A CHIMANLAL KUBERDAS MODI (D) BY LRS.

v.

GUJARAT INDUSTRIAL DEVELOPMENT CORP. & ORS.

(Civil Appeal No. 1385 of 2004)

B OCTOBER 22, 2010

[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]

C *Land Acquisition Act, 1894 – s.34 – Interest on solatium – Land belonging to appellant acquired – Award passed by Land Acquisition Collector –Reference application – Reference court passed decree – In the decree, the reference court made specific reference to payment of interest on compensation but did not make any reference to payment of* D *interest on solatium – Appellant filed execution application – Claimed interest on solatium in the pending adjudication – Executing court permitted recovery of interest on solatium, relying upon a Supreme Court judgment in Sunder case, which was delivered in the meanwhile – Order set aside by* E *High Court – On appeal, held: Though the execution court cannot examine the reasons so as to go behind the decree but since in the decree passed, the reference court made a specific reference to payment of interest but without any such reference to the payment of interest on solatium, it was open* F *to the executing court to apply the ratio of Sunder and declare that the compensation awarded includes solatium, and consequently, interest on the amount could be directed to be deposited in execution – Interest on solatium was claimed by the appellant in the pending adjudication, therefore, the* G *executing court was justified to permit recovery of interest on solatium from the date of judgment in Sunder, i.e., 19.9.2001 and not for any prior period.*

The Land Acquisition Officer passed award in a land

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acquisition case. Aggrieved by the award, the appellant filed reference application under Section 18 of the Act. The reference court enhanced the market value of the land and further granted a) solatium at the rate of 30%, b) increase of 12% from the date of publication, as also c) increase in compensation in terms of Section 23(1A) of the Land Acquisition Act, 1894. The claimants were also held to be entitled to interest at the rate of 9% and thereafter at 15% per annum on the entire amount payable. Consequent thereto, the appellant filed an execution application for recovery of the balance amount as awarded by the reference court. While the execution case was pending, the appellant also filed an application for payment of the amount of interest payable under Section 34 of the Act, at the rate of 9% for the first year and 15% thereafter on the amount awarded by the reference court under Section 23(1A) and 23(2) of the Act. The executing court issued warrant for recovery of balance amount and further interest from 1.7.2002, relying on the ratio of the judgment of this Court in the *Sunder* case, which was delivered in the meanwhile.

Aggrieved by the order of the executing court, the respondent filed a revision petition before the High Court contending *inter alia* that the reference court did not award interest on the aggregate amount and therefore, the executing Court was not justified in awarding an amount under Section 34 of the Act. The respondent further contended that the ratio of the judgment in *Sunder's* Case was not applicable to the facts of the instant case because on the date when the decree was passed, interest was not payable on the amount of solatium as also on the amount payable under Section 23 of the Act. The High Court set aside the order passed by the executing court.

In the instant appeal, the appellant submitted that

since the execution of the order passed in the reference case was pending on the date when the decision in the case of *Sunder* was delivered, the said decision should, therefore, have been relied upon as clearly held in *Gurpreet Singh's* case and on the basis of that benefit of payment of interest on solatium should have been given to the appellant.

The question which, therefore, arose for consideration in the instant appeal was whether the appellant was entitled to payment of interest under Section 34 of the Land Acquisition Act, 1894 on the solatium (on the compensation paid) in terms of the *Sunder case* and further explained in the *Gurpreet Singh* case.

Allowing the appeal, the Court

HELD:1. A bare perusal of the decree passed by the reference court indicates that in addition to the amount shown as compensation towards market value, solatium at the rate of 30% and increase of compensation at the rate of 12% per annum are also shown in the compensation schedule attached to the decree. The amount awarded in terms of the interest at the rate of 9% per annum which is shown to be included in the decree is, for reasons unclear, not indicated in the said schedule, but is specifically mentioned in the decree itself. Since a direction is made for payment of interest at the rate of 9% per annum and thereafter at 15% per annum in the decree, the appellant cannot be denied the benefit of the interest on market value, which also includes solatium and for that purpose the decisions in the case of *Sunder* and *Gurpreet Singh* would become relevant. [Para 13] [729-F-H; 730-A]

Sunder v. Union of India (2001) 7 SCC 211 and *Gurpreet Singh v. Union of India* (2006) 8 SCC 457 – relied on.

2. Though the execution court cannot examine the reasons so as to go behind the decree but if in the award passed, the reference court makes a specific reference to payment of interest but without any such reference to the payment of interest on solatium and merely payment of interest on compensation is granted, then it would be open to the executing court to apply the ratio of *Sunder's* case and declare that the compensation awarded includes solatium and, consequently, interest on the amount could be directed to be deposited in execution. That being the legal position as prevailing today, one cannot ignore the observations made in the judgment in *Gurpreet Singh* and it is ordered accordingly that compensation awarded includes solatium and, therefore, interest on the said amount shall be paid by the respondent in the pending execution. The ratio of the aforesaid decision is also applicable in view of the fact that such interest on solatium is claimed by the appellant in the pending adjudication and, therefore, the executing court was justified to permit recovery of interest on solatium from the date of judgment in *Sunder's* case, i.e., 19.9.2001 and not for any prior period. [Paras 16, 17] [732-C-F]

Case Law Reference:

(2001) 7 SCC 211	**relied on**	**Para 1**
(2006) 8 SCC 457	**relied on**	**Para 1**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1385 of 2004.

From the Judgment & Order 20.02.2003 of the High Court of Gujarat at Ahmedabad in Civil Revision Application No. 1148 of 2002.

WITH

Civil Appeal No. 1386 of 2004.

A Vibha Datta Makhija for the Appellants.

Mohit Paul, Anip Sachthey, Hemantika Wahi, Renuka Shau for the Respondents.

The Judgment of the Court was delivered by

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DR. MUKUNDAKAM SHARMA, J. 1. The only issue which arises for our consideration in these appeals is whether or not the appellant would be entitled to payment of interest under Section 34 of the Land Acquisition Act, 1894 on the C solatium on the compensation paid in terms of the decision of the case in *Sunder Vs. Union of India* reported in (2001) 7 SCC 211 and further explained in the case of *Gurpreet Singh Vs. Union of India* reported in (2006) 8 SCC 457.

2. The land belonging to the appellant was acquired by D issuing a notification under Section 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). A notification was issued on 4.10.1973 for the beneficiary, namely, Respondent No. 1 under Section 4 of the Act. Thereafter another notification under Section 6 of the Act was E issued by the competent authority on 4.11.1976. The Land Acquisition Officer passed an Award in the land acquisition case wherein he determined the market value of the land at Rs. 1.28 per sq. meter. Possession of the land was also taken over by the Land Acquisition Officer on the date of the passing of F the Award. Pursuant to the aforesaid Award, the appellant was paid an amount of Rs. 73,191.09.

3. Being aggrieved by the Award dated 22.9.1986, determining the market value of the land at Rs. 1.28 per sq. meter, the appellant filed two references under Section 18 of G the Act. During the pendency of the aforesaid reference before the Reference Court, the respondent paid a further sum of Rs. 1,18,557.08 towards the balance compensation for the land.

4. By a judgment and order dated 26.2.1999, the Reference Court disposed of the case, determining the market H

value of the land at Rs. 30 per sq. meter. While disposing of the said case, the following decree was passed by the Reference Court.

1. The reference cases are hereby partly allowed and the Respondents are hereby ordered to pay Rs. 28.72 Ps. over and above Rs. 1.28 Ps. Per Sq. Mtr. already awarded by the Land Acquisition Officer for the acquired lands.

2. The claimants be also paid the solatium at the rate of 30% and interest at the rate of 9% per annum till one year after the possession of the acquired lands was taken by the Government, and if the amount is not paid within one year, the claimants is entitled to the interest at the rate of 15% per annum thereafter till the entire amount is deposited.

3. The claimants are also entitled to get increase of 12% from the date of publication of notification u/s 4 i.e. dated November 15, 1973 to the date of award i.e. September 22, 1986, passed by the Land Acquisition Officer, as provided u/s 23 (1A) of the Land Acquisition Act.

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5. In terms of the aforesaid decree passed, a Schedule was also attached to the said judgment in which compensation payable to the appellant to the extent of market value of the land, solatium at the rate of 30% on the amount calculated and increase at the rate of 12 % per annum on the market value under Section 23(1A) was calculated.

6. Consequent thereto, the appellant filed an execution application for recovery of the balance amount as awarded by the Reference Court. During the pendency of the aforesaid execution application, the respondent paid an amount as part payment of the dues payable by the respondent to the appellant. While the said execution case was pending, the

A appellant also filed an application for payment of the amount of interest payable under Section 34 of the Act, at the rate of 9% for the first year and 15% thereafter on the amount awarded by the Reference Court under Section 23(1A) and 23(2) of the Act. As against the said prayer of the appellant, the respondents B filed objection. The said objection was heard by the executing court, and by an order dated 9.9.2002, the executing court rejected the objection filed by the respondent No. 1 herein and issued a warrant for recovery of balance amount and further interest from 1.7.2002, relying on the ratio of the judgment of C this Court in *Sunder Vs. Union of India* (supra).

7. Being aggrieved by the aforesaid order passed by the executing court, the respondent filed a revision petition before the Gujarat High Court contending *inter alia* that the Reference Court did not award interest on the aggregate amount and D therefore, the executing Court was not justified in awarding an amount under the aforesaid head of Section 34 of the Act. It was also contended that the ratio of the judgment in *Sunder* (supra) is not applicable to the facts of the present case because on the date when the decree was passed, interest E was not payable on the amount of solatium as also on the amount payable under Section 23 of the Act.

8. By a judgment and order passed on 20.2.2003, the High Court upheld the aforesaid contentions and allowed the appeal filed by the respondent and set aside the order passed by the F executing court on 9.9.2002.

9. Being aggrieved by the aforesaid order, the appellants filed the present Special Leave Petition in which leave was granted and on which we have heard the learned counsel G appearing for the parties.

10. The learned counsel appearing for the appellant reiterated the same submissions that the decisions in the cases of *Sunder* (supra) and *Gurpreet Singh* (supra) are clearly applicable to the facts and circumstances of the present case. H She also submitted that since the execution of the order passed

in the reference case was pending on the date when the decision in the case of *Sunder* (supra) was delivered, the said decision should, therefore, have been relied upon as clearly held in *Gurpreet Singh's* case (supra) and on the basis of that benefit of payment of interest on solatium should have been given to the appellant.

11. Learned counsel appearing for the respondent, however, refuted the aforesaid submissions by contending that the decisions in the case of *Sunder* (supra) as also of *Gurpreet Singh* (supra) are not applicable to the facts and circumstances of the present case.

12. Having regard to the aforesaid submissions and having gone through the cited decisions, we have scrutinized the records before us. The decree passed by the Reference Court has been extracted hereinbefore. The Reference Court in the decree has allowed the prayer for compensation towards the market value of the land as also solatium at the rate of 30% and also granted increase of 12% from the date of publication, as also an increase in compensation in terms of Section 23(1A) of the Act.

13. The claimants were also held to be entitled to interest at the rate of 9% and thereafter at 15% per annum on the entire amount payable. In the decree, it was also mentioned that the claimants would be entitled to get compensation as stated in the schedule attached therein. The schedule is attached with the decree. A bare perusal of the same indicates that in addition to the amount shown as compensation towards market value, solatium at the rate of 30% and increase of compensation at the rate of 12% per annum are also shown in the said schedule. The amount awarded in terms of the interest at the rate of 9% per annum which is shown to be included in the decree is, for reasons unclear, not indicated in the said schedule, but is specifically mentioned in the decree itself. Since a direction is made for payment of interest at the rate of 9% per annum and thereafter at 15% per annum in the decree, the appellant cannot

A be denied the benefit of the interest on market value, which also includes solatium and for that purpose the decisions in the case of *Sunder* (supra) and Gurpreet Singh (supra) would become relevant.

B 14. In the case of *Sunder* (supra), this Court in paragraph 23 has stated thus:-

"23. .....We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof."

D In paragraph 24, the Court further held as follows:-

"24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest

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under Section 34 was not in the contemplation of the legislature when that section was framed or enacted." A

15. The aforesaid decision of *Sunder* (supra) came to be considered once again by this Court in the case of *Gurpreet Singh* (supra) and in paragraph 54 of the said judgment, this Court held thus: 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, 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 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 C D E F G H

A 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
B Constitution of India with a view to avoid multiplicity of litigation on this question."

16. It is no doubt true that the execution court cannot examine the reasons so as to go behind the decree but if in the Award passed, the Reference Court makes a specific
C reference to payment of interest but without any such reference to the payment of interest on solatium and merely payment of interest on compensation is granted, then it would be open to the executing court to apply the ratio of *Sunder* (supra) and declare that the compensation awarded includes solatium, and
D consequently, interest on the amount could be directed to be deposited in execution. That being the legal position as prevailing today, we cannot ignore the observations made in paragraph 54 of the aforesaid judgment in *Gurpreet Singh* (supra) and we order accordingly that compensation awarded
E includes solatium and therefore interest on the said amount shall be paid by the respondent in the pending execution.

17. In our considered opinion, the ratio of the aforesaid decision is also applicable in view of the fact that such interest on solatium is claimed by the appellant herein in the pending
F adjudication and therefore, we observe that the executing court was justified to permit recovery of interest on solatium from the date of judgment in *Sunder* (supra), i.e., 19.9.2001 and not for any prior period.

G 18. Having held thus and allowing the appeals filed by the appellants to the aforesaid extent, we leave the parties to bear their own costs.

B.B.B. Appeal allowed.