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Court : Andhra Pradesh

Decided On : Apr-30-2003

Reported in : 2003(4)ALD500; 2003(4)ALT576

Judge : B. Sudershan Reddy and ;C.V. Ramulu, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 23(1A), 23(2) and 28

Appeal No. : CMP No. 3943 of 2003 and Rev. CMP (SR) 10607/2003 in AS. 1002/97

Appellant : Radhakrishna Murthy and ors.

Respondent : Special Deputy Collector, Land Acquisition (General) and anr.

Advocate for Def. : N. Subba Reddy, Adv.

Advocate for Pet/Ap. : S.R. Ashok, Sr. Counsel

Disposition : Petition dismissed

Judgement :

C.V. Ramulu, J

1. C.M.P. No. 3943 of 2003 is filed to condone the delay of 978 days in filing the Review C.M.P. (SR) No. 10607 of 2003 to review the judgment and Decree dated 31-3-2000 passed by this Court in A.S. No. 1002 of 1997 only to the extent of holding 'however, it is made clear that the claimants are not entitled to interest on additional market value and solatium'.

2. Before going to merits of the case, it is necessary to note a brief history of the case.

3. A.S. No. 1002 of 1997 was disposed of on 31-3-2000 fixing the market value for the acquired lands at Rs. 40/- per square yard and awarding statutory benefits as provided under the Act 68 of 1984. However, it was made clear that the claimants are not entitled to interest on additional market value and solatium. Aggrieved by the said judgment, the claimants-review petitioners have filed S.L.P.No. 5922-5923(C) of 2002 before the Supreme Court. The same was dismissed on 6-9-2002 and the Court made the following order:

'There is enormous delay and the same stands unexplained. Hence, the special leave petitions are dismissed.

4. Having failed before the Supreme Court, they ventured to file this review petition on 17-2-2003. It is curious to note that the Government, aggrieved by the judgment and Decree in A.S.No. 1002 of 1997, dated 31-3-2000, also filed Special Leave Petition before the Supreme Court in S.LP.No. 4024-4025 of 2001 and the same was disposed of after hearing the respondents-review petitioners herein on 10-1-2003. The order reads as follows:

'Delay condoned.

In the facts and circumstances of the case, we decline to interfere with the order made by the High Court. Therefore, the special leave petitions are dismissed.'

5. Mr. S.R. Ashok, learned Senior Counsel appearing for the petitioners, argued that the said portion of the judgment in A.S.No. 1002 of 1997 of which the petitioners are aggrieved, was made by the Court on its own and there were no allegations or denials in this regard. In fact, the petitioners also while filing the

S.L.P. raised a ground to the effect that this Court could not have denied the benefits of interest on additional market value and solatium and when the matter was brought to the notice of the Apex Court, they were orally suggested to file review petition before this Court. He further submitted that even otherwise, as per the judgments of the Supreme Court reported in *Meharban and Ors. v. State of U.P.*, : [1997]3SCR1149 , and *Union of India v. Ajit Singh*, : [1997]3SCR1117 , the petitioners are entitled for interest on additional market value and solatium and missed the attention of the Division Bench of this Court while disposing of A.S. No. 1002 of 1997. He also submitted that the various decisions of the Apex Court rendered earlier and governing the field were not taken into consideration while disposing of A.S. No. 1002 of 1997 and had they been taken into consideration, the decision of this Court in A.S. No. 1002 of 1997 would have been otherwise.

6. We have noticed that the Division Bench of this Court while disposing of the appeal relied upon a decision of a Full Bench of this Court in *I.D.L. Chemical Limited v. K. Viswanadham*, : 1998(2)ALD625 (F.B), and in view of this, there was no other go for the Division Bench in A.S.No. 1002 of 1997 to hold that the claimants are not entitled for interest on additional market value and solatium.

7. Learned Senior Counsel - Sri N. Subba Reddy - appearing for the respondents submitted that the sole inspiration for filing the review petition is the latest decision of the Supreme Court reported in *Sunder v. Union of India*, : AIR 2001 SC3516 , wherein the Constitution Bench held that the claimants are entitled for interest on additional market value and solatium also. Had the petitioners really aggrieved by the judgment in A.S. No. 1002 of 1997, they could have filed the appeal before the Supreme Court even before the appeal was filed by the respondent-Government. The respondent-Government filed S.L.P. No. 4024-4025/ 2001 in 2001, whereas the petitioners have filed the S.L.P. in the year 2002, i.e., after the pronouncement of the judgment by the Apex Court in *Sunder's case (supra)*. Thus, it must be deemed that even the petitioners were well aware that they are not entitled for interest on additional market value and solatium, which was rightly denied by this Court while disposing of the appeal. This is only a speculative litigation to take advantage of the law laid down by the Apex Court in *Sunder's case (supra)*. Mr. N. Subba Reddy, learned Senior Counsel, further submits that the law is well settled

that a review of an order cannot be made being inspired by a law laid down by the Apex Court subsequent to the order under review, unless the proceedings are in one way or the other pending before any of the Courts. Admittedly, no proceedings were relating to this case were pending before any Court of law between 31-3-2000 i.e., date of disposal of the appeal and 19-9-2001 i.e., the date of judgment in Sunder's case. In fact, if the petitioners had real intention to challenge the Judgment and Decree in A.S. No. 1002 of 1997 being aggrieved by the denial of interest on additional market value and solatium, they could have filed review petition before this Court or S.L.P. before the Supreme Court immediately after the disposal of the appeal and in fact, the S.L.P. filed by the petitioners/claimants was dismissed on the ground of laches and attained finality and review petition is not maintainable. Whereas, Sri S.R. Ashok, the learned Senior Counsel appearing for the petitioners, submits that mere dismissal of the S.L.P. in view of the delay caused in filing the same itself does not amount to merger of the judgment of this Court in the orders passed by the Apex Court and as such, the claimants-petitioners have every right to file a review petition seeking to extend the position of law as existed as on the date of disposal of the appeal as the same could not be brought to the notice of this Court. In support of his contention, he relied upon the judgment of the Supreme Court in Kunhayammed v. State of Kerala : [2000]245ITR360(SC) . Repelling the said argument, Sri Subba Reddy, submitted that apart from what is stated above, whether the theory of merger is applicable or not is immaterial for the purpose of considering the present review petition. Having not objected for such denial of interest on additional market value and solatium at the time of disposal of the appeal and having not filed any review petition immediately thereafter, they have chosen to file S.L.P. only being inspired by the judgment of the Apex Court in Sunder's case (supra) and after having failed in their efforts before the Apex Court, they have ventured to file the review petition with an abnormal delay of 978 days. This is nothing but an afterthought and a speculative litigation

8. We need not go into the doctrine of merger, as it has no significance and is not applicable in the present case. Further, it is difficult to accept the contentions of Sri S.R. Ashok that the entitlement of interest on additional market value as well as solatium was no longer res integra and even by the date of disposal of the appeal

by this Court on 31-3-2000, in view of the decisions rendered by 3-Judge Benches of the Apex Court in Meharban 's case (supra) and Ajit Singh's case (supra). He also contended that the omission to bring to the notice of the Court about the said decision's was neither wilful nor deliberate, but was due to the reasons beyond the control of the petitioners or their Counsel. The said contention is not acceptable for the reasons to be assigned later.

9. Learned Senior Counsel appearing for the petitioners has drawn our attention to a portion of paragraph-11 of Meharban's case (supra), which reads as follows:

'.....in fact, under these circumstances, we think that we should take into account reasonable rise in prices, particularly in view of the gap of several years, we think that the approximate net market value would be Rupees 175/- per sq.yard and after giving deduction for developmental charges for the lands situated in Quasimpur Nagla Tashil and the claimants are entitled to the solatium at 30% on enhanced compensation. They are also entitled to interest at the rate of 9% per annum for one year and 15% per annum on enhanced compensation from the date of the taking possession till date of deposit in the Court. In case the land owners are still in possession, they are not entitled to the payment of the interest. Similarly, they are entitled to additional amount under Section 23(1-A) from the date of the notification till date of the award or date of the taking possession, whichever is earlier.'

10. In the said case, there was absolutely no discussion with regard to what is the meaning of the words 'compensation' and 'market value'. The said case is not at all helpful to the petitioners.

11. Learned Senior Counsel for the petitioners relied upon paragraph-6 of the decision in Ajit Singh's case (supra), which reads as follows:

'The next question that arises for consideration is whether the respondent is entitled to the benefit of the Amendment Act 68 of 1984 In view of the fact that the award of the reference Court is of November 2,1973, the Amendment Act would apply and, therefore, the claimants are entitled to the solatium at 15% and interest at 6% on the enhanced compensation from the date of taking possession till date of

deposit in the Court.'

12. Basing on the above, the learned Senior Counsel argued that 6% interest on the enhanced compensation means, the interest on additional market value and solatium also. This cannot be accepted in view of the later judgments of the Apex Court and this Court wherein the words 'compensation' and 'market value' were categorically discussed and their connotations were demarcated with reference provisions of the Act.

13. Learned Senior Counsel appearing for the petitioners brought to the notice of this Court the decision in Periyar and Pareekanni Rubbers Ltd. v. State of Kerala : AIR 1990 SC2192 , and argued that His Lordship Justice K. Ramaswamy (as he then was) speaking for a 2-Judge Bench of the Apex Court considered the scope of the words 'market value' and 'compensation' and held that the claimants are entitled to interest on solatium. No doubt, in the said case, the Apex Court held that the claimants are entitled to interest on solatium. But, in the later judgment reported in Prem Nath Kapur v. National Fertilizers Corporation of India Limited : (1996)2SCC71 , 3-Judge Bench of the Apex Court presided by His Lordship K. Ramaswamy, J (as he then was) held on 29-11-1995 that no interest is payable on solatium under Section 23(2) or on additional amount under Section 23(1-A) of the Act. Similarly, in Yadavrao P. Pathade v. State of Maharashtra, : [1996]1SCR965 , 3-Judge Bench - His Lordships K. Ramaswamy, J., S. Saghir Ahmad, J., and G.B. Pattanaik, J., overruling the Periyar's case (supra), held on 24-1-1996:

'Unfortunately, neither the provisions were considered nor the distinction of the above provisions had been brought to the notice of this Court at that time. Therefore, mistaken view was taken to hold that interest on solatium is part of the component of compensation under Section 23(1) of the Act...'

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23(2)

23(1-A)

28

23(1)

15. As noticed above, there was no resistance on the part of the petitioners as to the denial of interest on additional market value and solatium at the time of disposal of the appeal on 31-3-2000. If really the judgment of the Apex Court in Meharban's case (supra) was governing the field at the time of disposal of A.S.No. 1002 of 1997, the claimants-petitioners could have filed either a review petition immediately or approached the Supreme Court without any loss of time. In fact, there was no other go for the Division Bench while disposing of A.S.No. 1002 of 1997 on 31-3-2000 except to follow the judgment of the Full Bench in IDL Chemicals Ltd. case (supra), which is binding on it. Nextly, assuming that there is some merit in the contention made by the Counsel for the petitioners that even in the existence of the Full Bench judgment of this Court, they are entitled for interest on additional market value and solatium in view of the judgment in Meharban's case (supra), as stated above, the said judgment has not dealt with the aspect of interest on additional market value and solatium and as such, as already stated above, it does not support the case of the petitioners. The review petition is also not filed within a reasonable time and much more, for the reason that as submitted by Sri N. Subbareddy it is clear that the petitioners are inspired by the judgment of the Apex Court in Sunder's case (supra) and this is only a speculative litigation, the question of condoning the delay does not arise and this may amount to opening Pandora's box and contrary to the judgment of the Supreme Court in A.C. Estates v. Serajuddin & Co., : [1966]1SCR235, in which it was held as follows:

'Our attention in this connection is drawn to Section 29(5) of the Act, which gives power to the Controller to review his orders on the conditions laid down under Order XLVII of the Code of Civil Procedure. But, this cannot be a case of review on the ground of discovery of new and important matter, for such matter has to be something which existed at the date of the order and there can be no review of an order which was right when made on the ground of the happening of some subsequent event...'

16. Learned Senior Counsel appearing for the petitioners further submitted that the delay caused could not be taken seriously in view of the reported judgment in N.

Balakrishnan v. M. Krishnamurthy, : 2008(228)ELT162(SC) , and also for the reason that the notification under Section 4(1) of the [Land Acquisition Act, 1894](#) was gazetted in the year 1972 and even as per the judgment of this Court, the petitioners are approximately entitled for Rs. 40.00 lakhs, but no pie was paid as on date. May be this seems to be a case which invokes sympathy of this Court, but the law does not help to recognize the claims of the petitioners. It is also difficult to agree with the argument of Sri S.R. Ashok as to applicability of the decision in Balakrishnan's case (supra) relied upon by him, for the reason that that case arose altogether in a different circumstances. That was a case where the delay was condoned by the Trial Court under Section 5 of the Limitation Act and set aside the ex parte decree passed earlier. It has no application to the facts of this case.

17. This review petition is filed with an abnormal delay of 978 days, seems to be inspired by Sunder's case and having failed before the Supreme Court in the Special Leave Petition, stating in the guise of Meharban's case that the question that arose for consideration in the appeal was no more res integra. It is apt to extract the relevant portions in the decisions of Sunder's case and Meharban's case. In Meharban's case, at paragraph-13, it was held :

'.....They are entitled to solatium at the rate of 30% in case delivery of the possession had taken place; in fact, possession was taken in respect of the extent of 53.5 acres. The claimants are entitled to the interest at the rate of 9% from June 16,1985 for one year and at the rate of 15% thereafter till date of deposit. They are entitled to additional amount under Section 23(1) from the date of notification till date of passing of the award or delivery of the possession at the rate of 12% per annum, whichever is earlier.'

In Sunder's case, at paragraph-27, it was held:

'In our view, the aforesaid statement of law is accord with the sound principles of interpretation. Hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly.'

18. From a reading of the above findings, it is clear that in Meharban 's case, the Apex Court never intended that the claimants therein are also entitled for interest on additional market value and solatium. Whereas, this was categorically dealt with in Sunder's case while interpreting Sections 23(2) and 28 of the Act together and held that the person entitled to compensation is also entitled to get interest on the aggregate amount including solatium. Thus, the argument of Sri S.R. Ashok, the learned Senior Counsel appearing for the petitioners, that the question arose in the appeal is no more res integra cannot be accepted. In Meharban's case, what all said was that the claimants therein are entitled for interest on the market value and there is no specific mention that the claimants therein are entitled for interest on additional market value and solatium. In fact, it is clearly stated that the claimants are entitled for interest on the enhanced compensation and the solatium was dealt with separately and no interest was directed to be paid on this count. Absolutely, there are no grounds to condone the inordinate delay of 978 days in filing the review petition particularly as there are no reasons are forthcoming except stating that it was neither wilful nor deliberate, but was due to reasons beyond the control of the petitioners or their Counsel. That apart, between the judgments of the Apex Court in Prem Nath Kapur's case (supra) and Sunder's case (supra), in huge number of cases, the interest on solatium and additional market value was denied. They all became final and if the case of the petitioners is accepted, it amounts to opening of pandora's box.

19. For all the above reasons, the petition to condone the delay of 978 days is dismissed. Consequently, the review petition stands dismissed. No order as to costs.

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