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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 4th March, 2020.

\+ **CM(M) 1034/2010 and CM APPL. 14422/2010, CM APPL. 47862/2019**

UNION OF INDIA ..... Petitioner

Through: Mr. Sanjay Kumar Pathak, Mr. Sunil Kumar Jha and Mr. M.S. Akhtar, Advocates (M: 9910770311).

versus

SARDAR SINGH DECD THR LRS & ANR ..... Respondents

Through: Mr. N.S. Dalal, Mr. D.P. Singh and Mr. Aman Mudgal, Advocates (M: 9811155424).

Mr. Akul Mehandru, proxy counsel for Mr. Kamal Mehta, Advocate for R-2(9) (M: 9873730409).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 47863/2019 (243 days delay in filing) and CM APPL. 47864/2019 (58 days delay in re-filing)

1. These are applications for condonation of delay. The same are allowed.

2. Applications are disposed of.

CM(M) 1034/2010 and CM APPL. 14422/2010, CM APPL. 47862/2019

3. The challenge in this case is to the impugned order dated 17th February 2010, wherein the ld. Executing Court has granted interest on solatium by following the judgment of the Ld. Division Bench in ***Bahadur***

Vs. Union of India RFA No. 190/83 (Decided on 15th November, 1996). The submission of ld. counsel for the Appellant is that in the present case, no interest on solatium is liable to be granted, inasmuch as the reference in the present case was decided prior to the judgment in ***Bahadur v Union of India***. The Respondents herein have only sought interest, as was sought in the case of ***Bahadur (supra)***. It is his submission that no solatium is, accordingly, liable to be awarded to the Respondents. He further urges that the Executing Court cannot go beyond the decree. Since the decree did not award interest on solatium, thus the same cannot be granted by the Executing Court.

4. The question as to whether or not interest is liable to be awarded on solatium is no longer *res integra.* The Constitution Bench in ***Sunder v. Union of India (2001) 7 SCC 211*** held that solatium is an integral part of the compensation awarded to landowners under Section 23 of the Land Acquisition Act, 1894. In ***Sunder v. Union of India (supra)*** it was noticed that various High Courts had expressed different opinions on this issue. The Supreme Court, after considering the various provisions of the Act, observed as under:-

> *"23. In deciding the question as to what amount would bear interest under Section 34 of the Act a peep into Section 31(1) of the Act would be advantageous. That Sub-section says; "On making an award Under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next Sub-section." The remaining Sub-sections in that provision only deal with the contingencies in which the Collector*

has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. We make it clear that the 'compensation awarded would include not only the total sum arrived at as per Sub-section (1) of Section 23 but the remaining Sub-sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the Sub-sections thereof.

24. The proviso to Section 34 of the Act makes the position further dear. 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 from the expiry of one year and that there would be no 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. We may also point out that different High Courts have taken the same view in the following decisions:-

G. Venkatesh v. Special Land Acquisition Officer (AIR

1975 Kara 95), B. Ravinder Reddy v. Special Deputy Collector, Land Acquisition (Industries), Hyderabad (AIR 1981 A.P. 381), State of Haryana v. Smt. Kailashwati and Ors. (AIR 1980 P & H 117) and Hindustan Aeronautics Ltd. v. Muniswamy Reddy (AIR 1993 Kar 77)
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. Smt. Kailashwati and Ors., (supra).

> *"<u>Once it is held as it inevitably must be that the solatium provided for Under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land.</u> 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. <u>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.</u>"*

Thus, the Supreme Court held that compensation would include solatium and interest would be liable to be granted in respect thereof.

5. In the present case, the execution proceedings relate to the revenue state of village Bhalaswara Jahangirpuri, Delhi, for which notification was issued under Section 4 way back on 25th March, 1977. The Reference Court determined the compensation payable in respect of the said village on 31st

May, 1988. The very same notification in respect of the same village was considered in the lead matter of ***Bahadur v. Union of India*** and a bunch of other matters. In the said judgement, a ld. Division Bench of this Court held that compensation would include solatium, and interest would be payable on solatium. This judgement was rendered on 15th November 1996 and modified on 24th October, 1997. There was a clarification which was sought, and finally vide order dated 11th February, 2003, the ld. Division Bench clarified the judgement in ***Bahadur v Union of India*** in the case of ***Kanwar Pal Singh v. Union of India RFA 122/1989 (Decided on 11th February, 2003)*** as under:-

> *"The petitioner has sought clarification of judgment dated 15th November, 1996 as modified by order dated 24th October 1997.*
> *No clarification would be required to be issued since in accordance with the judgment, appellant is entitled to receive interest on the amount of compensation which also includes solatium.*
> *Dismissed."*

6. Thus, with this clarification of ld. Division Bench no doubt remains as to whether interest would be liable to be paid on solatium or not. The Division Bench has clearly held that the compensation amount would include solatium.

7. The operative portion of the award in the present case reads:

> "*5. On the question of title, the petitioners have filed Ex. A-1, a copy of judgment in LAC No. 64/80 U/S 30/31 of the Act. In consequence thereof, the petitioners are entitled to (11-05) of land in khasra No. 1494, after leaving 2 bigha and 12 biswas to various plot holders. The petitioners would be entitled to enhanced*

compensation, in accordance with the judgment on the security to be furnished by them, to cover up the interest of any other plot holders, if they put their claims in respect of the plots held by them, if any. This is being so ordered to be in conformity with the judgment in LAC No. 64/80, which also allowed the payment to the petitioners, on their furnishing security. Issue no. 1 is decided accordingly.

Issue No. 2 & 3:

...

But, with respect, I feel inclined to agree with the market value arrived at in Ex. A-5, which is later in point of time, and therefore, adopt Rs. 13,300/- P.B. as the market value, in the instant case as well. The petitioners would thus be entitled to an enhancement of Rs. 6300/- P.E. in the market value, in respect of the land, described above.

...

Besides the enhancement in the market value, the petitioners are entitled to solatium at 30%, additional amount at 12% from the date of notification u/s 4 of the Act till the date of the Award or date of taking possession, whichever is earlier, and interest at 9% for the first year from the date of possession and at 15% for the period thereafter. Whatever has already been paid, shall be deducted. The benefits of additional amount, enhanced solatium and interest are being granted in the light of judgment in RFA No. 240/83 (Pyani Ram& others Vs. UOI) decided by Hon'ble High Court of Delhi on 18.12.87.

Respondents in this case sought execution of the award. The question which arose in the execution was whether interest would be liable to be paid on solatium. On the said issue, the executing Court held as under:-

"I have heard the arguments and have gone through the record. Brief question involved herein is that

whether the DH has been awarded interest on solatium in the judgment of High Court or not. Hon'ble High Court has decided the RFA No. 658/88 titled as Sardar Singh Vs. UOI of which DH is seeking execution on the basis of judgement of Bahadur Vs. UOI RFA NO. 190/83 dated 15.11.1996 which was modified vide judgement dated 24.10.97. In the said judgement Hon'ble High Court has granted 30% solatium and interest @ 9% and 15%. The said RFA Bahadur Singh Vs. UOI was decided alongwith many other RFA including one of the RFA filed by Kanwar Pal Singh bearing RFA No. 122/1989. The said Kanwar Pal Singh had filed a misc. application bearing CM NO. 223/03 seeking clarifications whether he is entitled to interest on the solatium amount or not and Hon'ble High Court vide its order dated 11.02.2003 had held that "no clarifications would be required to be issued since in accordance with the judgment, appellant is entitled to receive interest on the amount of compensation which also includes solatium". Thus the judgment of Kanwar Pal Singh (Supra) is clearly prove the point that all the DHs whose RFA were disposed off on the basis of judgment of Bahadur Singh Vs. UOI (Supra) are also entitled to interest on solatium. Further in Gurpreet Singh Vs. UOI IX(2006) SLT 528, it has been held that:

"Execution Court to grant interest on solatium if same has awarded in decree"

In similar case Meer Singh Vs. UOI LAC No. 67/81 Ex. No. 351/07 Ld. ADJ Shri A.K. Kuhar, vide order dated 16.05.07, also held that all the appellant whose appeal was decided by the common judgment of Bahadur Singh Vs. UOI (Supra) would be entitled to interest on solatium as per the order of Hon'ble High Court.

In view of the above fact I hereby held that DH is entitled to interest on solatium also as same was awarded to him in the decree.

Fresh calculation of the balance decretal amount be *called from the District Nazir who is directed to calculate the interest on the solatium also."*

8. The Executing Court has, thus, after following various judgements including ***Gurpreet Singh v. Union of India, (2006) 8 SCC 457*** held that interest would be liable to be paid on solatium and accordingly awarded the same. The Executing Court further directed calculation of the balance of the decretal amount.

9. There is no dispute that Respondents are placed similarly to all parties whose cases were part of the judgment in ***Bahadur v Union of India***. The Respondents' RFA being RFA No.658/1988 was disposed of on 23rd July, 1999 in terms of the ***Bahadur v Union of India*** judgement. The said order reads as under:

"*3….The question of market value of land acquired by the very same notification in respect of the same village, was the subject-matter of RFA No. 190/83: Bahadur v Vs Union of India; which was decided by a Division Bench of this Court on 14.11.96. In that case, the market value was assessed @ Rs. 17,800/- per bigha.*

4. Accordingly, we hold that market value of the land of the appellants in the present case also should be determined @ Rs. 17,800/- per bigha.

5. In addition to the market value of the land, the appellants/claimants shall be entitled to payment of solatium @ 30% of the aforesaid market value, in consideration of the compulsory nature of the acquisition under Section 23(2) of the Act. The appellants/claimants shall also be entitled to interest @ 9% per annum from the date of dispossession till expiration of one year from that date and thereafter @ 15% per annum till the date of payment in court on the compensation in excess of the sum awarded by the Collector in terms of Section 28 of the Act. The amount already paid *shall be adjusted towards the amount payable hereunder. The appellants/claimants shall also be entitled to proportionate costs*."

Thus, the Respondents would have to be treated on par with all the other similarly placed persons and cannot be treated differently. The Constitution Bench judgment in ***Sunder v. Union of India*** is also quite clear that solatium is included in compensation. Ld. counsel for the Union of India relies upon ***Gurpreet Singh v. Union of India (supra)*** to argue that the Executing Court cannot go behind the decree. The decree in the present case would be identical to the case in ***Bahadur v. Union of India***. In any event this question, has also been answered by the Supreme Court in ***Gurpreet Singh v. Union of India*** as under:-

> *"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 [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] , the awardee/decree-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 [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] 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 [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] 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 [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] (19-9-2001) and not for any prior period.*** *We also clarify that this will not entail any reappropriation 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."*

As per the above ratio, compensation includes solatium and interest is liable to be paid on solatium. However, the Supreme Court clarified that interest would be liable to be paid only from the date of judgement in ***Sunder (supra).***

10. Thus, the only question that needs to be examined is whether there was an express or implied rejection of interest on solatium in the award of the Reference Court. If the question of interest is not specifically referred to in the final award, and if solatium is to be considered as part of the compensation, then interest would be liable to be paid on solatium. Thus, unless and until there is express rejection of interest on solatium on any

specific ground in the award or in the judgement upholding/modifying the award, interest on solatium would be liable to be granted. However, in ***Bahadur (supra)*** there was no clarity as to the date from which interest would be liable to be paid on solatium. The same has been clarified by the Supreme Court in ***Gurpreet Singh (supra)***. Accordingly, in terms of the judgement in ***Gurpreet Singh (supra)***, interest is however only liable to be granted on solatium from the date of judgement in ***Sunder Vs. UOI*** i.e. 19th September, 2001. The interest amount on solatium is thus awarded from 19th September 2001 to the Respondents. Let the calculations be made and the amounts be paid to the Respondents in accordance with law.

11. The petition is disposed of in these terms. Ordered accordingly.

PRATHIBA M. SINGH
JUDGE

MARCH 04, 2020
MR/RG
(corrected and released on 18th March, 2020.)