

IN THE HIGH COURT OF DELHI AT NEW DELHI

CR No.172/2006

Shri Chander @ ChanduPetitioners
! through: Mr.N.S.Chechi, Advocate

VERSUS

\$ Union of India & Anr.Respondent
^ through: Mr.Sanjay Poddar, Advocate

RESERVED ON : 26.04.2007

% DATE OF DECISION: 30.04.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Petitioner is aggrieved by the order dated 28.2.2006 passed by the learned Addl. District Judge, Delhi in Execution No.865/2006.

2. The learned Judge, while executing the decree, held that as per the decree, interest on the solatium payable as per the enhanced compensation and additional amount payable under Section 23 (1-A) of the Land Acquisition Act,

1894 have not been granted, therefore petitioner would not be entitled to said 2 components of interest.

3. The learned Judge has held that the Executing Court cannot modify the decree.

4. Agricultural land of the petitioner was acquired. Being dissatisfied with the compensation determined by the Land Acquisition Collector he sought a reference under Section 18 of the Land Acquisition Act, 1894. The said reference was registered as LAC No.14/1997. It was disposed of vide order dated 3.2.2000. Relief granted was as under :-

'8. Relief:- In view of my findings on issue no.1 above, I fix the market value of the acquired land in question at the rate of 28,000/- per bigha. Beside this, the petitioner will get solatium @ 30% on the market value of land fixed in the case. The petitioner will also be entitled to interest @ 9% per annum from the date of dispossession till the expiry of one year and thereafter @ 15% per annum till payment on the enhanced amount. The petitioner will be entitled to proportionate costs."

5. Issue which came up before the learned Executing Court was whether revisionist was entitled interest on the additional amount and the solatium.

6. The same has been denied.

7. Learned counsel for the revisionist, Shri N.S.Chechi urges that the right flows from the statutory amendments

incorporated to the Land Acquisition Act, 1894. Per contra, Shri Sanjay Poddar, learned counsel for the respondent, drawing attention to the decision of a Division Bench of this court reported as 120 (2005) DLT 353, Daulat Ram & Ors. Vs. UOI urged that the Executing Court cannot go behind the decree.

8. Responding to the statement of Shri Sanjay Poddar, learned counsel for the respondents, Shri N.S.Chechi, counsel for the petitioner places reliance upon 2 decisions of the Supreme Court reported as (2007) SCCR 150 Patel Joitaram Kalidas Vs. Special Land Acquisiton Officer and 2007 (1) Supreme 521 Gurpreet Singh Vs. UOI. Counsel additionally places reliance upon an unreported decision dated 10.1.2003 passed by a Division Bench of this Court in RFA No.385/78 Bhulan Vs. LAC & Ors.

9. The controversy has arisen in view of a decision of the Supreme Court reported as 93 (2001) DLT 569 Sunder Vs. UOI. The decision is dated 19.9.2001. Prior to the said decision, law as interpreted by the Supreme Court vide decision reported as (1996) SCC 71 Prem Nath Kapoor Vs. National Fertilizers was that interest is payable only on the

enhanced compensation and not on solatium and additional amount payable under Section 23(1-A) of the Land Acquisition Act, 1894. In Sunder's case, Supreme Court held that interest would be payable even on the solatium and the additional amount payable under Section 23(1-A) of the Land Acquisition Act, 1894.

10. The effect thereof was that decisions by the reference courts, under Section 18 of the Land Acquisition Act, 1894, which are a decree, passed prior to 19.9.2001 do not contain a direction for payment of any interest on the solatium and additional amount directed to be paid under Section 2 (1-A) of the L.A. Act, 1894. Decrees passed after 19.9.2001 contain such a direction.

11. No doubt, in Bhulan's case (supra), a Division Bench of this court held that law as declared by the Supreme Court in Sunder's case (supra) would apply to all decrees, whether or not a specific direction was passed for payment of interest on the solatium on the enhanced compensation as also additional amount payable under Section 23 (1-A) of the Land Acquisition Act, 1894, but in Daulat Ram's case another Division Bench of this court held to the contrary.

12. In Daulat Ram's case it was held that an Executing Court has to execute the decree as passed and cannot modify the decree in light of subsequent decision of the Supreme Court delivered after the date of the decree. It was held that the Executing Court has to execute the decree as passed.

13. The said Division Bench noted the decision in Bhulan's case. It held that in view of the decision of the Supreme Court reported as JT 2004 (8) SC 202 Desraj Vs. UOI, a decision pronounced subsequent to the decision in Bhulan's case, law as declared in Bhulan's case was in conflict with the law declared by the Supreme Court in Desraj's case.

14. Since decision in Daulat Ram's case is subsequent to the decision in Bhulan's case and has noted the decision in Bhulan's case, I am bound to follow the decision in Daulat Ram's case.

15. Decision in Patel Joitaram Kalidas's case (supra) relied upon by the petitioner is not applicable for the reason in said decision the original proceedings were continuing. The petitioner before the Supreme Court was aggrieved by the decision of the reference court denying interest which was upheld by the High Court. In continuation of the original

proceedings, matter had reached the Supreme Court.

16. In view of the decision in Sunder's case, the Supreme Court directed payment of interest on the solatium awarded on the enhanced compensation as also on the amount payable under Section 23 (1-A) of the Land Acquisition Act, 1894. In para 18 of the report, the Supreme Court clearly observed that the decision was on the facts peculiar to the case and as a special case in the interest of justice.

17. Para 44 of the decision in Gurpreet Singh's case (supra), which was relied upon, reads as under :-

'44. On 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 judgment in *Sunder* (September 19, 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.”

18. Therefore, relief granted to the petitioner by the reference court, i.e. the decree in question needs to be noted.

19. In para 4 above I have noted the operative part of the order containing the directions.

20. Perusal thereof shows that the reference court has consciously restricted interest only to the enhanced compensation, meaning thereby no interest has been

awarded on the enhanced solatium and amount payable under Section 23 (1-A) of the Land Acquisition Act, 1894.

21. The reference court was conscious of the claim for interest. On one facet only interest has been allowed. Obviously, qua the others, the interest would be deemed to be disallowed.

22. Thus, even as per the decision in Gurpreet Singh's case, no case is made out for interference.

23. The petition is dismissed.

24. No costs.

April 30, 2007
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PRADEEP NANDRAJOG