IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP(NPD).No.4341 of 2015

N.Palanisamy @ thambi (died)
1. P.Seralathan
2. P.Elangovan
3. P.Parthiban
   Saraswathi (died)
4. P.Thilagavathi
   (The petitioners 1 & in the E.P. Have died. Hence, they are not shown as petitioners in this C.R.P).

... Petitioners

Vs.

1. Deputy Collector,
   District Collector Office Compound,
   District Collectorate,
   Coimbatore – 641 018.

2. The Principal General Manager,
   BSNL, Coimbatore Telecom,
   Mettupalayam Road,
   Coimbatore.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order and decretal order dated 11.08.2014 made in E.P.No.97/2011 in L.A.O.P.No.244/1991 on the file of the Court of the II Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.T.P.Manoharan
Senior Counsel for
Mr.K.P.Jotheeswaran

For Respondents : Mr.S.Jaganathan
Government Advocate (CS) for (R1)
: Mr.K.R.Ramesh Kumar (for R2)

O R D E R

This Civil Revision Petition is directed against the order and decretal order passed in E.P.No.97 of 2011 in L.A.O.P.No.244 of 1991 dated 11.08.2014 on the file of the learned II Additional Subordinate Judge, Coimbatore, thereby, partly allowing the Execution Petition to the tune of Rs.79,442/- and directed the second respondent to pay the same within a period of three months.

2. Mr.T.P.Manoharan, learned Senior Counsel for the petitioner submitted that the petitioners are the decree holders in L.A.O.P.No.244 of 1991. They filed the said petition as against the award passed by the Land Acquisition Officer for the land acquired and owned by the petitioners for the purpose of construction of telephone exchange. The total extent of land was ad-measuring 2.21 acres comprised in S.No.120/2B at Ganapathy

Village, Coimbatore North. The Land Acquisition Officer fixed the quantum at Rs.1,710/- per cent and accordingly awarded. The Reference Court enhanced the compensation to Rs.20,016/- per cent, for the land acquired by the respondents herein. Aggrieved by the same, the respondents filed an Appeal Suit before this Court and the petitioners also filed cross objection. This Court, by the judgment and decree, dated 25.06.2009 fixed the land value at Rs.20,000/- per cent, as fair and just compensation. The interest portion is disputed by the respondents and as such, the petitioners filed an Execution Petition before the Court below. They also filed a calculation statement, calculating the interest portion as awarded by this Court. In support of the said contentions, the learned counsel relied upon the judgments reported in (2001) 7 SCC 211 ***(Sunder -vs- Union of India),*** (2010) 10 SCC 464 ***(Iyasamy -vs- Tahsildar (LA)*** and (1995) 4 SCC 26 ***(Mathunni Mathai -vs- Hindustan Organic Chemicals Ltd).***

3. Per contra, the learned counsel appearing for the respondents submitted that the total award amount and the interest calculated by the petitioners is wrong. This Court, while fixing the compensation at Rs.20,000/- per cent, awarded solatium at the rate of 30% for the land

acquired by the respondents. They are entitled to interest on the market value of the acquired land and solatium at the rate of 9% from the date of taking possession for one year and thereafter, the interest at the rate of 15% per annum till the date of realisation. The petitioners also entitled to further sum of interest at 12% on the market value as per Section 21 (1-A) of the Land Acquisition Act. Therefore, there is no order as to interest for the additional market value of 12% for the land acquired. While calculating interest, the Execution Court rightly excluded 12% additional market value and accordingly, the respondents paid the entire award amount as well as the interest. In fact, the Execution Court wrongly calculated and according to the respondents' calculation, the petitioners are liable to refund some amount as per the calculation memo. However, the respondents did not file any revision as against the order passed by the Execution Court. In support of his contentions, he relied upon the judgment reported in (2006) 8 SCC 457 ***(Gurpreet Singh -vs- Union of India).***

4. Heard the learned counsel for the petitioners and learned Government Advocate (CS) appearing for the first respondent and the learned counsel appearing for the second respondent.

5. The land ad-measuring at 2.21 acres comprised at 120/2B, Ganapathy Village, Coimbatore North was acquired for the purpose of construction of telephone exchange. The Land Acquisition Officer fixed the compensation at the rate of Rs.1,710/- per cent. Before the Reference Court, the petitioners claimed enhancement of compensation and the Reference Court enhanced the compensation and fixed the quantum at rate of Rs.20,016/- per cent, for the land acquired. Aggrieved by the same, the respondents filed an Appeal Suit before this Court and the petitioners also filed cross objection. This Court fixed the fair and just compensation at Rs.20,000/- per cent, solatium at the rate of 30% and also awarded 12% of additional market value. As far as the interest portion is concerned, on the market value of the acquired land and the solatium was fixed at 9% from the date of taking possession for one year and thereafter, at the rate of 15% per annum, till the date of realisation. Therefore, it is clear that the claimants are entitled for interest at the rate of 9% from the date of taking possession and thereafter, they are entitled for the interest at the rate of 15% per annum till the date of realisation on the market value of acquired land and solatium. Accordingly, the petitioners are entitled for interest on the market value of

the land fixed at Rs.20,000/- per cent + 30% of solatium on the market value + 12% additional market value as per Section 23 (1-A) of the Land Acquisition Act.

6. In this regard, the learned Senior Counsel for the petitioners relied upon the judgment (2001) 7 SCC 211 ***(Sunder -vs- Union of India),*** whereas, the Hon'ble Apex Court held as follows:-

> *"20. We may now see whether exclusion of the factor "any disinclination of the person interested to part with the land acquired" from being considered as part of the compensation indicated in Section 24 of the Act would be of any aid for excluding solatium from the purview of interest accrual process. No doubt what is intended under Section 23 (2) is additional to the market value of the land and "in consideration of the compulsory nature of the acquisition." But it cannot be equated with any damage caused on account of "any disinclination of the person to part with the land acquired.*
>
> *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:*

"31. (1) 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 partly 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."

7. The Hon'ble Supreme Court of India, while deciding the interest under Section 34 of the Land Acquisition Act held that the amount of compensation was worked out in accordance with the provisions contained in Section 23 including all Sub Sections thereof. Therefore, the petitioners

are entitled for the interest for the award amount + 30% of solatium and 12% of additional market value of the land acquired by the respondents.

8. On a perusal of the calculation statement submitted by the respondents herein before the Execution Court, they left out 30% of the solatium as well as 12% of the additional market value of the land acquired by the respondents upon calculating interest. Further, subsequent deposit has to be adjusted towards the interest amount and then only to be adjusted towards the award amount. The compensation awarded for the land ad-measuring 2.21 acres at the rate of 20,000/- per cent would be equal to Rs.44,20,000/-. The solatium at the rate of 30% at the rate fixed by this Court would be equal to 13,20,000/-. The additional market value at the rate of 12% per annum from the date of last notification under Section 4 (1) of the Land Acquisition Act dated 27.09.1987 works out to Rs.10,59,327/-. Therefore, the total compensation awarded for the land acquired by the respondents would be Rs.68,05,327/-.

9. The learned counsel for respondents relied upon the judgment reported in (2006) 8 SCC 457 ***(Gurpreet Singh -vs- Union of India),***

whereas, the Hon'ble Apex Court held 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 -vs- Union of India, (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 -vs- Union of India, (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 to apply the ratio of Sunder -vs- Union of India, (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 -vs- Union of India, (2001) 7 SCC 211 : 2001 Supp (3) SCR 176 (19.09.2001) 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."

10. The Larger Bench of the Supreme Court of India has held that the interest portion has to be calculated by the Execution Court as per the ratio laid down in the case of ***(Sunder -vs- Union of India)*** reported in (2001) 7 SCC 211, when the award passed by the Reference Court or that of the Appellate Court does not specifically referred to the question of interest on

the solatium or in cases where the claim had not been made and rejected either expressly or impleadly by the Reference Court or the Appellate Court.

11. In the case on hand, this Court expressly awarded the interest on the compensation at the rate of 9% from the date of taking possession for one year and thereafter, awarded interest at the rate of 15% per annum till the date of realisation. As discussed above, the award means the entire amount, the award + solatium + additional market value. Therefore, the Court below, without considering the same, has wrongly calculated the amount payable by the respondents and partly allowed the Execution Petition and directed the respondents to pay a sum of Rs.79,442/- only.

12. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in E.P.No.97/2011 in L.A.O.P.No.244/1991 dated 11.08.2014 is set aside. The matter is remanded back to the Execution Court for fresh consideration. The Execution Court is directed to calculate the interest as discussed above and pass orders within a period of four weeks from the date of receipt of a copy of this order. The petitioners and

the respondents are directed to file the calculation of interest for the total compensation of Rs.68,05,327/-. On receipt of the same, the Execution Court shall pass orders accordingly. No costs.

19.02.2021

Speaking/Non-speaking order
Index : Yes/No
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To

1. The II Additional Subordinate Judge, Coimbatore.

2. Deputy Collector,
   District Collector Office Compound,
   District Collectorate,
   Coimbatore – 641 018.

3. The Principal General Manager,
   BSNL, Coimbatore Telecom,
   Mettupalayam Road,
   Coimbatore.

G.K.ILANTHIRAIYAN,J.

Kv

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