

Land Acq. Officer & Asstt. Commr.

v.

Shivappa Mallappa Jigalur

(Supreme Court Of India)

HON'BLE MR. JUSTICE AFTAB ALAM HON'BLE MR. JUSTICE SWATANTER
KUMAR

Land Acq. Officer & Asstt. Commr. v. Shivappa Mallappa Jigalur

Civil Appeal No. 4988-5047, 5048-5051, 5052 & 5053 Of 2010 (Special Leave Petition (Civil) No. 25319-25378 Of 2004, 23075-23078/2005, 12386/2006 & 1801/2007) With Civil Appeal No. 5054, 5055, 5056, 5057, 5058, 5059, 5060, 5061, 5062, 5063, 5064, 5065, 5066, 5067, 5068 & 5069 Of 2010 (Special Leave Petition (Civil) No. 18518/2005, 18522/2005, 18523/2005, 18521/2005, 18519/2005, 18525/2005, 18526/2005, 18524/2005, 18528/2005, 20027/2005, 20029/2005, 19786/2005, 19787/2005, 19788/2005, 23003/2005, 22773/2005) Wit | 07-07-2010

AFTAB ALAM, J.

1. In all the cases in this large group, arising from land acquisition proceedings, the State of Karnataka is directed to pay interest on the amounts of solatium. The liability to pay interest on solatium stands settled by the Constitution Bench decision of this Court in *Sunder vs. Union of India*, (2001) 7 SCC 211. But Mr. Sanjay R. Hegde, learned Standing Counsel for the State of Karnataka, the appellant in all the appeals, submitted that the question of applicability of the decision in *Sunder* was explained and clarified in another Constitution Bench decision of this Court (delivered after the filing of these appeals) in *Gurpreet Singh vs. Union of India*, (2006) 8 SCC 457. Relying upon paragraph 54 of the judgment in *Gurpreet Singh*, Mr. Hegde submitted that in cases where full payments were made in terms of the decree and the execution proceedings were consequently closed, the proceedings could not be re-opened and directions given for payment of interest on the basis of the decision in *Sunder*; further, any direction for payment of interest on solatium could only be for the period subsequent to the date of decision in *Sunder* (September 19, 2001). In other words, in cases where the full amounts of solatium were paid before September 19, 2001, there would be no question of payment of any interest. He, therefore, submitted that all the cases should be remitted to the respective courts below to re-examine the claim of the landowners/claimants in light of the decision in *Gurpreet Singh*.

2. We see no reason to adopt the course suggested by Mr. Hegde. The facts of the cases before us are quite simple and it can be easily ascertained which of these cases, if any, are hit by the decision in *Gurpreet Singh*. Besides, all the cases are fairly old. An order of remand would simply start a fresh round of appeals and further appeals, and would keep the landholders/claimants embroiled in litigation for an extended period. If we can, we would not like

the landowners/claimants to suffer any longer. If any landowner/claimant has a lawful claim, he must get it; otherwise, the matter must end here and now.

3. On the basis of the respective facts, the appeals in this group can be divided into four sub-groups. And now we propose to deal with each sub-group separately.

4. Before proceeding further, it may be stated that some cases belonging to different sub-groups enumerated herein below were earlier disposed of in piecemeal manner by order passed on March 25, 2010. Since all the cases in the different sub-groups are now being dealt within a consolidated manner, we recall the earlier order passed on March 25, 2010.

A

CIVIL APPEAL NOS.5054, 5055, 5056, 5057, 5058, 5059, 5060, 5061, 5062, 5063, 5064, 5065, 5066, 5067, 5068 & 5069 OF 2010(Arising out of Special Leave Petition (C) Nos. 18518/2005, 18522/2005,18523/2005, 18521/2005, 18519/2005, 18525/2005, 18526/2005, 18524/2005,18528/2005, 20027/2005, 20029/2005, 19786/2005, 19787/2005, 19788/2005,23003/2005, 22773/2005)

5. There are sixteen cases in this sub-group with identical facts.

6. Delay condoned.

7. Leave granted.

8. Mr. Hegde, learned counsel appears on behalf of the appellant, the Special Land Acquisition Officer and Ms. Kiran Suri, learned counsel represents the respondents-landowners in all the appeals in this sub-group.

9. The facts of the case, relevant for the present are very simple and brief and may be stated thus. The possession of the land coming under acquisition was taken over by the State on August 14, 1989 even before the issuance of the preliminary notification that came on January 3, 1992. The Land Acquisition Officer gave his award on October 13, 1993 fixing compensation at the rate of Rs.20,000/- per acre. On reference made under Section 18 of the Act, the civil court, by judgment and order dated November 27, 1998 enhanced the compensation to Rs.60,000/- per acre. It also awarded solatium @ 30%, additional market value @ 12% from the date of dispossession till the date of the award and interest @ 9% for

the first year and 15% from the second year onwards till the date of realisation. 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."

10. 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.

11. 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/decreeholder 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* 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)

12. 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.

13. 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. 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 landowner's 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. 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. 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.

14. For the reasons discussed above, we see no merit in these appeals. The appeals are, accordingly, dismissed but with no order as to costs.

15. 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.

B

SLPCC Nos.4641 of 2005, 4646 of 2005 and SLP CC Nos.5375 of 2005.

16. These three Special Leave Petitions were filed beyond the period of limitation. In SLP.....(CC) No.4641 of 2005, there is delay of 158 days, in SLP.... (CC) No.4646 of 2005, there is delay of 219 days and in SLP.....(CC) No.5375 of 2005, there is delay of 187 days.

17. Mr. Patil, learned Senior Counsel, appearing for the respondents-landowners stated that after filing the SLPs, the State had made payment of interest on the amount of solatium to the respondents-landowners. In SLP.....(CC) No.4641 of 2005, the amount of interest paid to the

land owner/respondent was Rs.41,236/-, in SLP.....(CC) No.4646 of 2005, Rs.50,752/- and in SLP.....(CC) No. 5375 of 2005 it was Rs.41,236/-. Interest was paid, however, up to the year 2002 and not up to September 11, 2005 when the actual payment was made. Hence, according to the respondent-landowners, the amount of interest for the period 2002 to September 11, 2005 still remains unpaid. The amounts that remain unpaid are much smaller than the amounts that were paid to the landowners/claimants, as indicated above.

18. Mr. Patil further stated that these three SLPs before us are out of a batch of 20 similar cases. Learned counsel gave us a tabular chart giving the details of all the 20 cases that were disposed of by the High Court under different MFA Nos. In this Chart, the present SLPs figure at serial nos. 11, 15 and 13. He further informed us that the SLPs arising from the cases at serial nos. 10 and 16 were earlier dismissed by this Court, one [SLP.....(CC) No.1611/2005] on the ground of limitation alone and other [SLP.....(CC) No.3929/2005] both on the ground of delay and on merits.

19. In the aforesaid facts and circumstances, we see no reason to interfere in these matters. The Special Leave Petitions are dismissed, both on grounds of delay and on merits with the direction to the petitioner to pay to the respective respondents/land owners the balance amounts of interest on solatium for the period from 2002 to 11.9.2005.

20. The observations and directions of the High Court in regard to any differences in calculation remain undisturbed.

SLP.....(CC) Nos.5505, 5521, 5831, 5835, 5853, 5841, 5899 and 5923 of 2005.

21. In view of the order passed in SLP.....(CC) Nos.4641 of 2005 etc. etc., these Special Leave Petitions are also dismissed both on the grounds of delay and on merits. The observations and directions of the High Court in regard to any differences in calculation remain undisturbed.

C

SLP (C) No.9504/2005, SLP (C) No.25015/2005, SLP.....(CC) No.5402/2005, SLP (C) No.241/2006, SLP (C) No.20021/2005, SLP (C) No.20023/2005, SLP (C) No.20022/2005, SLP (C) No.20024/2005

22. SLP (C) No. 9504/2005 is within time.

23. Delay condoned in rest of the matters.

24. In view of the orders passed in the cases in the preceding sub-groups, all these Special Leave Petitions are to be dismissed subject to the observation that in case of any grievance in regard to calculations, it will be open to the petitioner/the Special Land Acquisition Officer to raise his objections, if otherwise permissible in law.

25. It may also be added that accrual of interest will cease on the date the full amount of solatium is paid along with the interest accrued on it.

D

CIVIL APPEAL NOS. 4988-5047, 5048-5051, 5052 & 5053 OF 2010(Arising out of SLP (C) Nos.25319-25378 of 2004, 23075-23078/2005,12386/2006 & 1801/2007).

26. Leave granted.

27. We finally come to sub-group, to which at least the submission of Mr. Hegde, based on the decision in Gurpreet Singh seems to fully apply.

28. The facts of the cases in this sub-group are as brief and simple as in the earlier sub-groups. In the Collector's award made on August 20, 1997, the market value of the acquired lands was fixed @ Rs.21,500/- per acre (Kharab land @ Rs.400/acre). Against the award of the Collector, 20 references came to be made under section 18 of the Act at the instance of the aggrieved landowners/claimants. All the 20 reference cases were decided by a common judgment and order dated November 30, 1998 passed by Civil Judge and Additional CJM, Koppal, in LAC No.44 of 1998 and analogous cases. The civil court enhanced the market value of the subject lands from Rs.21,500/- per acre to Rs.50,000/- per acre. It also held the claimants entitled to solatium at 30% of the market value along with the additional market value at 12% per annum from the date of taking possession of the land on January 12, 1994 to the date of the award on August 20, 1997. It further held the claimants entitled to interest @ 9% per annum from the date of taking possession of the land on January 12, 1994 for the first year and after that from January 12, 1995 @ 15% till the date of full and final payment of the compensation. What is relevant for the present, however, is that the civil court expressly rejected the landowners' claim for interest on solatium observing as follows:

"The Claimants are not entitled for interest on solatium and additional market value in view of the case law reported in 1996 (2) SCC 71 (Premnath Kapoor and another vs. National Fertilizers Corporation of India Ltd., and others.)."

29. Apparently no one took the decision of the civil court any further and the matter was allowed to rest at that stage.

30. On September 19, 2001 came the decision of the Constitution Bench of this court in Sunder and then an appeal (MFA No.837 of 2002) was filed against the judgment and order passed by the Civil Court on November 30, 1998. The appeal, when it was filed, was barred by limitation by 1072 days. It is also not denied that long before the filing of the appeal or even before the judgment in Sunder came on September 19, 2001, the claimants had received all the payments in terms of the judgment and award given by the civil court.

31. A single judge of the High Court dismissed the appeal by order dated March 20, 2002 observing as follows:

"6. The only ground urged by the appellants in their appeals is that the Hon'ble Supreme Court distinguishing its earlier judgment in the case of **PREMNATH KAPOOR & ANR. VS. NATIONAL FERTILISER CORPORATION OF INDIA LTD., & Ors.** Reported in 1996 (2) SCC 72, has held in **Sunder vs. Union of India** reported in 2001 (6) SCALE 405, that a claimant is entitled to compensation under the Land Acquisition Act shall also be entitle to get interest on the aggregate amounts including solatium. In the said decision a Constitutional Bench of the Supreme Court has decided the question referred to the Bench as to whether the State is liable to pay interest on solatium under Sec.23(2) of the Land Acquisition Act and the said question has been answered in the affirmative.

7. Therefore, it appears that the appellants who never intended to challenge the awards were made to file the appeals after the above judgment of the Hon'ble Supreme Court. Thus no ground is made out by the appellants for condonation of such exorbitant delay. The appellants could have sought review of the order before the reference Court in view of the judgment of the Hon'ble Supreme Court."

32. Taking advantage of the remark that in view of the decision in Sunder, the landowners/claimants might have moved the reference court in review, as many as 36 review petitions came to be filed before the civil court. All those review petitions were dismissed by the Civil Judge (Senior Division), Koppal by order dated January 2, 2003 passed in Misc. Case No.30/202 and analogous cases. The Civil Judge found that the case set up for

condonation of the huge delay was palpably false and further that the review petitions were not maintainable and there were no reasonable grounds to review its judgment and award dated November 30, 1998.

33. Against the order of the civil court, the landowners/claimants came in revision before the High Court. A very large number of revisions (59 in all) were clubbed together for hearing before a division bench of the Karnataka High Court. All the revisions were finally allowed by judgment and order dated June 1, 2004 in Civil Revision Petition No.650 of 2003 and other analogous cases. The High Court did not allow either the long (and unexplained) delay or the earlier rejection of the claimants' appeal by a single judge of the court against the judgment of the civil court in section 18 references, or the fact that the claimants had received all payments in terms of the court's order long before the decision in Sunder was given by this court, stand in their way in claiming interest on the amounts of solatium and additional market value. The long and erudite judgment passed by the High Court is full of kind sentiments for the revision petitioners whose lands were compulsorily acquired by the Government and is also supported by good legal reasoning. The High Court decision was given long before the Constitution Bench decision of this Court in Gurpreet Singh. But when it comes up for consideration before us in this appeal the decision in Gurpreet Singh is very much there. We do not know how we would have responded to the judgment of the High Court, had it come before us, without the intervening decision of this Court in Gurpreet Singh. But the Constitution Bench decision is as much binding on us, as on the High Court. And, when tested against the decision in Gurpreet Singh, the High Court judgment coming under appeal appears to be plainly untenable. The High Court decision seeks to do exactly what is held impermissible in Gurpreet Singh. From the facts noted above, it is manifest and clear that on September 19, 2001 when the decision in Sunder was rendered, the land acquisition proceedings (including the execution proceedings) were over and closed. The reference court had given its decision and the modified award was fully satisfied; all payments in terms of the award of the reference court were made to the landowners/claimants. After the decision in Sunder, an appeal was filed against the judgment and award given by the reference court. That effort remained unsuccessful. Then a review petition was filed before the reference court and the matter was finally brought to the High Court in revision against the order passed by the reference court. It is, thus, patent that a concluded and closed proceeding was sought to be revived by the device of filing a review petition and then filing a revision against the order dismissing the review petition. This was plainly impermissible in view of the decision of this court in paragraph 54, in Gurpreet Singh.

34. On behalf of the respondents-landowners/claimants, it was sought to be argued that the decision in Gurpreet Singh imposed limitations on the power of the execution court but it did not restrict the power of the High Court in exercise of its revisional jurisdiction. We are unable to accept the submission. The order passed by the civil court, dismissing the review petition was wholly in accordance with the view taken by this court in Gurpreet Singh. The High Court order, reversing the order of the civil court and allowing the claim of the respondents led to a result disapproved by this court.

35. Thus, when looked at from any angle, the High Court decision coming under appeal is untenable. We are, therefore, constrained to interfere in the matter and set aside the judgment of the division bench of the Karnataka High Court coming under appeal.

36. The appeals in this sub-group are allowed but with no order as to costs.