IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4604 of 2014 (O&M)
Date of Order:08.05.2018

Improvement Trust Pathankot through Executive Officer

..Petitioner

Versus

Sh. Joginder Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Iqbal Singh Ratta, Advocate,
for the petitioner.

Mr. Rajiv Atma Ram, Sr. Advocate, with
Mr. Mrigank Sharma, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

The Improvement Trust, Pathankot, is in the revision petition against the order passed by the learned Executing Court dismissing an application for refund of the amount on the ground that the interest on solatium is not payable before 19.09.2001, as per the judgment passed by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Gurpreet Singh v. Union of India, (2006) 8 SCC 457***. Learned counsel has referred to paragraph 44 of the judgment, which is extracted as under:-

> *"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 (supra), the*

> *<u>awardee/decree holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree</u>. 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."*

Learned counsel submits that since while determining compensation, the court did not specifically award interest on solatium, therefore, the interest is payable only with effect from 19.09.2001 and not for any period prior thereto.

In the present case, compensation payable was determined by this court in a writ petition. Hon'ble Single Bench of this court while adjudicating upon the aforesaid issue ordered that the land owners shall not be entitled to the benefit of Section 23(1)(a) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), but they shall be entitled to benefits under Section 23(2) and 28 of the Act of 1894. Concluding part of the judgment passed by the learned Single Judge in CWP No. 4166 of 1985, decided on 12.09.1994 is extracted as under:-

> "*The Tribunal passed the impugned Award on 4th June 1985. The Award of the Land Acquisition Collector is prior to 30th April, 1982. Keeping in view Section 30, transitional provisions of the Land Acquisition (Amendment) Act, 1984, the petitioners are entitled to the benefits of Section 23(2) and 28 of the Amended Act. However, they are not entitled to the benefits of Section 23(1) of the Act. This view of mine is supported by the judgments rendered by the Apex Court in Union of India and anotehr v. Raghbir Singh, A.I.R. 1989 S.C. 1933 and Food Corporation of India Faridkot v. Makhan Singh and anotehr, A.I.R. 1992 S.C. 1406.*
>
> *Accordingly, the present writ petition is allowed and the petitioners are held entitled to compensation at the rate of Rs.700/- per marla along with other ancillary*

> *benefits under Section 23(2) and 28 of the Act, as amended up-to date. No order as to costs."*

Section 28 of the Act has been specifically referred to by the learned Single Judge and it has been directed that the land owners shall be entitled to compensation at the rate of Rs.700/- per marla along with all other ancillary benefits available under Section 23(2) and 28 of the Act of 1894.

A careful reading of the judgment passed by the Hon'ble Constitution Bench, it is clearly provided that if the award of the 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 the compensation is awarded, then it would be open to the executing court to apply the ratio in judgment laid down in the case of Sunder (supra) and hold that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution in view of the judgment. Hence, sina-qua-non for applicability of paragraph 44 of the judgment, it is necessary that the judgment of the appellate court does not make a reference to award of interest on solatium. Section 28 of the Act has been interpreted by the Hon'ble Supreme Court to hold that solatium is part of compensation payable as is clear from the words used in Section 28 of the Land Acquisition Act, 1894. For facility of reference, Section 28 of the Land Acquisition Act, 1894 is extracted as under:-

> ***28. Collector may be directed to pay interest on excess compensation****. If the sum which, in the opinion of the Court, the Collector ought to have awarded as*

compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court:

Provided *that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry."*

In view thereof, there is no scope for interference.

The revision petition is dismissed.

May 08, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No