



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 03.09.2020

Judgment Delivered on : 20.11.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.914 of 2015

and

M.P. (MD)No.1 of 2015

The Commissioner,
Oddanchatram Municipality,
Oddanchatram,
Dindigul District.

: Petitioner/2nd Petitioner/2nd Respondent/
2nd Respondent

.. Vs ..

Muthuramakrishnan (Died)

1.Thirumalaisamy

2.M.Kasthuri Krishnan : Respondents 1 & 2/Respondents/
Petitioners/Petitioners

3.The Land Acquisition Officer cum
Revenue Divisional Officer,
Palani.

4.The District Rural Development Officer,
Dindigul District at Collectorate,
Dindigul. : Respondents 3 & 4/Petitioners 1&3/
Respondents 1 & 3/Respondents 1 & 3

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decretal order dated 09.01.2015 made in E.A.No.252 of 2012 in E.P.No.160 of 2008 in L.A.O.P.No.3 of 1996 on the file of Subordinate Judge, Palani.

For Petitioner : Mr.J.Parekh Kumar
For Respondents 1 & 2 : Mr.M.P.Senthil
For Respondents 3 & 4 : No appearance

ORDER

This Civil Revision Petition is directed against the order of the learned Subordinate Judge, Palani, in E.A.No.252 of 2012 in E.P.No.160 of 2008 in L.A.O.P.No.3 of 1996, dated 09.01.2015.

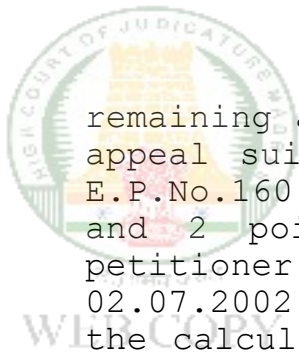
2.Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for respondents 1 and 2.



3.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.1.The property measuring an extent of 4 acres 21 cents (1,83,388 square feet) in Survey No.216/4A1 and 217/1A in Oddanchatram Village, Dindigul District was acquired by Government for the purpose of establishing wholesale vegetable market at Oddanchatram at the request of the revision petitioner, namely, the Commissioner of Oddanchatram Municipality. The notification under Section 4(1) of the Land Acquisition Act was issued on 29.08.1989. After completing the acquisition process, an award was passed on 01.07.1991 by the Land Acquisition Officer. A sum of Rs.15.87 per square feet was fixed as market value for the acquired land by the Land Acquisition Officer, namely, the third respondent herein. Aggrieved by the compensation fixed by the third respondent, the land owners sought for reference under Section 18 of the Land Acquisition Act and later the matter was referred to the Sub Court, Palani, for fixing just compensation. The reference Court, namely, the Sub Court, Palani, in L.A.O.P.No.3 of 1996 enhanced the compensation from Rs.15.87 per square feet to Rs.40/-per square feet apart from granting other statutory benefits like solatium and additional compensation as provided under Section 23(1-A) of the Land Acquisition Act. It is pertinent to mention that the decree in L.A.O.P.No.3 of 1996, dated 11.04.2001 shows that the land owners are entitled to 30% solatium and additional compensation as provided under Section 23(1-A) of the Act and interest from the date of taking possession on 30.11.1990. As against the order of reference Court, namely, Sub Court, Palani, dated 11.04.2001, in L.A.O.P.No.3 of 1996, an appeal was preferred by the revision petitioner herein along with respondents 3 and 4 before this Court in A.S.No.59 of 2002. In an interlocutory application in C.M.P.No.5973 of 2002 in A.S.No.59 of 2002, this Court directed the appellants in the appeal suit to deposit a sum of Rs.1,00,00,000/- (Rupees One Crore). As against the said direction, the appellants in A.S.No.59 of 2002 preferred L.P.A.No.134 of 2002 before the Division Bench and the Hon'ble Division Bench allowed the appeal partly by directing the appellants to deposit a sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs) in two installments. The Division Bench further directed the appellants to deposit the first installment of Rs.30,00,000/- (Rupees Thirty Lakhs) within a period of two weeks from 02.07.2002 and the second installment within a period of eight weeks thereafter. The Hon'ble Division Bench also permitted the land owners, namely, the respondents 1 and 2 herein to withdraw the entire sum of Rs.75,00,000/-.

3.2.The appeal in A.S.No.59 of 2002 was partly allowed and this Court reduced the market value from Rs.40/- per square feet to Rs.33.60 per square feet. In respect of other aspects, the award of the reference Court was confirmed. Since the revision petitioner



remaining amount as per the decree as modified by this Court in the appeal suit, the respondents 1 and 2 filed execution petition in E.P.No.160 of 2008. In the execution petition, the respondents 1 and 2 pointed out that the amount deposited by the revision petitioner pursuant to the order in L.P.A.No.134 of 2002 dated 02.07.2002 was to be adjusted towards interest and that therefore, the calculation memo filed by the respondents 1 and 2 would show a balance to be recovered from the revision petitioner. The executing Court allowed the execution petition accepting the claim of respondents 1 and 2 and ordered attachment for recovery of a sum of Rs.58,69,177/- being the amount due as on 08.06.2009. Aggrieved by the order of Executing Court directing the revision petitioner to make further payment, the revision petitioner preferred a revision earlier before this Court in C.R.P.(NPD) (MD) No.2560 of 2010. This Court by order dated 14.11.2011 remitted the matter to the executing Court after holding that the executing Court had not decided the issue with regard to the actual amount to be paid. This Court also gave liberty to the revision petitioner as well as respondents 1 and 2 to file their calculation memo.

3.3.After remand, the revision petitioner as well as the respondents 1 and 2 filed their respective calculation memo. This time the revision petitioner filed E.A.No.252 of 2012 with a prayer to record full satisfaction of the decree by the amount deposited i.e., a sum of Rs.57,50,331/-. This application was hotly contested by the respondents 1 and 2 by filing not only a detailed counter pointing out the erroneous calculation arrived at by the revision petitioner in an arbitrary fashion. The main objection was regarding adjustment of amount deposited first towards principal to escape from calculating interest on principal for the delayed payment. The executing Court dismissed the petition in E.A.No.252 of 2012 which was filed by the revision petitioner to record full satisfaction of the decree on the basis of the calculation memo filed by the revision petitioner. Aggrieved by the same, the Commissioner of Oddanchatram Municipality has preferred the above Civil Revision Petition.

4.This Court elaborately heard the Counsels appearing for the revision petitioner and the respondents 1 and 2. This Court directed both parties to file their respective calculation memo to find out the real issue on which the parties are at dispute. There is no dispute with regard to the total extent of land acquired. It should be noted that the following facts, dates and events are not in dispute:



Total extent of land acquired : 1,83,388 Square feet

29.08.1989 : Date of notification under Section 4(1) of the Land Acquisition Act.

30.11.1990 : Date of taking possession

01.07.1991 : Date of award passed by the Land Acquisition Officer fixing market value at the rate of 15.87 per square feet.

11.04.2001 : Date of order in L.A.O.P.No.3 of 1996 by Sub Court, Palani, enhancing compensation from 15.87 to Rs.40/ per square feet.

16.07.2002 : A sum of Rs.30,00,000/- was deposited by revision petitioner.

06.09.2002 : A sum of Rs.45,00,000/- was deposited by the revision petitioner.

13.12.2007 : Date of judgment and decree in A.S.No.59 of 2002 modifying compensation from Rs.40 per square feet to Rs.33.60 per square feet.

08.06.2009 : A sum of Rs.57,50,331.33 was deposited by the revision petitioner.

5.The learned Counsel appearing for the revision petitioner filed a calculation memo indicating that a sum of Rs.28,42,146.88 has to be recovered from respondents 1 and 2 as the revision petitioner had paid in excess of the amount required to be paid or deposited as per the decree. The learned Counsel appearing for the revision petitioner relying upon Section 23 (1-A) and 28 of the Land Acquisition Act submitted that the respondents 1 and 2 had wrongly calculated additional compensation contrary to Section 23(1-A) of the Act. As per Section 23(1-A) of the Act, in addition to the market value of the land, the Court shall in every case award an amount calculated at the rate of 12% per annum on such market value for the period commencing on and from the date of publication of notification under Section 4(1) of the Act to the date of award of the Collector or the date of taking possession of the land whichever is earlier. The learned Counsel appearing for the revision petitioner is right and the respondents are entitled to 12%



on the market value from the date of notification under Section 4(1) of the Act till the date of taking possession as it is admitted in this case that possession was taken prior to the award by invoking emergency provisions.

6.The learned Counsel appearing for revision petitioner then submitted that the Constitution Bench of the Hon'ble Supreme Court in **Sunder v. Union of India** reported in **2001 (4) CTC 434** has affirmed that the land owner is entitled to interest on solatium and additional compensation under Section 23(1-A) of the Act and that the amount towards interest can be calculated only for the period after the judgment of the Hon'ble Supreme Court and not earlier. The learned Counsel after referring to the judgment of the Hon'ble Supreme Court in **Gurpreet Singh's** case reported in **2006 (8) SCC 457** conceded that the amount deposited should be adjusted first towards interest then towards costs and thereafter towards the principal unless the decree otherwise directs. However, he pointed out that the interest on solatium can be claimed only in pending execution petitions and not in cases where compensation had already been paid. It was further submitted by the learned Counsel for the petitioner that the executing Court cannot be permitted to recover interest on solatium and additional compensation prior to the date of judgment of the Hon'ble Supreme Court in Sunder's case i.e., 19.09.2001. In paragraph 44 of the judgment the Hon'ble Supreme Court has held as follows:

"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 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 (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."

7.The learned Counsel appearing for the petitioner reiterated the submission by referring to the subsequent judgment of the Hon'ble Supreme Court reported in 2010 (10) SCC 635 and few other judgments for the proposition that the claimants can be permitted to recover interest on solatium only from the date of judgment in Sunder's case and not for the period prior to the judgment in Sunder's case. Finally, the learned Counsel appearing for the petitioner submitted that in this case compensation was awarded only after the judgment of the Hon'ble Supreme Court in **Prem Nath Kapur's case** reported in **1996 (2) SCC 71** and that the amount deposited should be adjusted first towards compensation and then towards interest. Since the judgment of the Hon'ble Supreme Court in **Gurpreet Singh's** case came subsequently, it is contended by the Counsel for revision petitioner that the amount deposited pursuant to the direction of the Hon'ble Division Bench in L.P.A.No.134 of 2002 should be adjusted towards principal and not towards interest. It is pointed out by the learned Counsel for the petitioner that interest as per Section 28 of the Act should be calculated at the rate of 9% for the first one year from the date of possession and at 15% for the rest of the period. The Hon'ble Supreme Court in Sunder's case (which was pronounced on 19.09.2001) categorically held that compensation awarded is the aggregate amount under Section 23 which ought to have reached the hands of the person interested as and when the award is passed and as soon as the person deprived of compensation for the land. The declaration of law in Sunder's case by Hon'ble Supreme Court was actually followed in several cases. As a matter of fact, this Court had occasions to deal with the issue earlier and held the position in tune with the law declared by the Hon'ble Supreme Court. The learned Counsel appearing for the revision petitioner by referring to the judgment of the Hon'ble Supreme Court submitted that interest on solatium and additional compensation can be claimed only for a period from 19.09.2001 and not earlier. The decree in L.A.O.P. reads as follows:

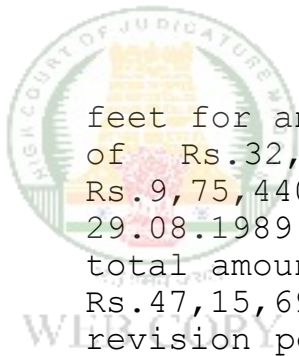


“1.ஆர்ஜித நிலத்திற்கு சதுரடி 1க்கு ரூ.40/- வீதம் அங்காடி மதிப்பு நிர்ணயம் செய்யப்படுகிறது.
2.அதற்கு 30% ஆறுதல் தொகையும், மத்திய நிலமெடுப்புச் சட்டம் பிரிவு 4 (1)ன்படி பிரசுர தேதியான 29.08.1989ம் தேதியிலிருந்து அவாண்டு தேதிவரை 12% கூடுதல் தொகை வழங்க வேண்டுமென்றும்,
3.நிலமெடுப்புச் சட்டம் பிரிவு 28ல் குறிப்பிட்டுள்ள காலவரையறை தீர்ப்புத் தேதிக்கு முன்பே முடிவடைந்து விட்டதில் மேற்படி சட்டம் பிரிவு 28ன் சரத்துப்படி (Provision) சுவாதீனம் எடுத்த தேதியான 30.10.1990ம் தேதியிலிருந்து மேற்படி தொகை நீதிமன்றத்தில் வைப்பீடு செய்யும் காலம் வரை 15% வட்டி செலுத்தப்பட வேண்டுமென்றும் கட்டளையிடப்படுகிறது.”

Therefore, the revision petitioner is liable to pay interest on solatium and additional compensation as per the judgment and decree of the reference Court. This portion of the judgment was not challenged nor modified by this Court in A.S.No.59 of 2002. Therefore, the revision petitioner is liable to pay interest as per decree and petitioner's liability cannot be restricted based on the expressions in the judgment of the Hon'ble Supreme Court in **Gurpreet Singh** on the applicability of the judgment of the Hon'ble Supreme Court in Sunder's case. Further, paragraph 44 of the judgment of Hon'ble Supreme Court in **Gurpreet Singh's** case renders the argument of petitioner's Counsel unsustainable in view of the specific terms of the decree.

8.The main argument of the learned Counsel appearing for the revision petitioner relates to the apportionment. It has been repeatedly held by this Court in several judgments regarding apportionment. The position was made clear in a catena of judgments of the Hon'ble Supreme Court as followed by this Court in several subsequent judgments. The principle reiterated by this Court following the judgment of the Hon'ble Supreme Court regarding apportionment has to be followed in all cases. The law declared by the Hon'ble Supreme Court cannot be interpreted to have only prospective effect even in respect of cases which are pending. In this case, the appeal suit filed by the revision petitioner and others was disposed of only in 2007 and therefore, there is no scope for restricting the applicability of the judgment of Hon'ble Supreme Court. The contention that the revision petitioner can adjust the deposit made on 16.07.2002 and on 06.09.2002 towards principal has no legal basis nor supported by any other judgment of Hon'ble Supreme Court.

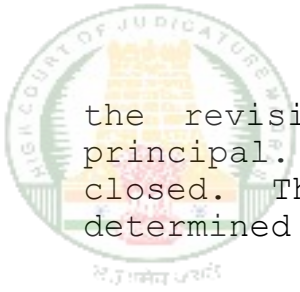
9.As a result, in order to avoid further complications based on calculation memos filed by both sides, this Court is inclined to accept the calculation memo filed by the respondents 1 and 2 to the extent indicated in this order. From the calculations on either side, it is admitted by both sides that the respondents are entitled to the difference of compensation at the rate of 17.73 per square



feet for an extent of 1,83,388 square feet. This works out to a sum of Rs.32,51,469.24. 30% of solatium for the amount is Rs.9,75,440.77. Additional compensation for the amount at 12% from 29.08.1989 to 30.11.1990 comes to Rs.4,88,789/-. Therefore, the total amount of compensation payable to respondents 1 and 2 comes to Rs.47,15,699/-. There is no dispute about this amount and the revision petitioner has also agreed to pay a sum of Rs.47,17,570.06 as compensation. The respondents 1 and 2 are entitled to the interest at the rate of 9% from 30.11.1990 to 29.11.1991 i.e., for a period of one year from the date of taking possession. This works out to Rs.4,24,413/-. Thereafter, respondents are also entitled to interest at the rate of 15% from 30.11.1991 till the sum of Rs.30,00,000/- was deposited on 16.07.2002. The interest at 15% from 30.11.1991 to 15.07.2002 works out to Rs.75,15,644/-.

10.The amount towards interest payable upto 15.07.2002 comes to Rs.79,40,057/-. The revision petitioner deposited a sum of Rs.30,00,000/- on 16.07.2002. Therefore, the amount payable towards interest after deducting a sum of Rs.30,00,000/- is Rs.49,40,057/-. The revision petitioner deposited a sum of Rs.45,00,000/- on 07.09.2002. The interest payable at 15% on the amount of compensation upto 06.09.2002 works out to Rs.98,877/-. The total amount of interest payable upto 06.09.2002 is a sum of Rs.50,38,934/-. Out of this amount, after deducting a sum of Rs.45,00,000/- deposited on 07.09.2002, the balance payable towards interest is Rs.5,38,934/-. Thereafter, interest at the rate of 15% from 08.09.2002 to 07.06.2009 for the amount of compensation comes to Rs.47,74,645/-. The total amount payable by the revision petitioner towards interest upto 07.06.2009 comes to Rs.53,13,579/-. The amount deposited by the revision petitioner on 08.06.2009 is Rs.57,50,331/-. Since a sum of Rs.4,36,752/- is paid in excess of the amount towards interest, the said amount has to be deducted from the total amount of compensation determined at Rs.47,15,699/-. Hence, as on 08.06.2009 the petitioner is liable to pay a sum of Rs.42,78,947/-. Calculating interest at the rate of 15% from 09.06.2009 to 31.08.2020 for the amount of Rs.42,78,947/-, the respondents 1 and 2 are entitled to a sum of Rs.72,05,193/- towards interest alone. Adding the amount of Rs.42,78,947/- towards principal and further sum of Rs.72,05,193/- towards interest the revision petitioner is liable to pay a sum of Rs.1,14,84,140/- calculating interest upto 31.08.2020. The revision petitioner is liable to pay interest for the period subsequent to 31.08.2020 till the amount is realised by the revision petitioner.

11.Having regard to the findings of this Court with regard to the amount payable to the respondents 1 and 2 by the revision petitioner, this Court is of the view that the revision petition is liable to be dismissed and hence, dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only) payable to the respondents on account of further delay in settling the amount of compensation by



the revision petitioner in 2002 should be appropriated towards principal. Consequently, the connected miscellaneous petition is closed. The revision petitioner is directed to settle the amount as determined by this Court within 12 weeks without fail.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

SRM

To
The Subordinate Judge,
Palani.

+1 CC to M/s.MP.SENTHIL, Advocate (SR-22426[F] dated 23/11/2020)

Order made in
C.R.P. (MD) No.914 of 2015
20.11.2020

SGS (CO)
TR(03.12.2020) 9P 3C