



C.R.P.(NPD)No.1369 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD).No.1369 of 2018

R.Ranganathan

... Petitioner

VS

1.The Special Tahsildar,
Land Acquisition for Harijin and Welfare Scheme,
Office at Collectorate, Tiruppur Town and Taluk,
Tiruppur District.

2.The District Collector,
Office at Collectorate,
Tiruppur, Tiruppur District.

M.Rangasamy (Died)

3.S.Periyasamy

4.S.Muthusamy

... Respondents

Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 23.01.2018 passed in E.P.No.28 of 2016 in LAOP.No.60 of 1987 on the file of Principal Subordinate Judge at Tiruppur.

For Petitioner : Mr.K.Myilsamy

For Respondents : Mr.B.Tamil Nidhi (for R1 & R2)
Additional Government Pleader
R3 & R4 – Not ready notice



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ORDER

Lands were acquired in Tiruppur, which resulted in an award being passed in LAOP.No.60 of 1987 on 29.10.1992. Against the said order, an appeal was preferred to this Court, which came to be allowed on 18.07.2002. A further appeal was preferred to the Supreme Court in Civil Appeal No.3848 of 2003. At the time the Civil Appeal stood allowed setting aside the judgment and decree of this Court, the Supreme Court passed the following order:

'..... In the facts and circumstances of the case, we set aside the judgment of the High Court and restore the award made by the Reference Court. The amount shall be paid to the claimants/appellants with all consequential statutory benefits such as solatium and interest as provided under the statutory provisions of the Act. Since the acquisition is of 1984, we direct the respondents to either deposit or pay compensation awarded within six weeks from the date of receipt of this judgment.'

This makes it clear that the Supreme Court granted the benefit of solatium and interest and all other statutory benefits, which the petitioner was entitled to.

2. Feeling aggrieved that the amount was not paid as per the order of the Supreme Court, E.P.No.28 of 2016 was filed before the Principal Subordinate Judge, Tiruppur. The claim in the E.P. was that the amount due and liable to be paid is Rs.3,41,47,754.26/-. The Execution Petition



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was dismissed by the learned Executing Judge holding that the interest on solatium is permissible only from 19.09.2001 and not from the prior date. This was based on the judgment of ***Gurpreet Singh v. Union of India in Civil (Appeal) No.4570 of 2006 dated 19.10.2006.***

3.Mr.K.Myilsamy, learned counsel appearing for the petitioner would point out that ***Gurpreet Singh's*** case arose in the circumstances, where the Executing Court could not go behind the decree, when the Award Court or the High Court or the Supreme Court had denied the statutory benefits to the claimants. He would rely upon paragraph 44 which reads 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



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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.'

4.He would say that the Government had adjusted the amount towards the Principal first and the interest later. Thereby depriving him of the statutory benefit which he is entitled to.

5.Per contra, Mr.B.Tamil Nidhi, learned Additional Government Pleader (CS) would argue on the basis of the Execution Petition that the petitioner himself had agreed, the amount withdrawn by him is only towards the Principal and not towards the interest.

6.On these aspects, there is no finding by the learned Executing Court. Even as per the memo of calculation filed today by the learned Additional Government Pleader (CS) there seems to be an outstanding of



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Rs.1,404.56/- which is payable. The calculation is extracted below for

ready reference:-

<i>Sl.No</i>	<i>Description</i>	<i>Amount</i>
1	Amount Awarded by sub court @ Rs.3,40,624.50 per acre for 4.91 Acre as market value	16,72,466.30
2	12% interest per annum from date of issue of 4(I) notification 07.04.1984 to 29.11.1985 on the award amount Rs.16,72,466.29 for 602 days	3,31,010.86
3	30% Solatium amount of Rs.16,72,466.29/-	5,01,739.88
4	1+2+3	25,05,217.04
5	Less amount sanctioned by the LAO	93,872.13
6	(4-5)	24,11,344.91
7	Interest at 9% PA for 01 year from 13.01.1986 to 12.01.1987 (365 days)	2,17,021.04
8	Interest @ 15% per annum for the period from 13.01.1987 to 25.01.1994 for Rs.24,11,344.90 Period (2570 Day) $2411344.91 \times 15\% \times 2570 / 365$	25,46,776.61
9	Total (6+7+8)	51,75,142.56
10	Amount deposited to the Sub court as per GO no.272 dated 08.12.1993	42,08,468.00
11	Calculation as per Government Letter 558/LA/1(1) 05-02, dated 11.03.2005 (Letter Copy Attached)	
I	Amount deposited to the Sub court as per GO no 272 dated 08.12.1993 (Deposit Date: 25.01.1994)	42,08,468.00
II	As per order issued by Govt of Tamilnadu 558/LA1(1)-05-02 dated 11.03.05 The amount deposited to court is adjusted the amount due towards the Land value+ solatium + Additional Market value (as per column 6)	24,11,344.91
III	Balance (I-II)	17,97,123.09



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Sl.No	Description	Amount
IV	Then adjusted the amount of Interest payable under section 28 of The Land Acquisition Act (Here in this case) . (a) Rs. 2,17,021.04 . (b) Rs.25,46,776.61 . ----- . Total Rs.27,63,797.65	27,63,797.65
V	Balance (IV-III)	9,66,674.56
12	Amount sanctioned As per GO no 156/1997 and deposited to the sub court on 26.05.1997	9,65,270.00
13	Balance (V-12)	1,404.56

7.This calculation differs from that which was given by the learned Additional Government Pleader (CS) before the Executing Court.

8.Mr.Tamil Nidhi also brought to my notice that the judgment of the Supreme Court in *Iyasamy and another v. Special Tahsildar, Land Acquisition in Civil Appeal Nos.1760-1761 of 2004 dated 30.09.2010*, the relevant paragraph reads as follows:-

*'The learned counsel for Appellants in Civil Appeal Nos.1760-1761/04 are also claiming interest on solatium and additional compensation as the impugned order of the High Court was pronounced prior to judgment in **Sunder v. Union of India** reported at (2001) 7 SCC 211. Since the present appeal was pending before this court, therefore, the ratio of **Sunder v. Union of India** would entitle the appellants to receive interest on solatium under section 23(2) and additional compensation under Section 23(1A) in terms of the said decision. It was decided in **Gurpreet Singh v. Union of India** reported at (2006) 8 SCC 457 that*



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*such interest can be claimed only from the date of the judgment in **Sunder (supra)** i.e. 19.9.2001. Therefore, the appellants in the Civil Appeal Nos.1760-1761/04 shall be entitled to such interest for the period after 19.9.2001, not the period prior to the same.'*

9.The order of the learned Executing Court has not gone into these issues at all. The withdrawal of the amount whether it is towards the Principal or towards the interest has not been stated in the order of the learned Executing Court.

10.In the light of the above, I feel the entire exercise has to be re-worked by the learned Executing Court after hearing the arguments of the claimant as well as the learned Government Pleader. Therefore, the order of dismissal in E.P.No.28 of 2016 dated 23.01.2018 is set aside. The matter is remitted to the learned Executing Court to render verdict in the light of the judgment in *Sundar's case*, *Gurpreet Singh's case* as well as *Iyasamy's case*. It is also requested to come up with a specific finding as to whether the amount was withdrawn towards the interest first or towards the Principal first, which will have an effect on the amount of compensation to be paid.

11.Therefore, this civil revision petition is allowed. The order of the lower Court is set aside. E.P.No.28 of 2016 is restored into the file of



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the Executing Court. The said exercise shall be completed within a period of four (4) months from today. No costs.

14.08.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

vs

To

The Principal Subordinate Judge,
Tiruppur.



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V. LAKSHMINARAYANAN,J.

VS

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