

# Tamil Nadu Housing Board vs Abdul Salam Sarkar (Dead) on 13 January, 2021

**Equivalent citations: AIR ONLINE 2021 SC 259**

CA 94/2021

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
Civil Appeal No 94 of 2021  
(Arising out of SLP (C) No 16857 of 2019)

Tamil Nadu Housing Board

Appel

Versus

Abdul Salam Sarkar and Others

Respo

JUDGMENT

Dr Justice Dhananjaya Y Chandrachud 1 Leave granted.

2 The only question which arises in the present appeal is whether the respondents are entitled to interest on solatium for the acquisition which took place under the provisions of the Land Acquisition Act 1894. This issue turns on an interpretation of the judgment of the Constitution Bench of this Court in Gurpreet Singh vs Union of India 1 (“Gurpreet Singh”).

3 By an order of this Court dated 1 December 2020, the issue was crystallized by observing that the Court will “examine the question whether (the) matter is covered by the judgment of this court in the case of Gurpreet Singh”. 4 In the present case, the reference court by its decision dated 26 July 1990, allowed for the grant of interest on solatium at the rate of 12% per annum. 5 When the matter was carried in appeal, a Division Bench of the Madras High Reason: (2006) 8 SCC 457 Court by its judgment dated 12 July 2001, issued the following clarification on the aspect of interest on solatium:

“It is further made clear that the claimants are not entitled to interest on solatium and additional amount. Further, the issue regarding grant of interest on solatium is pending before the Larger Bench of the Hon'ble Supreme Court. Hence, depending on the outcome of the cross before the Supreme Court, the claimants are permitted to fill an appropriate petition before the concerned sub-court.”

6 The Special Leave Petitions against the judgment of the Division Bench were dismissed on 22 March 2004. The review petition filed by the Revenue Divisional Officer was also dismissed on 2

August 2006. It is in this background that we have to assess the tenability of the claim for interest on solatium based on the decision of the Constitution Bench in Gurpreet Singh (supra). 7 In paragraph 54 of the judgment in Gurpreet Singh (supra), the above issue was considered specifically in the context of the earlier decision in Sunder vs Union of India 2. Dealing with the issue, Justice P K Balasubramanyan speaking for the Constitution Bench observed thus:

“54.....That question is whether in the light of the decision in Sunder (2001) 7 SCC 211 : 2001 Supp (3) SCR 176], 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 negated 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 2 (2001) 7 SCC 211 [(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 court to apply the ratio of Sunder [(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 [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] (19-9-2001) 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.”(emphasis supplied) 8 The test which Gurpreet Singh (supra) mandates is that interest on solatium would be payable if the reference court has either not referred to it or has not rejected it expressly or by necessary implication. Moreover, the claim can only be made in pending execution proceedings. In the present case, the claim for interest on solatium had not been rejected by the reference court. In an appeal arising from the decision of the reference court, the High Court, In its judgment dated 12 July 2001, observed that since the matter was pending before a larger bench of this Court, the issue as to whether interest on solatium would be granted would depend on the outcome of those proceedings and it would be open to the claimants to move an application before the Sub Court. It was after the judgment of this Court in Gurpreet Singh (supra), which was delivered on 19 October 2006, that the respondents moved an application for the grant of interest on solatium. The High Court by its impugned judgment has come to the conclusion that such an application was tenable in view of the judgment in Gurpreet Singh (supra). As a matter of principle, we see no reason to take any other view since it is in accord to the judgment of the Constitution Bench.

9 The submission which has been urged on behalf of the appellant is that in the present case, the claim was made in 2008 after the earlier execution petition was closed and the original award and the enhanced compensation were deposited and appropriated by the claimant. This, in our view, would not dis-entitle the claimant for the grant of interest on solatium. The claim for interest on solatium was not rejected and was expressly kept open by the High Court in its judgment dated 12 July 2001. The liberty which was granted by the High Court to institute proceedings before the Sub Court after the matter was resolved by the larger bench of this Court was the subject matter of a Special Leave Petition. The judgment of the High Court was affirmed by the dismissal of the Special Leave Petition. The review petition by the Revenue Divisional Officer was also dismissed. Hence, inter partes, the claimants were entitled to apply for the grant of interest on solatium, particularly having regard to the fact that the claim had not been rejected at any antecedent stage and had been kept open. 10 In the above view of the matter, we confirm the direction of the High Court to the effect that the claimants-respondents would be entitled to the payment of interest on solatium. However, insofar as the exact mathematical computation is concerned, it would be appropriate to leave it to the reference court to verify the computations and to pass appropriate orders. Since during the pendency of these proceedings, a deposit has been made by the appellant in terms of the interim orders, the amount which has been deposited will be permitted to be withdrawn by the respondents and shall be given due credit for in arriving at the final amount which is due and payable. We also clarify that in terms of the judgment of the Constitution Bench in Gurpreet Singh (supra), interest on solatium will be payable with effect from the date of the judgment in Sunder vs Union of India (19 September 2001).

11 The appeal is accordingly disposed of. The costs of Rs 5 lakhs which have been deposited in this Court in pursuance of this Court's order, shall also be disbursed to the claimants.

12 Pending applications, if any, stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]  
.....J. [Sanjiv Khanna] New Delhi;

January 13, 2021 CKB