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C.R.P.(NPD) No.1304 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.08.2022

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.R.P. No.1304 of 2022
and C.M.P.No.6927 of 2022

The Executive Engineer,
Tamil Nadu Housing Board
Tatabad, Coimbatore – 12.

... Petitioner

Versus

1. D.Swaminathan (Died)
2. S.Rajeswari
3. S.Prasantha Durairaj
4. S.Nandhitha Lakshmi
5. Padmavathy
6. Special Tahsildar (Land Acquisition),
Housing Scheme Unit-III,
Coimbatore.
Respondents

...

Civil Revision Petition filed under 227 of Constitution of India against
the order dated 17.03.2022 passed in E.P. No.339 of 2017 in
L.A.O.P.No.243 of 1990 on the file of the learned Second Additional
Subordinate Judge, Coimbatore.



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For Petitioner : Mr.C.Kalaichelvan
Standing Counsel for TNHB

For Respondents 2-5 : Mr. V.Raghavachari
for Ms. V.S.Usharani

6 : Mr. E.Vijayanand
Additional Government Pleader

ORDER

This Civil Revision Petition has been preferred challenging the order passed by the learned II Additional Subordinate Judge, Coimbatore in E.P. No.339 of 2017 in L.A.O.P. No.243 of 1990, dated 17.03.2022.

2. The revision petitioner is the Reference Officer and the subject property was acquired by the Tamil Nadu Housing Board, Coimbatore in respect of an award passed on 25.04.2015 in L.A.O.P. No.243/1990.

3. The acquisition relates to the property measuring an extent of 23.95 acres comprised in S.F.No.22/2, etc. at Ganapathy Village, Coimbatore. While fixing the compensation, the Special Tahsildar (Land Acquisition) / sixth respondent has fixed the compensation at the rate of Rs.200/- per cent. Not being satisfied with the compensation so awarded, the claimants /



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respondent 1 to 5 have raised objections before the Land Acquisition Tribunal in L.A.O.P. No.243 of 1990. By a judgment dated 25.04.2015, the Land Acquisition Tribunal has enhanced the compensation fixed by the Land Acquisition Officer at the rate of Rs.4,000/- per cent.

4. Claiming a sum of Rs.56,56,840/- for an extent of 6.79 acres, the claimants have filed an Execution Petition in E.P. No.336 of 2017 in L.A.O.P. No.243 of 1990. The revision petitioner, had already deposited a part compensation amount of Rs.1,93,26,253/- towards the enhanced compensation to the respondents. Once again, the respondents 1 to 5 have claimed interest by calculating the same from 23.03.1983 (i.e.) from the date of notification issued under Section 4(1) of the Land Acquisition Act in the said execution proceedings. The Executing Judge has allowed the execution petition and ordered attachment of the property belonging to the Government. Aggrieved over the same, the present Civil Revision Petition is preferred.

5. Mr.C.Kalaiselvan, learned counsel for the petitioner submitted that the solatium at the rate of 30% along with the interest was awarded to the



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claimants through Lok Adalat and compensation was agreed to be fixed at Rs.4,000/- per cent from the date of 4(1) Notification to the date of award along with interest. The grievance of the revision petitioner is that though the entitlement of interest is only in accordance with the judgment of the Hon'ble Supreme Court held in the case of *Sunder Vs. Union of India*, reported in (2001) SCC 211, the claimants have claimed the interest on the solatium so agreed and awarded through Lok Adalat, from the date of 4(1) notification.

5.1. By citing the judgment in the case of *Sunder Vs. Union of India*, reported in (2001) SCC 211, the learned counsel for the petitioner submitted that the claimants are entitled to claim interest only from 19.09.2001 which is the date of the judgment in Sunder's case; the Reference Officer / Petitioner has calculated interest from 19.09.2001; but the claimants have claimed interest from the date of notification i.e.23.03.1983 which is against the guidelines of the Hon'ble Supreme Court; a Government order vide G.O.Ms.No.401 Revenue and Disaster Management (LA-I(1)) Department dated 12.10.2018, has also been passed in this regard by clarifying the interest.



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5.2. The learned Executing Judge, without taking into consideration of *Sunder's* case (supra) and the aforesaid Government order dated 12.10.2018 has calculated the interest from the date of notification (23.03.1983) instead of calculating it from 19.09.2001; hence, the order of the Executing Judge has to be set aside.

6. Per contra, Mr.V.Raghavachari, learned counsel for the respondents 2 to 5 / claimants submitted that *Sunder's* case (supra) is applicable only to those matters where the award does not specify the date from which the entitlement of interest is allowed; whereas in the case on hand, in the award itself the Reference Court has made it very clear that the claimants are entitled to interest from the date of notification i.e. 23.03.1983.

6.1 In support of the above contentions, the learned counsel for the first respondent cited the decision of this Court in the case of ***The Executive Engineer & Administrative Officer, Erode Housing Unit, Tamil Nadu Housing Board Erode-9, Vs. K.P.Natarajan and others*** in 2016 5 LW 391 and another judgment of this Court in a batch of Civil Revision Petitions in



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the case of ***Executive Engineer, Tamil Nadu Housing Board Vs. V.Saraswathiammal and others*** dated 07.01.2021 reported in ***Manu/TN/1351/2021***.

7. In *Sunder's* case (supra), it is held that the claimants are entitled to interest on the solatium similar to the larger component of the compensation awarded. So it is held that the interest awarded under Section 28 of the Land Acquisition Act would be on both the market value and solatium.

8. In the case of ***Gurupreet Singh Vs. Union of India*** reported in ***MANU/SC/4736/2006***, a Full Bench of the Hon'ble Supreme Court concurred with *Sunder's* case (supra) and held that the awardee is entitled to claim interest on the solatium even though it is not specifically granted by the reference Court. In view of the law settled down in *Sunder's* case (supra), the powers of the Executing Court is clarified so far as it relates to the entitlement of interest on the award amount, which is inclusive of the solatium. It is a little deviation from the general rule that the executing Court should not go beyond the decree. So according to the law settled down by the Supreme court, if the Reference Court is silent about the interest on



solatium, the entitlement of interest as seen in the decree can be extended to solatium also. So the executing Court shall execute the decree for the amount worked out along with interest as stated above.

9. The relevant paragraph of the judgment of **Gurupreet Singh Vs. Union of India** is extracted hereunder:

“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



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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.”

10. Since the judgment of *Sunder* case (supra) was delivered on 19.09.2001, in in *Gurupreet Singh's* case (supra), date from which the entitlement of interest is taken up from 19.09.2001.

11. Subsequent to the above judgment, the Government of Tamil Nadu has also passed the Government order in G.O. (Ms.) No.401 Revenue and Disaster Management (LA-I(1)) Department dated 12.10.2018 to that effect which is extracted hereunder:



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“6. The Government, after careful examination hereby issue the following clarifications to the orders issued in the GO and letter second and third read above;

“In all land acquisition cases, a person entitled to the compensation awarded under the Land Acquisition Act. 1894 (Central Act 1 of 1894), on or after 19.9.2001 is also entitled to get interest on the aggregate amount including additional market value and Solatium awarded, only with effect from 19.09.2001 as per the orders of Supreme Court of India in its judgement dated 30.09.2010 in Civil Appeal No.1760-1761 of 2004. Regarding interest for the period prior to 19.09.2001, the procedures then in force on 18.09.2001, i.e., the claimants in the land acquisition cases are not entitled for payment of interest on the 30% solatium, and 12% additional amount awarded under section 23(1A) and 23(2) of the Land Acquisition Act, 1894 (Central Act 1 of 1894) shall be followed”.

12. The above Government Order would be applicable to the awards which have been passed under the old Act i.e. Land Acquisition Act, 1894, on or after 19.09.2001. The Government Order was issued by taking into consideration of the entitlement of interest for the awardees as per the dictum laid on *Sunder's* case (supra).



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13. While clarifying the cut off date for the interest, it is held in *Gurupreet Singh's* case that the Executing Court can interpret the entitlement of interest only if the reference Court has not rejected the interest in its order explicitly. If the awardee had claimed interest for the compensation and if the reference Court was either silent or granted a generalised order about the entitlement of interest, then the Executing Court is at liberty to interpret the same positively and direct the Government to deposit the interest part also.

14. The above said position has been once again confirmed by this Court in the case of *The Executive Engineer & Administrative Officer, Erode Housing Unit, Tamil Nadu Housing Board, Erode – 9 Vs. K.P.Natarajan & others* reported in *2016-5-L-W-391*. In the above judgment the Hon'ble Mr. Justice M.Duraiswamy has clarified the said point by following the earlier judgements of the Supreme Courts and held that when Reference Court is silent about the interest, the Executing Court should apply the ratio laid down in *Sunder's* case (supra) and the compensation amount would include solatium along with interest.



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15. It is further held in the said case that if the Reference Court has awarded interest on solatium, and if it is confirmed by the appellate court also, the claimants are entitled to interest on solatium without any cut off date. For a better reference paragraph '21' of the said judgment is extracted hereunder:

“21. In the case on hand, the Reference Court had awarded interest on the compensation amount including on the solatium. That being the case, the claimants are entitled to claim interest as per the award passed by the Reference Court and not from the date of the judgment made in [Sunder vs Union of India] 2002 (2) L.W.39. In the case of the Reference Court and this Court in PRAYER: This A.S.No.965 of 2004 remaining silent about Rule 27 of C.I the award of interest on solatium, then the produce the claimants can claim interest only from the issued by Sub date of pronouncement of the judgment in an additional Sunder’s case (i.e.) 19.09.2001. Since the Reference Court had awarded interest on the solatium, which was also confirmed by this Court in the First Appeal, the claimants Specific perf are entitled to interest on solatium without any cut off date.)”

16. In the case of *The Additional Special Tahsildar, Adi Dravidar Welfare Department, (Land Acquisition Officer), Harur, rep. by the*



District Collector, Dharmapuri Vs. R.M.Chinnaraj reported in **2019-5**

L.W. 650 much more light is thrown on appropriation of the amount deposited towards the award amount. It is held that as per the Rule of Appropriation, the amount first deposited can be appropriated towards interest and later towards principal. When the decree of the Court does not expressly specifies about the order of appropriation, the general rule would be to appropriate the amount towards interest firstly and later to the other component of the compensation.

17. In fact in the case of ***Executive Engineer, Tamil Nadu Housing Board Vs. Saraswathiammal and others***, reported in **MANU/TN/1351/2021**, the very same subject matter of acquisition in Ganapathy village of Coimbatore has been dealt. In the said case the Housing Board was contesting about the entitlement of interest by claiming that the claimants are entitled to interest only from the date of judgment of *Sunder's* case dated 19.09.2001. However, the Court has categorically held that the date of judgment of *Sunder's* case will not be applicable to those cases where the award itself has a specific and explicit reference about the entitlement of interest and also about the date from which the interest should



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be awarded. In the said case, the Hon'ble Mr. Justice R.Subramanian, has dealt at length about the date from which the interest should be awarded. It is made clear that if the award specifies the date from which the interest is due, then there is no necessity to assume the date as done in *Gurupreeth Singh*'s case.

18. The relevant portion of the judgment in the case of ***Executive Engineer, Tamil Nadu Housing Board Vs. Saraswathiammal and others***, reported in ***MANU/TN/1351/2021*** reads as under:

“17. As already pointed out, the awards of the Reference Court in these cases were passed in April 2005 and the awards specifically directed payment of interest on the solatium and the additional amount. The said grant was confirmed by this Court in the Appeals and by the Hon'ble Supreme Court in the Civil Appeals. I therefore do not think that para 44 of the judgment in Gurpreet Singh v. Union of India (supra) could be invoked by the Housing Board to deny interest on the solatium and the additional amount for the period between the date of taking possession and the date of judgment in Sunder v. Union of India (supra). Hence the first contention of the learner Additional General stands rejected.”



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19. In view of the above judgment, there need not be any quarrel as to the application of the starting date for interest for the acquisitions made in Ganapathy Village, Coimbatore. However, it is claimed that the judgment of this Court held in *Executive Engineer, Tamil Nadu Housing Board Vs. Saraswathiammal and others*, (as stated supra) has been challenged before the Supreme Court in S.L.P No.6928 of 2021. As of now, the said judgment is not stayed and hence, these Civil Revision Petitions can also be disposed in the line of *Executive Engineer, Tamil Nadu Housing Board Vs. Saraswathiammal and others*, (as stated supra) by concluding that the first respondents' entitlement of interest cannot have any other cut off date than what is mentioned in the award by the Reference Court itself.

20. In the case on hand, Reference Court has made it explicit about that entitlement of interest and also the date from which the interest should run. Under such circumstances, the Executing Court has got no power to go beyond the decree and presume by itself that the awardees are entitled to interest only from 19.01.2001.



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21. However, it is up to the parties to wait until the outcome of S.L.P. No.6928 of 2021 pending before the Hon'ble Supreme Court.

22. With the above observations, the Civil Revision Petition is dismissed and the order dated 17.03.2022 passed by the learned Judge, II Additional Subordinate Court, Coimbatore in E.P.No.339 of 2017 in L.A.O.P. No.243 of 1990 is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2022

Speaking order / Non-speaking order

Index: Yes / No

Internet : Yes

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To

The II Additional Subordinate Judge, Coimbatore.



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R.N.MANJULA, J.,

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