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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 09.09.2021

Order Passed on : 21/10/2021

W.P.(227) No. 831 of 2018

Purushottam Sharma, S/o. Shri Jainarayan Sharma, aged about 59 years, R/o. House No. MIG 80, Post Tatibandh, Raipur, District Raipur Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through : Collector, Raipur, District Raipur Chhattisgarh.
2. Executive Engineer, Chhattisgarh Housing Board, Division I, Raipur, District Raipur Chhattisgarh.

---- Respondents

W.P.(227) No. 631 of 2018

Archana Sharma, D/o. Purushottam Sharma, aged about 43 years, R/o. H.No. MIG 80, Post-Tatibandh, Raipur, District- Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through : Collector, Raipur, District Raipur Chhattisgarh.
2. Executive Engineer, Chhattisgarh Housing Board, Division I, Raipur, District Raipur Chhattisgarh.

---- Respondents

AND

W.P.(227) No. 60 of 2019

Kusum Sharma, W/o. Dr. P. Sharma, H.No. MIG 80, Tatibandh, Raipur, District- Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through : Collector, Raipur, District Raipur Chhattisgarh.
2. Executive Engineer, Chhattisgarh Housing Board, Division I, Raipur, District Raipur Chhattisgarh.

---- Respondents

For Petitioners	: Mr. Kishore Bhaduri, Sr. Advocate with Mr. Sunny Agrawal, Advocate
For Respondent-State No.1	: Ms. Hamida Siddiqui, Dy.A.G.
For Respondent No.2	: Mr. Sanjay Patel, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

1. All these petitions are heard and decided together by this common order as they are arising out of the order dated 08.05.2018, passed by the Court of 4th Additional District Judge, Raipur in Execution Case No. 32/2019, 30/2019 and 31/2019 respectively.
2. The petitioners were the land owners and their lands were acquisitioned by the State of Chhattisgarh for C.G. Housing Board. The petitioners were not satisfied by the amount of compensation awarded to them by the authorities, therefore, reference was made under Section 18 of the Land Acquisition Act, 1984 (hereinafter referred to as "the Act, 1984"), before the Court of District Judge, Raipur. The learned District Judge, Raipur passed an award dated 11.12.2009. The learned District Judge enhanced the compensation payable to the petitioners in all three cases. The petitioners filed execution cases, which were registered as Execution Case No.32/2009, 30/2009 & 31/2009 respectively, before the Executing Court and they presented their calculations according to the award passed by the learned District Judge, Raipur, in their respective

cases. The Executing Court has not accepted the calculations submitted by the petitioners. The amount for satisfaction of decree was calculated by the Court itself incorrectly and all execution cases were closed on the ground that the decree was completely satisfied in all the execution cases.

3. It is submitted by the learned Sr. Counsel for the petitioners that the calculations made by the Executing Court in all the cases is erroneous. According to the calculation submitted by the petitioners, Rs.69,23,299/- was payable to the petitioner in W.P.(227) 831 of 2018, Rs.57,85,838/- was payable to the petitioner in W.P.(227) No.631 of 2018 and Rs.68,73,774/- was payable to the petitioner in W.P.(227) No. 60 of 2019.
4. It is further submitted that the compensation has to be calculated in accordance with the Section 23 of the Act, 1894. Reliance has been placed on the judgment of Supreme Court in case of **Sunder Vs. Union of India**, reported in **(2001) 7 SCC 211**. It is submitted that the amount of compensation has to be calculated in accordance with the provisions of Sub-section of Section 23, which includes solatium. The learned Execution Court has made a miscalculation that all the amount has been paid, whereas, amount of Rs.16,00,169/- is remaining to be paid in W.P.(227) 831 of 2021. Similarly Rs.13,37,356/- is remaining to be paid in W.P.(227) No.631 of 2018 and Rs.15,88,809/- is remaining to be paid in W.P.(227) No. 60 of 2019. Therefore, the calculations in the impugned orders are erroneous, which needs correction. It is prayed that all the petitions be allowed and appropriate orders be passed granting relief to the petitioners.

5. Learned State counsel appearing on behalf of the respondent No.1 makes formal objection.
6. Learned counsel for the respondent No.2 opposes the petitions and the submissions made in this respect. It is submitted that the impugned orders are reasonable and lawful, which does not suffer from any infirmity. The calculations submitted by the petitioners have been denied and it is submitted that all the compensation as ordered along with interest have been paid to the petitioners. It is also submitted that the petitioners had remedy available to file appeal against the impugned order under Section 54 of the Act, 1894, therefore, there being statutory remedy available to the petitioners, the petitions filed under Article 227 of the Constitution of India are not maintainable. It is prayed that all the petitions be dismissed.
7. In reply, it is submitted by the learned Senior Counsel that the impugned orders are the orders passed in execution cases, which are not appealable. Section 54 of the Act, 1894 provides for filing appeal only against the award of the District Judge, therefore, the petitions are maintainable. Further the petitioners are only challenging the calculations made by the learned Executing Court and praying for correction of the same, therefore, the petitions filed under Article 227 of the Constitution of India are maintainable.
8. I have heard the learned counsel for the parties and perused the documents placed on record.
9. In W.P.(227) 831 of 2018, according to the award of compensation by the Land Acquisition Officer/S.D.O., Raipur in award dated 13.08.2007, the total amount awarded with interest was Rs.3,39,808/-. The reference order of the District Judge, Raipur

dated 11.12.2009, the award was enhanced to Rs.43,35,352/- with direction that 9% interest shall be payable on difference amount from the date of award of District Judge up till one year and subsequent to that interest shall be payable @ 15% per annum. Therefore, same has to be calculated accordingly.

10. The difference amount awarded by the District Judge from the award granted by the Land Acquisition Officer is Rs.39,95,554/-. The learned Execution Court has taken into consideration the difference amount as Rs.24,64,000/- which is not correct calculation. The amount of Rs. 24,64,000/- is mentioned in the reference order of District Judge dated 11.12.2009 in which the interest were calculated and added and the total amount of compensation was granted as Rs.43,35,352/-. Subtracting the amount of award granted by the SDO, the remaining amount that is difference amount stands at Rs.39,95,554/-. Therefore, I am of this view that the calculation made by the learned Executing Court is incorrect and order closing the execution proceeding is also erroneous.
11. In W.P.(227) 631 of 2018, the award of compensation by the Land Acquisition Officer was Rs.2,83,982/-, which was enhanced by the reference Court in order dated 11.12.2019 to Rs.36,23,115/-. Similar direction for payment of interest @ 9% was payable on difference amount from the date of award of District Judge uptill one year and subsequent to that interest was to be payable @ 15% per annum. The difference amount in this case after subtracting the compensation granted by the SDO is Rs.33,39,133/-. In this case also the learned reference Court had mentioned difference amount of Rs.20,59,200/-, in which after addition of interest, the total amount of

compensation was ordered to be Rs.36,23,115/-, therefore, the difference amount mentioned in the impugned order is erroneous, whereas, the actual difference amount is Rs.33,39,133/-. The learned Executing Court should have calculated the interest accordingly. Hence, the impugned order in this case also is erroneous.

12. In W.P.(227) No. 60 of 2019, the award of compensation granted by the Land Acquisition Officer was 3,37,381/-. The learned reference Court by order dated 11.12.2009 enhanced the award to Rs.43,04,384/-. The difference amount in this case is Rs.39,67,003/-. The direction for payment of interest is same as ordered in other cases.
13. The calculation in the impugned order is with respect to difference amount, which is mentioned as Rs.24,46,400/- is erroneous as it is because the difference amount calculated by the learned reference Court before adjudicating the complete compensation to be awarded Rs.43,04,384/-, therefore, the learned Executing Court committed error in taking into consideration the different amount mentioned in the impugned order, which is not the difference amount for the execution case. The difference amount for the execution case would be Rs.39,67,003/- as the actual amount on which the interest was required to be calculated as per the order of the reference Court. Hence, the order passed by the Executing Court in this case is also erroneous, which is based on miscalculation.
14. After considering on the submissions and making calculation, with respect to difference in amount, in compensation that was granted by the reference Court compared to what was granted by the Land Acquisition Officer/SDO in all three cases, the respective figures of

difference in amount have been mentioned here-in-above on which there is requirements for making calculation and for giving finding as to whether the award has been satisfied or not. Therefore, all the three petitions are allowed. The impugned orders in all three cases are set-aside. The learned Executing Court is directed to take into consideration the difference amount as calculated in this order and continue with the execution proceeding in all the cases, until the same are satisfied.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram