

THE HIGH COURT OF TRIPURA

AGARTALA

CRP No. 53 of 2014

Petitioner :

Union of India,

To be represented by Asstt. Defence Estate Officer, Lichubagan, P.O-Salbagan, P.S- East Agartala.

By Advocate :

Mr. A. Lodh, Adv.

Respondent :

Sri Sukhlal Debbarma,

S/o. Late Rabi Ch. Debbarma, Resident of West Noabadi, P.S-Dodhjungnagar, West Tripura.

By Advocate :

Ms. S. Deb Gupta, Adv.

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **16th September, 2014.**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

The short question which arises in this case is whether interest on the amount of solatium is to be paid from 19.09.2001 i.e. the date when the Apex Court decided the case of ***Sunder Vrs. Union of India: (2001) 7 SCC 211*** or from the date of notification issued under Section 4 of the Land Acquisition Act, 1894.

[2] The award in the present case was passed by the learned Land Acquisition Judge, West Tripura, Agartala in Misc. (L.A) No. 9 of 2009 and the operative portion of the award reads as follows:

"In the above background I hold that all the claimant-petitioners in the present cases are entitled to get market value of the acquired lands @ Rs.12,000/- per kani (fact rate). Besides that they shall get an additional amount @ 12% per annum on the market value with effect from the date of notification under Section 4 of the L.A., Act, 1894 till the date of Award given by the L.A. Collector, West Tripura, Agartala, or the date of taking over possession of the acquired land whichever is earlier. They shall also get solatium @ 30% of the market value of the acquired land as determined by this court. They shall also get interest at the rate of 9% per annum from the date of taking over possession for one year and thereafter at the rate of 15% per annum in the enhanced amount."

[3] Before the learned executing Court on behalf of the land owner-claimants, it was claimed that in view of the judgment in ***Sunder's*** case, interest is liable to be paid on solatium.

[4] On behalf of the Union of India it was urged that as per the judgment of the Constitution Bench of the Apex Court in ***Gurpreet Singh Vrs. Union of India : (2006) 8 SCC 457*** interest on solatium is payable only from 19.09.2001 i.e. the date when ***Sunder's*** case was decided. Though the learned executing Court has referred to both the decisions, he has not cared to go through the decisions, read them or apply them to the facts of the case. He has only stated that on perusal of the aforesaid judgments, he finds force in the submissions made by the counsel for the decree holder.

[5] I am afraid that this is not the reasoning expected from a Judicial Officer of the rank of District Judge. The reasoning has to be of the Judge, not of the counsel or of any other person. The Judge must apply his own mind and if relevant citations are given then he must either apply the citations or give the reasons why he is distinguishing the citations.

[6] In ***Sunder's*** case it was clearly held that unless the request for interest has been specifically rejected, even the Executing Court was bound to

grant interest on solatium. However, a Constitution Bench of the Apex Court in ***Gurpreet Singh's*** case dealing with this question held 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 (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."

[7] The gist of the judgment of the Apex Court is as follows:

(1) *Since the Executing Court cannot go behind the decree if the land reference Judge has rightly or wrongly specifically rejected the prayer for grant of interest on solatium then the Executing Court cannot grant such interest.*

(2) *If the Land Acquisition Judge has specifically granted interest on solatium then it is payable from the date of notification issued under Section 4 of the L. A. Act, 1894.*

(3) *The Apex Court further held that there were a large number of cases where there is no specific reference to interest payable on solatium. There may also be cases where claim for interest on solatium had not been made and, therefore, there was no question of accepting or rejecting such a claim. In these cases the Apex Court held that the executing Court was free to follow the judgment of **Sunder(supra)** and grant interest on solatium but with the caveat that in such cases the interest would be awarded only from 19.09.2001 i.e. the date when **Sunder's** case was decided.*

(4) *The Apex Court also made it clear that the executing Court could award interest on solatium only in pending executions and where the execution proceedings had been disposed of, the matter could not be re-opened.*

[8] The law laid down in **Gurpreet Singh's** case is very clear. In the present case I find that the operative portion of the order of the Land Acquisition Judge does not refer to grant of interest on solatium. Therefore, though the executing Court was fully justified in granting interest on solatium this interest could only be granted with effect from 19.09.2001 and not from any prior date.

[9] In view of the above discussion, the petition is allowed and the matter is remanded to the learned District Judge who shall now again quantify the amount payable by the Union of India in accordance with the law laid down hereinabove. The parties are directed to appear before the learned Executing Court on 30th October, 2014 and the Executing Court shall ensure that the Execution Petition is disposed of by 29th November, 2014.

[10] The petition is disposed of in the aforesaid terms. No order as to costs.

Copy of this judgment be also sent to all the Judicial Officers in the State of Tripura.

CHIEF JUSTICE