

A CENTRAL GOVT. OF INDIA

v.

RAJ DEVI ALIAS RAJ KUMARI & ANR.

(Civil Appeal No. 4623 of 2021)

B AUGUST 05, 2021

[K. M. JOSEPH AND S. RAVINDRA BHAT, JJ.]

- Interest – Payable on solatium – The decree was put in execution and the Execution Court had passed the order which is impugned by the appellant, by which the appellant is directed to pay interest on solatium from the date the 1st respondent was deprived of her possession – The dispute in question which arises for consideration is whether interest is payable on solatium from the date possession was taken from the 1st respondent – The physical possession was taken on 16.06.1990 – The contention of the appellant, however, is that this is a case where the principle which was enunciated by Supreme Court in Gurpreet Singh v. Union of India (2006) 8 SCC 457 would apply and interest on solatium could be granted only from the date of the judgment of Supreme Court in Sunder v. Union of India (2001) 7 SCC 211 i.e. 19-09-2001 – Held: In the Award passed, it is clear that interest is not seen granted on solatium – What is granted is only solatium – The judgment of the High Court in appeal carried by the 1st respondent, therein also, it is clear that the High Court has not granted interest on solatium – Therefore, it is a case which must be dealt with in terms of the declaration of law made in Gurpreet Singh, which held that “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 (19-09-2001) and not for any*

prior period— Thus, it is ordered that the 1st respondent will be entitled to interest on solatium from the date of Sunder v. Union of India viz. 19-09-2001 – Accordingly, appeals are allowed.

Gurpreet Singh v. Union of India (2006) 8 SCC 457 : [2006] 7 Suppl. SCR 422; Sunder v. Union of India (2001) 7 SCC 211 : [2001] 3 Suppl. SCR 176 – relied on.

Central Government of India v. Bakhta & Another etc. (SLP (C)Nos. 21784-21799 of 2013) – referred to.

Case Law Reference

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|-------------------------|-----------|--------|---|
| [2006] 7 Suppl. SCR 422 | relied on | Para 4 | C |
| [2001] 3 Suppl. SCR 176 | relied on | Para 4 | |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4623 of 2021.

From the Judgment and Order dated 04.07.2016 of the High Court of Punjab and Haryana at Chandigarh in C.R. No. 1400 of 2015 (O&M).

Ms. Aishwarya Bhati, ASG, A. K. Kohli, Ms. Ruchi Kohli, Ms. Saudamini Sharma, Ms. Suhasini Sen, Siddhant Kohli, A. K. Sharma, Mukesh Kumar Maroria, Advs. for the Appellant.

Merusagar Samantaray, Adv. for the Respondents.

The Order of the Court was passed by

K. M. JOSEPH, J.

Delay in filing the special leave petition is condoned.

Leave granted.

We have heard Ms. Aishwarya Bhati, learned Additional Solicitor General appearing for the appellant, and Mr. J.S. Thind, learned counsel for the 1st respondent.

By the impugned judgment, the High Court upheld order dated 11.11.2014 by which the objections filed by the appellant were disposed of by the Execution Court and the appellant was directed to make payment on or before 12.01.2015.

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- A The dispute in question which arises for our consideration is whether interest is payable on solatium from the date possession was taken from the 1st respondent. There is no doubt that physical possession was taken in this case on 16.06.1990. The contention of the appellant, however, is that this is a case where the principle which has been enunciated by this Court in Gurpreet Singh v. Union of India (2006) 8 SCC 457 would apply and interest on solatium could be granted only from the date of the judgment of this Court in Sunder v. Union of India (2001) 7 SCC 211 i.e. 19-09-2001.

We may notice the reasoning of the High Court, which is as follows:

- C “Mr. J. S. Thind, learned counsel appearing on behalf of respondent No. 1-claimant-landowner submits that this Court while deciding the R.F.A. had granted the element of solatium and interest and the findings have been upheld by the Hon’ble Supreme Court. This fact is not disputed by the other side. He submits that the award granting solatium and interest being not part of the decree has already been upheld by the Hon’ble Supreme Court vide order dated 2.1.2014 passed in Special Leave Petition (Civil) No. 21784-21799 of 2013 (Central Govt. of India, Thru Defence Est. Versus Bakhta & another etc. etc.). In the other matters also, the land owners had assailed the findings of the Executing Court and the same have been set-aside by this Court vide order dated 21.2.2013 passed in Civil Revision No. 3160 of 2012 and other connected matters (Annexure P-10). This fact is also not disputed by the counsel for the petitioner.

- F In view of the aforementioned facts, I do not find any illegality and perversity in the order under challenge. No interference in the impugned order is called for.”

- G Therefore, as already noticed, the question arises whether in the facts of this case, the 1st respondent was entitled to interest from the date the 1st respondent was deprived of physical possession or from the date of the judgment in Sunder supra.

Award was passed in this case on 12.06.1990. The relevant part reads:

- H “The land owners and the interested persons will be entitled to 30% solatium in consideration of compulsory nature of

acquisition on the total price of land. In view of the amended proposition of section 23 of the act the land owners are also entitled an additional amount at the rate of 12% on the market value from the date of notification u/s 4 which will be paid later on after the approval of the appropriate Government under Section 11(iii) of the Land Acquisition Act, 1894 and allotment of funds. The land owners are also entitled to get 12% additional amount on the remaining amount of compensation from the date of taking possession and an additional interest @ 9% per annum on the remaining amount in connection with possession till they get final payment.”

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It is not in dispute that the 1st respondent along with others appealed the Award and in the judgment, the High Court granted relief to the appellants by enhancing the compensation and it is necessary to notice the relief portion which reads as follows:

“While adopting the reasoning given in Dr. Balbir Singh’s case (supra) and in view of the reasons and circumstances stated herein above, the Regular First Appeals preferred by the claimants are partly accepted while those preferred by the Union of India are dismissed. Resultantly, the claimants would be entitled to get a sum of Rs. 4,06,320.00 per acre with all the statutory benefits available to them, more particularly, under Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act. However, there shall be no order as to costs.”

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There is no doubt that the said judgment has become final, the appeals and special leave petition being dismissed.

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The decree was put in execution and the Execution Court has passed the order which is impugned by the appellant herein, by which the appellant is directed to pay interest on solatium from the date the 1st respondent was deprived of her possession.

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The High Court proceeded in this case on the basis that not only was solatium ordered in favour of the 1st respondent but 1st respondent was also granted the benefit of interest on solatium.

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The second plank on which the judgment of the High Court is supported is the order passed by this Court in the case of Central Government of India v. Bakhta & Another etc.(SLP (C)Nos. 21784-21799 of 2013).

- A The stand of the appellant is that this is a claim where the matter must be resolved with reference to the law enunciated in Gurpreet Singh supra. The relevant portion of the declaration is to be found in para 54 of the judgment:
- B 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 the counsel to address us on that question. That question is whether in the light of the decision in Sunder (2001) 7 SCC 211, the awardee/decrees-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 (19-9-2001) 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.”
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- H We have noticed the terms of the Award as also the judgment of the High Court in appeal carried by the respondents.

As far as the Award passed is concerned, it is clear that interest is not seen granted on solatium. What is granted is only solatium. Moving on to the judgment of the High Court in appeal carried by the 1st respondent, therein also, it is clear beyond the shadow of any doubt that the High Court has not granted interest on solatium. What is seen granted by the High Court is the benefit under Section 23(2) among other statutory benefits. We are unable to find reference to interest on solatium. Therefore, this would be a case which must be dealt with in terms of the declaration of law made in Gurpreet Singh supra.

Shri J. S. Thind, learned counsel for the 1st respondent, would, however, try to persuade us to support the decision of the High Court by pointing out that as found by the High Court in the impugned judgment, Government of India failed in the special leave petition carried against the judgment of the High Court which also arose from execution proceedings in the case of Central Government of India v. Bakhta & Another etc. which also arose from the same Award.

We have perused the order which is relied on by the learned counsel for the respondent. It is true that the special leave petition carried by the appellant was dismissed. However, what is pertinent to note is what was the issue which was involved in the said case. In a batch of matters, the Executing Court in the said case had awarded interest on solatium from the date of the judgment in Sunder supra. It was this order which was upheld by the High Court by its judgment dated 25.01.2013. We may only notice paragraph 6 of the said judgment:

“6. In view of the legal proposition enunciated in these authorities, Court of Reference/Executing Court was perfectly justified in allowing the interest on the solatium with effect from September 19th, 2001 in execution proceedings.”

It is this order which was the subject matter of the special leave petition before this Court which came to be dismissed. In other words, this was the case where the Executing Court had applied the principle in Gurpreet Singh supra and granted interest on solatium from the date of the judgment in Sunder viz., 19-09-2001 in the execution proceeding. We are unable to comprehend as to how this judgment can come to the rescue of the respondent. We are, therefore, of the clear view that the appeal is to be allowed. Accordingly, we allow the appeal. Impugned order will stand set aside. The order which was impugned before the

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- A High Court will stand set aside and it is ordered that the 1st respondent will be entitled to interest on solatium from the date of Sunder (*supra*)viz. 19-9-2001.

No orders as to costs.

Ankit Gyan

Appeal allowed.