Rs.21/- per square yard over and above the compensation of Rs.6000/- per acre awarded by the LAO

deducting the amount already paid to the claimants, with 30% solatium on market value and 12% additional amount from the date of Section 4(1) notification on 20.08.1977 till award of the LAO dated 30.01.1984 on the market value and 9% p.a. interest from date of possession i.e., 02.05.1964 for one year and thereafter till realization 15% per annum interest not only on the market value, but also on solatium. Subsequently, the State preferred A.S.No.2084 of 1991 and the High Court remanded the matter on 18.12.1996 and it was re-determined pursuant to the remand by fresh disposal of O.P.No.140 of 1986 on 27.11.1998 by fixing the compensation at Rs.16/- per square yard for the total extent of Ac.49.03 gts = 237523 square yards and with further direction that the claimants are entitled to all the benefits as per the amended provisions of the Act No.68/1984. The order of the reference Court in O.P.No.140 of 1986 was confirmed in A.S.No.2101 of 1999 dated 24.12.2003 of this Court and SLP Civil dated 03.12.2004 of the Apex Court, to say LAO went unsuccessful in the appeal before the High Court and the Supreme Court. The claimants filed therefrom E.P.No.80 of 2005 for recovery of the decretal amount by way of attachment of the movable properties of judgment debtor. The Principal Senior Civil Judge on 23.06.2014 allowed the EP observing that decree holder Nos.13 and 14 are entitled for recovery of their share of the decretal amount of Rs.1,39,22,678/- as the judgment debtor failed to deposit the amount, it is fit case to order attachment of movable property of Judgment debtor. Impugning the said order, the judgment debtor filed this revision.

3. The contentions vis-à-vis oral submissions of the learned counsel for the petitioner/J.Dr. that the learned Judge ought to have seen that impugned order is contrary to the award dated 13.08.1981 in OP.No.140 of 1986 and did not whisper about interest on 12% additional market value under section 23(1A) of the Act and learned Judge ought to have seen that the execution Court cannot exceed its jurisdiction to go beyond the decree. It is contended that the interest has been calculated on the amount awarded by the Collector and also deposited by the judgment debtor No.2 this is not at all correct as per the expression of the Hon'ble Supreme Court in **Gurpreet Singh Vs. Union of India**¹ wherein it was clearly mentioned that the liability to pay interest is only on excess amount of compensation determined under Section 23(1) and not on the amount already determined by the Land Acquisition officer under Section 26 or Section 54 and deposited into the Court or on solatium under Section 23(2) and additional amount under Section 23(1-A) of the Act. It is also contended that it is very clear from calculation sheet at serial No.12 that interest has been calculated on the amount awarded by the LAO and the executing Court has not appreciated the facts and passed the order for making further payment of an amount of Rs.1,39,22,678/-. It is further contended that the learned Judge ought to have seen that even as per Section 28 of the Act "the Collector may be directed to pay interest on excess compensation, if the sum which in the opinion of the Courts, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the Court may direct

¹ (2006) 8 SCC 457

that the Collector shall pay interest on such excess at the rate of 9% per annum from the date on which he took possession of the land to the date of payment of such excess into Court and in view of above aforesaid legal position, the decree-holders are not entitled for the interest on the amount awarded by the Collector. It is also contended that the learned Judge ought to have seen that the agricultural lands of the decree holders were acquired and there is no such tax liability in respect of the rural agricultural lands and the executing Court failed to appreciate the fact that the compensation has been awarded by the Court below is on square yard basis and therefore the land in question now cannot be considered as agricultural land and sought for allowing the revision by setting aside the impugned order.

4. The learned counsel for the respondents/claimants submits that the impugned order holds good and for this court there is nothing to interfere.

5. Both sides submitted their calculation. Among the claimants (revision respondent Nos.1 to 28), Bandari Ramulu and Bandari Mallesh i.e. respondent Nos.13 & 14 died and their legal representatives i.e., respondent Nos.30 to 33 filed application to come on record in CRPMP.No.8010 of 2017 and the same is allowed today by impleading them as respondent Nos.30 to 33 to the revision petition.

6. Heard both sides and perused the material on record.

7. Before coming to discuss on facts further, Coming to the legal position on solatium and interest, Section 34 CPC which

deals with pendente-lite and post-lite interest concerned, (which is non substantive like a pre-lite interest either covered by a specific statute or by Interest Act, 1978 or by a contract, if not on equity or trade-custom and usage) clearly speaks as a general principle that 'omission to award interest tantamounts to refusal'. In the Land Acquisition Act, Section 23 or even Section 34 leave about any of the sections 1 to 54 there is no any specific provision contra or otherwise than the general principle of omission tantamounts to refusal of interest.

8. What is laid down in **Sunder Vs. Union of India**² that is further clarified in **Gurpreet Singh's** case, which are the constitutional bench expressions of the Apex Court supra are only the guidance with reference to the above general principle under Section 34 Sub-section 2 CPC, even though Section 34 was not referred in the two constitutional bench expressions. The Sunder's expression on its perusal speaks the entitlement of interest on solatium even not specified by virtue of the expression with prospective affect.

9. Referring to **Sunder's** case in **Gurpreet Singh's** case (supra) it is clearly held, particularly in Paragraph No.54 as follows:

"54. 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 the counsel to address us on that question. That question is whether in the light of the decision in **Sunder** supra, 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

² (2001) 7 SCC 211

been negated 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's** case 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** Supra (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.”

10. A perusal of E.P.No.80 of 2005 particulars, it is filed by Bandari Ramulu and Bandari Mallesh (revision respondent Nos.13 & 14) and they are the 2 signatories though in the cause title loosely referred as 1st claimant and others. Undisputedly, the compensation awarded is at Rs.16/- per square yard for the total extent of Ac.49.03 gts = 237523 square yards in O.P.No.140 of 1986 by judgment dated 27.11.1998, that was confirmed by the High Court and Apex Court as referred supra.

11. Thus the compensation for the acquired land is 237523 square yards x 16/- per square yard = Rs.38,00,368/-. Coming to the solatium as per Section 23(2) which was amended with effect from 24.09.1984 of 15% to 30% for the awards made and orders passed after 30.04.1982 concerned, the award in this case was since dated 30.01.1984 of 30% thereon comes to Rs.11,40,110/-. However so far as additional market value under

Section 23(1-A) as per the amended provision of Act No.68/1984 with effect from 24.09.1984 incorporating for payment of 12% that is also applicable to the awards made and orders passed on or after 30.04.1982 it comes to Rs.29,41,171.48 Ps. from the date of Section 4(1) notification dated 20.08.1977 to date of award 30.01.1984 (since possession taken long prior to Section 4(1) notification). In all comes to Rs.78,81,650/-. The amounts paid at the time of award dated 30.01.1984 is Rs.3,38,617.50 Ps. and at the time of supplemental award dated 13.04.1987 is Rs.2,67,949.50 Ps.

12. In this regard as per the Land Acquisition Act 1894 the interest payable under Section 34 if amount not paid on or before taking possession, the interest payable is 6% p.a. from the time of taking possession till the amount paid or deposited. It is only by amendment Act No.68/1984 with effect from 24.09.1984, the 6% is amended to 9% and a proviso is inserted to Section 34 saying if compensation is not paid or deposited within one year from date of possession taken interest payable is 15% p.a. from expiry of the one year period of taking possession. Here prior to the amendment by Act No.68/1984 dated 24.09.1984 without any difference of rate of interest for one year and later to the date of possession, the slab is 6% including from Madras/A.P. amendment to the Act in 1953. Before coming further, it is to consider entitlement of any interest from date of possession taken on 02.05.1964 which is long prior to Section 4(1) notification dated 20.08.1977 concerned the calculation is as follows:

$$\text{Rs.38,00,368/-} \times 6/100 \times 160/12 = \text{Rs.30,40,294/-}$$
 and from 20.08.1977 to the date of award dated 30.01.1984 interest of 6%

payable not only on the original compensation @ Rs.16/- per square yard, but also on 30% solatium and 12% additional market value till date of award 30.01.1984 comes to Rs.78,81,650/- $\times 6/100 \times 77/12$ = Rs.30,34,436/- + Rs.30,40,294/- = Rs.60,74,730/-. Out of the accrued interest of Rs.60,74,730/-, amounts paid on 30.01.1984 of Rs.3,38,617.50 Ps. and further amount on 13.04.1987 of Rs.2,67,949.50 Ps., which comes to Rs.54,68,163/-. Besides that the compensation amount of Rs.78,81,650/- and interest from date of possession till date of award after deduction of payments made, still due of Rs.54,68,163/-; the subsequent interest as per Section 34 payable on said amount of Rs.78,81,650/- at 15% per annum (since possession taken long back in 1964) from date of award to be calculated till amount deposited as per the High Court direction on 08.09.1992 i.e., from 31.01.1984 to 07.09.1992 comes to Rs.78,81,650/- $\times 15/100 \times 103/12$ = Rs.1,01,47,624/-. The amount deposited of Rs.93,64,028/- on 08.09.1992, which shall be deducted from Rs.1,01,47,624/- = Rs.7,83,596/- interest component of this besides earlier interest component Rs.54,68,163/- = Rs.62,51,759/-, out of which on 18.04.2000 an amount of Rs.32,31,043/- deposited and still Rs.30,20,716/- due towards interest. Further on the principal amount of Rs.78,81,650/- interest @ 15% p.a. from 09.09.1992 to 08.09.2006 = Rs.1,65,53,465/- + old interest of Rs.30,20,716/- = Rs.1,95,72,181/- (-) Rs.1,18,84,807/- (amount deposited on 08.09.2006) = Rs.76,87,374/- still interest due. Thus as on 08.09.2006, besides the compensation amount of Rs.78,81,650/- + interest balance of Rs.76,87,374/- is due to the claimants put

together. Out of which, the decree holder Nos.13 & 14 shown entitled to 60% for the extent of 93,871 square yards and as per the compromise memo in CRP.Nos.794 & 752 of 2002 dated 07.11.2004, the claimants 22 to 28 of O.P.No.140 of 1986 are entitled to 7 ½ share from out of share of the decree holder Nos.13 & 14 as an internal adjustment. Since respondent Nos.13 & 14 shown died and their legal representatives brought on record as per order in CRPMP.No.8010 of 2017 by names B.Mallesh, B.Laxmi Yadav, Sailu Yadav, Laxman Yadav as respondent Nos.30 to 33, they are along with other legal heirs if any of respondent Nos.13 & 14 are entitled to execute by impleadment in E.P.No.80 of 2005 of the lower Court.

13. The subsequent payments made under doctrine of appropriation as per Section 60 of Indian Contract Act till the interest is cleared the claimants are entitled to appropriate and anything paid beyond interest due to be deducted from out of the principal compensation due supra. However, the interest to be calculated is not by including interest arrears due, but on the principal compensation sum of Rs.78,81,650/-.

14. The lower Court pursuant to the above is directed from the verification of the record as to any payment/deposit with notice made thereafter to give deduction and ascertain any amount still due with a direction to recover and if nothing due to record full satisfaction and refund if any excess amount lying.

15. With these observations, the Civil Revision Petition is disposed of and the order of the lower Court in E.P.No.80 of 2005 dated 23.06.2014 is modified and the lower Court is directed to

give fresh disposal of the matter in continuation to the above in the execution petition as per directions supra.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 15.12.2017
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