

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5584 of 2010

ORDER:

The revision petitioner Nos.1 & 2 are the decree holders along with revision 2nd respondent and revision 1st respondent is the Land Acquisition Officer-cum-Sub Collector, Vijayawada, is the judgment debtor.

The revision is maintained impugning the order of the learned Senior Civil Judge, Nandigama, in E.P.No.32 of 2000 (old E.P.No.123 of 1991 on the file of Principal Senior Civil Judge, Vijayawada) in O.P.No.31 of 1978. The execution petition is filed for attachment of the movables of J.Dr. and to bring it for sale for recovery of the decree amount due for the land acquired as compensation of Rs.1,61,573/-. The executing Court arrived at a sum of Rs.11,500.66 Ps. payable to the decree holders/claimants by 26.03.2004 by the impugned order dated 19.03.2004.

The contentions in the grounds of revision are that the learned Senior Civil Judge in passing the impugned order while executing the decree for the alleged amount due arrived not considered the calculation filed by the decree holders and the amount arrived is contrary to law and ought to have been considered the decree holders calculation in ordering said amount and the order is contrary to the expression of the Apex Court in **Sunder Vs. Union of India**¹ with regard to grant of interest on solatium and by said wrong calculation the amount arrived thereby is liable to be revised by setting aside the order.

¹ AIR 2001 SC 3516

The learned Government pleader for Land Acquisition supported the order by submitting there is nothing to interfere with the impugned order of the lower Court while sitting in revision.

Heard both sides.

The impugned order of the lower Court shows the execution petition by claiming a sum of Rs.1,61,573/- and the J.Dr. deposited Rs.1,08,525.20 Ps. by way of bankers cheque and the decree holders received an amount of Rs.1,07,125/- by way of cheque from the Court on 08.03.1994 and later both parties filed respective calculations and Court disposed of on 30.10.2001 holding still Rs.15,946.20 Ps. only due as on 02.02.1994. Against said order, decree holders maintained revision in High Court and the matter was remanded for fresh consideration keeping in view the principles laid down in **Sunder supra** within 3 months and after receiving copy of said order on 30.12.2003 notice issued and heard.

According to the calculation of the learned counsel for the decree holders up to 31.10.2000 is Rs.1,38,464.74 Ps. due and as per J.Dr. calculation an amount of Rs.1,07,919.25 Ps. only due up to 19.01.2001.

In this regard the land value fixed at Rs.3,000/- per acre by the learned Senior Civil Judge, Vijayawada, in O.P.No.31 of 1978 for Ac.0.12 cents and enhancement of compensation for Ac.0.35 cents disallowed and interest @ 4% from date of taking possession on 15.03.1973 till deposited into Court with solatium of 15% statutorily awarded. Against said award of the Principal Senior Civil Judge, the claimants preferred appeal before the High

Court which enhanced compensation by appeal judgment dated 09.03.1988 from Rs.3,000/- per acre to Rs.1,00,000/-, Rs.90,000/- and Rs.60,000/- per acre respectively of which the claimants are entitled @ Rs.1,00,000/- per acre for the land acquired and for the fallow land at Rs.90,000/- per acre if possession taken and enjoyed by the Corporation or at only Rs.60,000/- per acre if still kept fallow without being used and in addition to the market value entitled to additional amount of 12% per annum from date of Section 4(1) notification to the date of award or date of taking possession whichever is earlier. As per Section 23(1-A) of the amended Land Acquisition Act (for short 'the Act') and in addition to the market value also entitled to solatium of 30% on such market value under Section 23(3) of the Act and if amount of compensation not paid or deposited on or before taking possession entitled to interest on such amount of 9% from time of taking possession until paid or deposited and if not paid within one year from date of taking possession at 15% per annum for further period and in the event of Supreme Court holds that the amended Act has no retrospective effect, the Government is at liberty to file application to review the decree on the enhanced solatium and interest.

It is not in dispute that the Supreme Court in **Sunder Supra** held amended Act is not retrospective in operation. In the light of above there is no dispute of compensation awarded for the Ac.0.35 cents is at Rs.1,00,000/- per acre by High Court in appeal and for remaining Ac.0.12 cents though as per the decree holders entitled for Rs.90,000/-, the claimants have to prove for that of possession taken and land enjoyed by Corporation and not

kept fallow as per appeal judgment of the High Court and same not proved. Thus for the Ac.0.35 cents the market value is Rs.35,000/- + additional market value of 12% from 15.03.1973 date of taking possession till 07.06.1973 date of notification is Rs.957/- + 30% solatium on market value comes to Rs.10,500/- and structural value of Rs.6,646.50 Ps. total comes to Rs.53,103.50 Ps. and interest at 9% thereon for one year from 15.03.1973 comes to Rs.4,779/- and later at 15% per annum till 26.08.1977 date of award comes to Rs.27,459/- to say Rs.53,103.50 Ps. + Rs.32,238/- of which what is paid by LAO on 26.08.1977 is Rs.37,026/- and balance to be paid is thereby by then Rs.16,077.52 Ps. + Rs.25,640.27 Ps. (amount paid deducted out of principal amount, as the amount paid shows land value, structural value and 30% solatium of Rs.4,829.48 Ps. while deposit made on 26.08.1977) and further interest from 26.08.1977 to 02.02.1994 when paid, Rs.16,077.52 Ps. for item No.1. So far as item No.2 shown for Ac.0.12 cents Rs.60,000/- per acre comes to Rs.7,200/- + 12% per annum for said period Rs.197/- and 30% solatium comes to Rs.2,160/- and interest @ 9% per annum for said period comes to Rs.860/- and later 15% for said period comes to Rs.28,260.85 Ps. = Rs.9,557/- + Rs.29,120/- and it is shown of grand total therefrom for item Nos.1 & 2 of Rs.1,20,025.86 Ps. and an amount of Rs.1,08,525.20 Ps. paid by LAO on 02.02.1994 to say balance payable by J.Dr. of Rs.11,500.66 Ps.

In the grounds of revision the main contest is regarding the alleged improper application of the expression of the Apex Court in **Sunder supra** and not of Rs.60,000/- for the fallow land of

Ac.0.12 cents and Rs.1,00,000/- for the other land of Ac.0.35 cents per acre respectively.

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.

What is laid down in **Sunder supra** 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.

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 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'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.”

The other expression of the Apex Court in **RL Jain (D) By LRs. Vs. DDA and Others**² observed therefrom of where possession taken prior to Section 4(1) notification concerned, the amount awarded to be payable with interest @ 9% p.a. from date of taking possession only if it have been paid or deposited to mean, where possession is taking prior to issuance of preliminary notification under Section 4(1) it is just and equitable that Collector may determine rent or damages for use of property to which land owner is entitled while determining the compensation amount payable to land owner for the acquisition of the property. For belated payment of such amount appropriate interest at prevailing bank rate.

From the above so far as item No.1 i.e., Ac.0.35 cents at Rs.1,00,000/- per acre = Rs.35,000/- + for item No.2 i.e., Ac.0.12

² AIR 2004 SC 1904

cents at Rs.60,000/- per acre of Rs.7,200/- = Rs.42,200/-, solatium of 30% thereon comes to Rs.10,500/- + Rs.2,160/- = Rs.12,660/- and structural value of Rs.6,646.50 Ps., in all the principal amount comes to Rs.61,506/-. Thus the interest to be payable at 9% from date of taking possession for one year as per Section 34 of the Act including as per **RL Jain supra** comes to Rs.61,506/-x9/100=Rs.5,535/- + interest @ 15% per annum from 14.03.1974 till amount paid on 26.08.1977 comes to Rs.32,290.65 Ps. = Rs.37,826/- is the interest component. As the payment made on 26.08.1977 is by mentioning towards land and structural value besides interest of Rs.4,830/- out of the deposited amount of Rs.37,026/- after deducting of interest of Rs.4,830/- from Rs.37,026/- the balance is Rs.32,196/- paid specifically towards principal amount to be deducted out of Rs.61,506/-. Thus the principal amount dues is Rs.29,310/-. Out of interest sum of Rs.37,826/- - Rs.4,830/- = Rs.32,996/- is interest due. Interest subsequent to that at 15% per annum from 26.08.1977 (since calculated up to 14.09.1977) till 02.02.1994 for 196 months on Rs.29,310/- comes to Rs.71,809/- + Rs.32,996/- = Rs.1,04,805/- towards interest and principal amount of Rs.29,310/- due and what is paid by LAO on 02.02.1994 an amount of Rs.1,08,525/-, the decree holders are entitled to adjust towards interest under doctrine of appropriation for not specifically stated towards principal amount then besides interest still due of Rs.1,08,525/- - Rs.1,04,805/- = Rs.3,720/- interest due and principal amount of Rs.29,310/-. The interest further at 15% per annum from 03.02.1994 on Rs.29,310/- besides old

interest due of Rs.3,720/- is payable by the J.Dr. to the decree holders.

Accordingly and in the result, the Civil Revision Petition is disposed of by directing the executing Court as per above calculation to proceed further by recovery of the said amount.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 09.02.2018
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