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CR-1497-2013

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-8308-CII-2015 in/and

CR-1497-2013 (O&M)

Reserved on :- July 06, 2023

Pronounced on: July 11, 2023

Union of India and another

....Petitioners

vs.

Ajaib Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Arun Gosain, Senior Standing counsel &
Ms. Swati Arora, Advocate,
for the petitioner-UOI.

None for the respondents.

HARKESH MANUJA J.

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Prayer made in this application is for seeking restoration of the main case.

From the contents made in the application, which is supported by affidavit, sufficient cause has been shown for non-appearance on behalf of applicant/ petitioners, thus, the same is allowed. Order dated 10.03.2015 is hereby recalled and the main case is restored to its original number and is taken up for final hearing as well.

Main case

1. By way of present petition, challenge has been made to an order dated 08.02.2013 passed by the Executing Court, directing the

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petitioners to deposit the balance amount of compensation due in favour of the land owners-respondents.

2. In the present case, land owned by the respondents was acquired vide notifications dated 08.06.1979 and 26.10.1979 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, "the Act") respectively, followed by an award dated 31.03.1981 as regards the market value of the land, besides another award dated 27.05.1982, regarding structure value thereof. As per the admitted facts, possession of the land in pursuance to the acquisition proceedings was taken from the landowners on 12.06.1982.

3. Aggrieved of the abovementioned awards, respondents filed reference under Section 18 of the Act, seeking enhancement of compensation which came to be decided on 15.01.1986. Still aggrieved of the assessment, respondents approached this Court by way of filing RFA-1492-1986, which came to be decided on 08.01.2004, wherein, though the amount of compensation awarded by the reference court was maintained, however, the value of structure was enhanced by another sum of Rs.89,700/-.

4. In view of the aforesaid determination, the respondents filed execution and during its pendency, provided their calculations wherein they even claimed interest on solatium and also on the additional market value.

5. As per learned counsel, petitioner-UOI was directed to release the same in favour of respondents-landowners as ordered by the Executing Court on 08.02.2013, which has been impugned by way of present revision petition.

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6. Learned counsel appearing on behalf of the petitioners made two fold submissions. Firstly, he submits that the respondents/ landowners were not entitled for grant of benefit of additional amount of 12% over market value as provided under Section 23(1-A) of the Act, as the award in the present case was passed by the Land Acquisition Collector on 31.03.1981 i.e. much prior to the date of applicability of the amended Land Acquisition Act, 1984 i.e. 30.04.1982. In support, he places reliance upon the judgments of Hon'ble Supreme Court in ***"State of Punjab and others vs. Babu Singh and others", 1995 AIR SCW 1691*** and ***"Union of India vs. Swaran Singh and others, AIR 1997 SC 462"***.

Learned counsel further submits that the land-owners could not have been held entitled for interest on the amount of solatium as well as upon the component of additional market value by the Executing Court, prior to 19.09.2001 i.e. the date when the issue of interest on solatium was finally adjudicated upon by Hon'ble the Supreme Court in ***"Sunder vs. Union of India, AIR 2001 SC 3516***. In this regard, he places reliance upon judgments of the Hon'ble Supreme Court in case titled as ***"Gurpreet Singh vs. Union of India, 2006 AIR SCW 5813, "Tamil Nadu Housing Board vs. Abdul Salam Sarkar, 2021(1) RCR (Civil) page 668 and "Central Govt. of India vs. Raj Devi @ Raj Kumari and another" Law Finder Document I.D. No.1868068 in CA No.4623 of 2021, decided on 05.08.2021.***

7. On the other hand, no one has chosen to appear on behalf of the respondents-landowners.

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8. I have heard learned counsel for the petitioners and gone through the paper book as well as the law cited at the bar.

9. As regards the first contention raised on behalf of the petitioners regarding non-entitlement of the landowners of the benefit under Section 23(1-A) of the Act, I am unable to accept the same. In the present case, the land was acquired vide notifications dated 08.06.1979 and 26.10.1979 issued under Sections 4 and 6 of the Act, respectively followed by two awards dated 31.03.1981 (re: land value) and dated 27.05.1982 (re: structure value). Once, the determination of compensation by the Land Acquisition Collector as contemplated under Section 11 of the Act was pending as on 30.04.1982 and was finally concluded on 27.05.1982, the respondents-landowners were un-ambiguously entitled for the benefit of amended provisions of Land Acquisition Act, 1984 including the benefit of additional amount of 12% over market value as provided under Section 23 (1-A), the same being fully applicable to the facts in hand.

10. Nonetheless, in the reference petition filed at the instance of respondents-landowners seeking enhancement of compensation, the Court specifically and categorically awarded the benefit under Section 23(1-A) of the Act, which even finds mentioned in the judgment dated 08.01.2004 passed by this Court in RFA No.1492-1986 filed at the instance of predecessor-in-interest of respondents-landowners.

Admittedly, no challenge was ever made to the grant of aforementioned benefit under Section 23(1-A) i.e. the additional compensation in favour of landowners by the petitioners-UOI and thus, the

same became final inter-se the parties and the Executing Court was well within its authority while directing the petitioners to release the said benefit in favour of the respondents-landowners. Having perused the judgments cited on behalf of the petitioners as regards the first submission, from the decisions of **Babu Singh's** (supra) and **Swaran Singh's** (supra), it is apparent that the same are not applicable to the present facts and are clearly distinguishable. In cases, of **Babu Singh's (supra)** and **Swaran Singh's (supra)**, the benefit of Section 23(1-A) of the Act was never part of the original reference court award whereas the same had been granted post decision of reference, while amending the same, in exercise of powers under Sections 152/153 CPC by the Reference Court itself. While denying the benefit of Section 23(1-A) of the Act in execution, the Hon'ble Supreme Court in the aforesaid cases very categorically held that the reference Court or High Court was having no power or jurisdiction to entertain applications under Sections 151 or 152 CPC to correct any decree/award which had become final or to even independently pass an award enhancing the solatium and interest as amended by Act No.68 of 1984.

11. The other plea raised by learned counsel for the petitioners regarding award of interest on solatium w.e.f. 19.09.2001, it needs somewhat broader discussion. Against acquisition, the benefit of solatium to a landowner is available under Section 23(2) of the Act; whereas award of interest on the amount of compensation is governed under Sections 28 & 34 thereof. The provisions which are relevant for discussion upon the issue in hand are reproduced hereunder:-

Section 23: *Matters to be considered in determining compensation:-*

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration-

first, the market-value of the land at the date of the publication of the {Subs, by Act 38 of 1923, s.7, for "declaration relating thereto under s.6."} [notification under section 4, sub-section (1)];

secondly, the damage by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession taking possession of the land, by the reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if in the consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the

award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation: In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum (thirty per centum) on such market-value, in consideration of the compulsory nature of the acquisition.

Section 28:- *Collector may be directed to pay interest on excess compensation. - If the sum, which the Collector did award as compensation, the award of the Court may direct that the collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court: [Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date or expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.]*

Section 34:- *Payment of interest - When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited: [Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date or 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.]*

12. In view of the conflicting views expressed on the issue regarding payment of interest on solatium, the matter was dealt with by a larger Bench of the Hon'ble Supreme Court in **Sunder's** case (*supra*), wherein it was held that the benefits to be awarded to a landowner under Section 23 (1-A) i.e. the "additional amount" and the "solatium" under Section 23 (2) of the Act, were merely sequels or concomitant adjuncts of the determination of "market value" as indicated in Section 23 (1) and thus, formed part of "compensation" or the "awarded amount" and the interest thereupon was payable under Sections 28 & 34 of the Act. Relevant observations from the case of **Sunder** (*supra*) are reproduced hereunder:-

"19. Section 26 does not say that the award would contain only the amounts granted under sub-section (1) of Section 23. The special mention of that sub-section in Section 26 is only for the purpose of directing that the grounds or reasons for awarding the amount under each of the clauses in the sub-section shall be specified in the award. It is unnecessary to mention any reason or ground in any award as to why the sums indicated in sub-section (1-A) and sub-section (2) of Section 23 of the Act were granted, because they are only the sequels or concomitant adjuncts of the determination of the total amount indicated in sub-section (1). No judicial exercise is required to quantify the sums mentioned in sub-section (1-A) or sub-section (2) because the section itself specifies the percentage to be worked out for the purpose of adding to the total amount arrived at under sub-section (1)....."

23.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 clear. 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....*
28. *In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence the person entitled to the compensation*

awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly.”

13. The aforestated exposition of law lead to another unanswered situation of how to make it applicable upon the cases wherein the process for adjudication on the question of market value and compensation was finally over, though the claims in executions were either pending or concluded. Later, this issue came up for consideration before another larger Bench of Hon'ble Supreme Court in the case of “**Gurpreet Singh Vs. Union of India**, 2006 AIR SCW 5813, which was dealt with in para 44 thereof, in the following manner:-

“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/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 (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 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.”

14. From the relevant portion of judgment in **Gurpreet Singh’s case** (supra) reproduced above, it is apparent that the Hon’ble Apex Court primarily dealt with the scope of powers vested with the executing Court to grant benefit of interest on solatium to the landowners in whose cases, the determination of quantum of market value and compensation was finally over before **Sunder’s** case (supra). This can itself be discerned from the question framed by the Hon’ble Supreme Court for its consideration in **Gurpreet Singh’s** case (supra), determination which reads as under:-

*“Whether in the light of the decision in **Sunder’s** case (supra), the awardee/ decree-holder would be entitled to claim interest on solation in execution though it is not specifically granted by the decree”.*

The aforementioned question was obviously framed and

answered to cater the situation existing prior to decision of **Sunder's** case (supra); wherein the determination qua quantum of market value and compensation was final, though no specific relief qua interest on solatium was either granted or declined. Upon examination, the Hon'ble Supreme Court elucidated upon the powers of the Executing Court to deal with the issue in the following manner:-

(a) Claim for interest on solatium had been made and the same had 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's** case (supra) on the ground that Executing Court cannot go behind the decree.

(b) 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 Executing Court to apply the ratio of **Sunder's** case (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 the execution. Otherwise, not.

(ba) Such interest on solatium can be claimed only in pending executions and not in closed executions.

(bb) Executing Court will be entitled to permit its recovery from the date of judgment in **Sunder's** case (supra) i.e. 19.09.2001 and not for any prior period.

It is important to note here that the above proposition was laid down while dealing with the rule of appropriation in execution of money decree in land acquisition matters, thus, the same was in fact only to enlarge the scope of the execution proceedings in a certain way to confer powers upon the Executing Court to grant benefit of interest on solatium in cases where determination on the question of market value and compensation was finally over before the reference Court as well as the Appellate Court.

Needless to repeat that the entire discussion in **Gurpreet Singh's** case (supra) was about cases, wherein the final determination of compensation was over by the time, judgment in **Sunder's** case (supra) was rendered and the same could not be made applicable to the claims made by the landowners in the cases, where the question of quantum of market value and compensation was pending, but determined finally, post decision in the case of **Sunder's** (supra), by reading and applying the text

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from the judgment in case of **Gurpreet Singh's** (supra) in absolute terms as a statute; rather than reading the point of law it lays down by reference to the issue involved. My aforesaid view can also be derived from the judgment passed by the Hon'ble Supreme Court in the case of **Senior Divisional Manager, Life Insurance Corporation of India and others Vs. Shree Lal Meena**, (2019) 4 SCC 479 and **Vidarbha Industries Power Limited Vs. Axis Bank Limited**, (2022) 8 SCC 352. Relevant para No.84 of **Vidarbha's** case (supra) is reproduced hereunder:-

"84. The judgment of this Court Swiss Ribbons (supra), which was rendered in the context of a challenge to the vires of the IBC, does not consider the question of whether Section 7(5)(a) of the IBC is mandatory or discretionary. It is well settled that a judgment is a precedent for the question of law that is raised and decided. The language used in a judgment cannot be read like a statute. In any case, words and phrases in the judgment cannot be construed in a truncated manner out of context."

15. Undoubtedly, reading of the exposition of law in case of **Gurpreet Singh's** (supra), in any other manner, would even render it in conflict with the reasoning recorded in **Sunder's case (supra)** as well as the determination of law made therein which holds that benefit of solatium as provided Section 23 (2) of the Act is sequel or concomitant adjunct of determination of total amount i.e. the "market value" as assessed under Section 23 (1) thereof and would automatically be part of compensation i.e. the awarded amount payable with interest under Section 28 of the Act. Thus, it would lead to an irresistible conclusion that any determination

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under Section 23 (1) of the Act, done by the Reference Court or the Appellate Court which became final post **Sunder's** case (supra) would make the landowner automatically entitled for all other statutory benefits such as under Section 23 (1-A) and 23 (2) including interest thereupon under Section 28 of the Act, even though not granted specifically and cannot be restricted in terms of **Gurpreet Singh's** case (supra) by making it applicable w.e.f. the judgment passed in **Sunder's** case (supra). i.e. 19.09.2001.

16. Importantly, in the present case, even this Court vide judgment dated 08.01.2004, passed in RFA No.1492 of 1986 being completely conscious of the law laid down in **Sunder's** case (supra), after determining the market value, specifically and categorically ordered for grant of "all statutory benefits" under the amended provisions of the Act, in favour of landowners/ respondents. Relevant portion thereof, is reproduced hereunder:-

"Additionally the claimant would also be entitled to the statutory benefits under the amended provisions of the Act."

A perusal of the above shows that once having determined the market value, the land owners were awarded "all statutory benefits" under the amended provisions, they would definitely be entitled for the benefits under Section 23(1-A) & sub-section (2) of Section 23, besides interest under the provisions of Sections 28 of the Act, the same being only the sequels or concomitant adjuncts of determination of market value i.e. the total amount determined under sub-section (1) of Section 23 of the Act.

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17. Present is not a case of claim of interest on solatium in execution of an award passed by the Reference Court or Appellate Court, where the final determination of compensation was made prior to decision in **Sunder's** case (supra) and thus **Gurpreet Singh's** case (supra) would not apply to restrict prior to 19.09.2001.

18. Moreover, similar controversy arising out of certain orders passed by the Executing Court as regards payment of interest on solatium came up before Hon'ble Supreme Court in the case of "**Land Acquisition Officer and Assistant Commissioner and another vs. Shivappa Mallappa Jigalur and others**", (2010) 12 SCC 387. In the said case also, while dealing with the appeals filed by the land-owners, Karnataka High Court enhanced rate of compensation vide its judgment dated 31.03.2003, besides holding them entitled for all statutory benefits. Relying upon **Gurpreet Singh's** case (supra), a plea was sought to be raised by the State of Karnataka in the execution proceedings that the interest on solatium was to be granted only from the date of judgment in **Sunder's** case (supra) i.e. 19.09.2001. However, the aforesaid plea was rejected by the Hon'ble Apex Court while holding that the decision in **Gurpreet Singh's** case (supra) had no application to the facts of the case as in that case, the Hon'ble Apex Court was considering the scope of grant of benefit of interest on solatium in the execution proceedings and the limitations of the Executing Court in this regard. Relevant paragraphs 8 to 15 of **Shivappa Mallappa Jigalur's** case (supra) are reproduced hereunder:-

"8. Both the Special Land Acquisition Officer and the landowners/claimants filed their respective appeals

against the order of the civil court. The appeal preferred by the Special Land Acquisition Officer was dismissed but the appeals of the landowners/claimants (MFAs in the High Court of Karnataka) came to be admitted. While the landowners appeals were pending before the Karnataka High Court, a Constitution Bench of this Court pronounced the judgment in Sunder which settled the issue regarding the liability of payment of interest on the amount of solatium. Later on, the appeals filed by the landowners were allowed by the Karnataka High Court by judgment and order dated March 31, 2003. The High Court further enhanced the rate of compensation from Rs.60,000/- per acre fixed by the civil court to Rs.78,000/- per acre and in the operative portion (paragraph 14 of the judgment) directed as follows:-

“Accordingly, we allow all these appeals in part. The appellants/land owners are entitled to compensation of Rs.78,000/- per acre, along with the statutory benefits. The awards passed by the Reference Court under appeals accordingly shall stand modified. In the circumstances of the case, there shall be no order as to costs.”

9. *Following the judgment of the High Court, the landowners once again went before the execution court for realisation of the additional amounts in terms of the High Court order. A copy of the execution petition along with the order sheet of the execution proceeding is produced before us, that leave no room for doubt that though payments in terms of the decree passed by the civil court were made earlier, execution proceedings commenced afresh directly in pursuance of the judgment and order passed by the High Court in the*

landowners/claimants' appeals and the decree/ award modified on that basis.

10. *In light of the above facts, we now examine the objection raised by Mr. Hegde relying upon the observations and directions made in paragraph 54 of the Constitution bench decision in Gurpreet Singh. Paragraph 54 of the decision is 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 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, 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 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 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 (19-9-01) 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.

(emphasis added)

Relying upon the portion shown in italics in the above quoted passage, Mr. Hegde argued that in these cases the amount of solatium as determined by the civil court was paid long before September 19, 2001, following which the execution proceeding was closed and hence, no liability of any interest on the amount of solatium could be fastened upon the State in light of the decision in Gurpreet Singh.

11. *We are unable to accept the submission and in our view the decision in Gurpreet Singh has no application to the facts of the present cases. In paragraph 54 of the decision in Gurpreet Singh's case, the Court was considering the scope of execution proceedings and the limitations of the execution court. The three lines relied upon by Mr. Hegde must be read and understood in the context of what is said earlier. The Court clearly said that the*

execution court could not go beyond the decree. In the event, the claim of interest was rejected expressly or by necessary implication in the decree, it would not be permissible for the execution court to grant interest relying upon the decision in Sunder. But, even then the Court went on to clarify that if the award of the reference court or the appellate court was silent on the issue of solatium and interest then it would be open to the execution court to apply the ratio of Sunder and say that the compensation awarded would include solatium and in such an event interest on the amount could be directed to be deposited in execution. The decision in Gurpreet Singh, thus, actually enlarged the scope of execution proceeding, in a certain way, on the basis of the decision in Sunder.

12. *Coming now to the passage specially relied upon by Mr. Hegde, we do not have the slightest doubt that the reference to "closed executions" does not mean cases in which the main proceeding arising from the landowners claim for enhanced compensation remains pending before the civil court or at the appellate stage. It may sometimes happen, as illustrated by this case that the award of the Collector or the decree of the civil court is put to execution and payments are made in terms of the award or the decree of the civil court and in that sense the award or the decree is satisfied. Nevertheless, an appeal against the award or the decree of the civil court may still remain pending either before the High Court or even before this Court. In appeal, the superior court may enhance the compensation which would lead to enhancement of solatium and consequently the interest on the additional amounts of compensation and solatium. In such a situation, the landowner/*

claimant would be bound to go back to the execution court for realisation of the additional amounts in terms of the modified decree. In such cases, the execution proceedings cannot be deemed to be closed and neither was it the intent of the observations in paragraph 54 of the decision in Gurpreet Singh.

13. *Coming now to the stipulation that any interest on solatium can only be granted for the period subsequent to September 19, 2001, the date of the decision in Sunder, it is evident that this again, is a limitation on the power of the execution court. The direction is actually referable to those cases in which the award of the reference court or the appellate court being silent, it is left open to the execution court to give direction for the deposit of interest on solatium. In such cases, the reference court can ask for interest only for the period subsequent to September 19, 2001. The direction in no way circumscribes the power of the court dealing with the main proceeding relating to enhancement of the compensation.*
14. *The matter can be looked at from another angle. The appeal being the continuation of the original proceeding, in the facts of the cases in this sub-group, there can be no question of accrual of interest only after the date of the decision in Sunder. At this stage, it may be recalled that the civil court had awarded solatium @ 30% and interest @ 9% for the first year and @ 15% from second year onwards till the date of realisation. The State's appeal against the judgment of the civil court was dismissed. Thus, the direction for payment of solatium with interest at the rates indicated had become final. The High Court enhanced the rate of compensation. This would*

inevitably lead to an increase in the amount of solatium and consequently in the amount of interest on the unpaid amount of solatium. Thus, looked at from any point of view, the question of payment of interest subsequent to September 19, 2001 does not arise.

15. *For the reasons discussed above, we see no merit in these appeals. The appeals are, accordingly, dismissed but with no order as to costs. For any grievance with regard to calculation of the amounts of solatium or interest, it will be open to the appellant, the Special Land Acquisition Officer to raise his objections, if otherwise permissible in law.”*

19. Similar view was even expressed by the Hon'ble Supreme Court in a later case in ***Bhanshankar Oghadbhai Mehta (D) by LRs Vs. Gujarat Industrial Development Corporation Limited***, reported as **(2018) 13 SCC 722**. Relevant para No.9 thereof, is reproduced hereunder:-

- “9. *Coming to the question of interest we find that though the High Court had awarded interest on the additional compensation payable under Section 23(1A) of the Land Acquisition Act, 1894, no interest on the solatium amount has been awarded. In view of the Constitution Bench judgment in Sunder v. Union of India [(2001) 7 SCC 211], we are of the view that the entitlement of the landowners to interest on the solatium amount is automatic. The ratio of the law laid down in paragraph 54 of the judgment of this Court in Gurpreet Singh v. Union of India [(2006) 8 SCC 457] would not apply as the present is not a stage in execution. Accordingly, following the ratio of the law laid by the Constitution Bench in Sunder (supra) we award interest to the*

landowners on the solatium amount. The amount due on account of interest and all other amounts payable, on due and proper computation, in terms of the present order, be paid, in any case, within a period of six months from the date of receipt of a copy of this Order.”

20. Reliance placed upon by learned counsel representing the petitioners in the case of **Raj Devi @ Raj Kumari's** (supra) may not help him as in that case, the judgment passed in the cases of **Shivappa Mallappa Jigalur's** (supra) as well as **Bhanushankar Oghadibhai Mehta's** case (supra), which squarely covered the controversy as regards grant of interest on solatium by the Executing Court in the cases wherein the final determination of compensation by the Reference Court or the Appellate Court was made after the decision in **Sunder's** case (supra), were never brought to the notice of the Hon'ble Apex Court.

Faced with the position and relying upon the latest decision dated 23.12.2022 passed by this Court in **Kanwaljit Singh Toor and another Vs. Punjab State Consumer Disputes Redressal Commission and others**, (CWP-26164-2018), which is based on the judgment of Hon'ble Apex Court in case of **Atma Ram Vs. State of Punjab**, reported as **AIR 1959 SC 519**, reliance has been placed upon the decision in **Shivappa Mallappa Jigalur's** case (supra) as well as **Bhanushankar Oghadibhai Mehta's** case (supra), which are of equal bench strength as that of **Raj Devi @ Raj Kumari's** case (supra) and even carry detail discussion on the point of law, besides even neither been brought to the notice of the Hon'ble Supreme Court in the case of **Raj Devi @ Raj Kumari's** (supra); nor even

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been reserved/ distinguished therein. Relevant paragraphs No.44 & 45 of **Kanwaljit Singh Toor's** case (supra) are reproduced hereunder:-

“44. The earlier judgments of Nivedita & Cicily (supra) have not been referred by the Hon'ble Supreme Court in the judgment of Ibrat Faizan (supra). It is well settled position in law that when there are two divergent opinions of the Hon'ble Supreme Court emanating from Benches of co-equal strength, the High Court should follow the one which in its view is better in expounding a point of law. The said position in law was expounded by the Constitutional Bench of the Hon'ble Supreme Court in the case of “Atma Ram versus State of Punjab” reported as AIR 1959 SC 519. The relevant extract of the above judgment reads thus:-

“Perhaps, the better course would have been to constitute a larger Bench, when it was found that a Full Bench of three Judges, was inclined to take a view contrary to that of another Full Bench of equal strength. Such a course becomes necessary in view of the fact that otherwise the subordinate courts are placed under the embarrassment of preferring one view to another, both equally binding upon them. In our opinion, the view taken by the earlier Full Bench is the correct one.”

45. The said judgment has not been over ruled or set aside by the Hon'ble Supreme Court in any subsequent or larger Bench. Hence, the legal position remains uncontroverted that where judicial precedents of co-equal strength are irreconcilably in conflict, a Court has the freedom to pick and choose between them. It may refuse to follow the later decision on the ground that it was arrived at per inquirium or it may follow such decision on the ground that it is the latest authority. Which of these

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*two courses the Court adopts would depend upon its
acceptance or acknowledgment of one view.”*

21. In view of the discussion made hereinabove, I do not find any illegality or perversity in the order passed by the Executing Court directing the petitioners to deposit the amount of compensation including interest on solatium from the date when the possession was taken from the land owners instead of 19.09.2001 i.e. the date of decision in **Sunder's** case (supra) as in the facts of the present case the determination of amount of compensation was finally made by this Court vide its judgment dated 08.01.2004 passed in RFA No. 1492 of 1986 (Vinay Mittal, J.) which is post the decision of **Sunder's** case (supra).

22. Consequently, the present revision is dismissed.

July 11, 2023
sonika/sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/ No