THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

APPEAL SUIT No.100 of 1992

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This appeal preferred under Section 54 of the Land Acquisition Act by the Agricultural Market Committee, Allagadda, Kurnool District, is directed against the order and decree passed in O.P.No.21 of 1981 by the Court of the Subordinate Judge at Nandyal, Kurnool District.

The State Government, for purposes of extending the existing Agricultural Market Yard at Allagadda Village in Kurnool District, has published the draft notification under Subsection (1) of Section 4 on 22.03.1979. The necessary declaration under Section 6 of the Act was published in the Andhra Pradesh Gazette issue dated 27.05.1980. Land of an extent of Ac.18.75 cents lying in Sy.Nos.244/1, 244/2, 245/1B, 247, 248/1, 248/2 and 249 of Allagadda Village has been acquired. Advance possession of these lands was taken over by the Tahsildar, Allagadda on 07.09.1980. The Land Acquisition Officer by his award dated 27.11.1980 has fixed the market value for the land situate in Sy.No.245/1B at Rs.5,000/- per acre and for the rest of the land of an extent of Ac.4.10 cents at the rate of Rs.2,400/-. During the award enquiry held on 23.10.1980, the claimants made claim for compensation at rates varying between Rs.30,000/- to Rs.40,000/- per acre. Since, they are not satisfied with the compensation awarded by the Land Acquisition Officer, they sought for a reference under Section 18 of the Land Acquisition Act and that is how O.P.No.21 of 1981 came to be referred and later on adjudicated by the Court of the Subordinate Judge at Nandyal, henceforth referred to as 'Civil Court'. The Civil Court by its order dated 22.12.1984, fixed the market value for the land of an extent of Ac.2.52 cents lying in Sy.No.245/1B, belonging to the sixth claimant, at the rate of Rs.300/- per cent of land and the market value for the rest of the lands belonging to the other claimants, excepting claimants 7 & 13, who remained *exparte* at the rate of Rs.250/- per cent. The award of the Land Acquisition Officer that the claimants are entitled to payment of interest at the rate of 4% on the amount of compensation with effect from 07.09.1980, the date on which advance possession of lands has been taken over has been confirmed. The Reference Court has also awarded solatium at 30%. The Agricultural Market Committee, being the beneficiary of acquisition, has preferred this appeal.

Heard Sri N. Subba Reddy, learned Senior Counsel on behalf of the appellant, the learned Government Pleader for Land Acquisition on behalf of the Collector-cum-Land Acquisition Officer and Sri R. Prasad, learned counsel for the respondents/claimants-cum-Cross Objectors.

Before the Civil Court, on behalf of the Referring Officer, R.W.1 was examined and Ex.X-1 plan was also got marked. On behalf of the claimants, P.Ws 1 to 5 were examined and Exs.A-1 to A-8 were also got marked.

P.Ws.1, 2 and 4 have clearly deposed as to the location of the lands acquired and the developments that are available in and around the lands acquired. They have clearly brought out that Allagadda is one of the important commercial towns in the district. It was also a Taluk Headquarters, before smaller revenue units of ‘Mandals’ are created. Consequently, government has constructed a traveler’s bungalow close-by to the lands in question for stay of the Government Officials who visit frequently Allagadda in respect of one work or the other. This apart, it was brought out that there are six rice mills, two cotton mills, two zinning mills established near about the acquired land. There were four cinema halls in proximate closeness to the lands in question which cater to the entertainmental needs of both the local and visiting population of nearby villages and there are two colleges in that area. P.W.1 is the attestor of the original sale deeds marked as Exs.A-3, A-4 and A-6, the consideration of which sale transactions has been paid by the respective purchasers in his presence. P.W.2, apart from being an attestor of Ex.A-2, sale deed, was also incidentally the father of the vendor. P.W.2 has also spoken about the existing residential colonies in proximate closeness to the lands acquired. In fact, P.W.5 has spoken to the developments that have taken place long prior to the proposed acquisition by speaking about how land in Sy.No.247, which is close by to the lands in question, has been developed and laid out as house sites. Ex.A-7, is the approved layout of the said land while Ex.A-8 is the challan dated 23.06.1975 evidencing the payment of 'layout fee' for sanctioning Ex.A-7 in Sy.No.247. In view of the above evidence, the Civil Court had no difficulty whatsoever in arriving at a finding of fact that the lands in question have been acquired in an otherwise fairly well developed locality. This apart, lands in question are found abetting the Kurnool – Kadapa State highway.

Ex.A-2 is the registration extract of sale deed dated 10.02.1976. The appellant Agricultural Market Committee, Allagadda, it is appropriate to note, was the purchaser of land of an extent of Ac.0.10 cents lying in Sy.No.559. That Ac.0.10 cents of land was purchased for a total consideration of Rs.10,000/-. Thus, the price works out per acre to Rs.1,00,000/- (one acre = 100 cents). When such a high price has been paid-off by the Agricultural Market Committee, for acquiring Ac.0.10 cents of land, but, at the same time, offering resistance to pay the market value of Rs.30,000/- to Rs.40,000/- per acre for the lands acquired, is somewhat strange, the explanation being, the said Ac.0.10 cents of land has been acquired for gaining access to the State Highway connecting Kurnool to Kadapa. We will deal with this issue a little later.

As was already noticed supra, the notification under Subsection (1) of Section 4 was published on 22.03.1979, while the declaration under Section 6 was published on 27.05.1980. Ex.A-3 relates to a registration extract of a sale transaction that took place on 02.08.1975, whereby, Ac.0.3 cents of land in Sy.No. 247 of the same village was sold for Rs.900/-, thus, fetching a rate of Rs.300/- per every cent. Similarly, Ex.A-4 is a registration extract of a sale deed dated 02.07.1975, whereby, Ac.0.6 cents of land lying in Sy.No.247 was sold for a price of Rs.1,800/-. Ex.A-6 is another registration extract of a sale deed dated 02.07.1975 whereby Ac.0.3 cents of land lying in Sy.No.247 is sold for a consideration of Rs.900/-, whereas, Ex.A-5 is registration extract of a sale deed dated 03.03.1976 whereby, land of an extent of Ac.0.6 cents in Sy.No.242 of the Village was sold for Rs.2,000/-. From the above, it emerges that, much prior to the notification under Section 4(1) was published, sale transactions covered by Exs.A-3, A-4 & A-6 concerning the land lying in Sy.No.242 of the village, each cent of land was sold for Rs.300/-. It is no doubt true that, these sale transactions covered small bits of lands comprising of Ac.0.3 cents or Ac.0.6 cents, whereas, Ex.A-5 which relates to a sale transaction that took place on 03.03.1976 covering sale of Ac.0.6 cents of land in Sy.No.247, the consideration went up by 10% and hence, was sold for a price of Rs.2,000/-. Therefore, when Exs.A-2, A-3, A-4, A-5 & A-6 are looked into, it emerges that, the land price in the vicinity, at any rate for the land situate in Sy.No.247 has shown an upward increasing trend by 10% in one year's time period. Similarly, Ex.A-7, the draft layout plan for the land situate in Sy.No.247 and Ex.A-8 the layout fee receipt dated 13.06.1975 speak of the potentiality of the development of the lands, in particular, in Sy.No.247 and those around. Ex.A-1 is a rough sketch which has been filed to exhibit the proximate closeness of the lands acquired and the other developments.

A perusal of Ex.A-1 and Ex.X-1 clearly brings out the proximate closeness of the lands in question to the lands acquired. This apart, the lands in Sy.No.247 are forming into a kind of a contiguous zone to the lands acquired and the claimants have brought evidence in this regard. On behalf of the Returning Officer, R.W.1 was examined and R.W.1 is an officer who has been appointed to the service only on 22.05.1984, long subsequent to the notification and also passing of the award by the Land Acquisition Officer. That reflects the casual approach that was adopted on the subject, as R.W.1 merely spoke about passing of the award by Land Acquisition Officer and could not explain why such a low price was awarded.

It is no doubt true that, Ex.A-2 is a sale deed covering Ac.0.10 cents of land lying in Sy.No.559 and the purchaser of this Ac.0.10 cents of land is the Agricultural Market Committee itself. It paid a total sale consideration of Rs.10,000/-, thus reflecting the rate of Rs.1,00,000/- per acre. Though Sri Subba Reddy, learned Senior Counsel has urged that this land was purchased at such a high price, as the Agricultural Market Committee needs to gain access to the main road of Kurnool – Kadapa passing through Allagadda, but however, the perusal of the plans reflect otherwise. The land covered by Ex.A-2 is lying in Sy.No.559, which is towards the rear portion of the Agricultural Market Committee. However, it is obvious that this particular piece of land was purchased by the Agricultural Market Committee, offering a fairly good price of Rs.1,000/- per cent of land, is for securing very effective utilization of the rest of the land belonging to and covered by the Market yard. Therefore, to a certain extent, the criticism that the sale consideration paid by the Agricultural Market Committee for the transaction covered by Ex.A-2 may not be taken into account and consideration for fixation of the market value for the lands acquired, may deserve consideration, but, at the same time, it cannot be lost sight totally that the lands in the vicinity are sold for a price of not less than Rs.300/- per cent of land.

The relevant principles to be followed while determining the market value have been crystallized by the Supreme Court in the Judgment rendered in **Bhargav Samanna and others vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality**[1].

> "7. In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant Notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. A fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. By comparing the price shown in the transactions all variables have to be taken into consideration. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. This principle has been stated by this Court in Tribeni Devi's case (supra).
> 11. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of

deduction simply for the reason that it is part of the large tract acquired, may not be justified."

The relevant factors to be kept in view for determining the market value are spelt out by the Supreme Court in **Viluben Jahlejar Contractor v. State of Gujarat**[2] and in **Atma Singh v. State of Haryana**[3].

Viluben Jhalejar Contractor v. State of Gujarat

Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under Sub-section (1) of Section 4.

One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification Under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors	Negative factors
(i) smallness of size	(i) largeness of area
(ii) proximity to a road	(ii) situation in the interior at a distance from he road

(iii) frontage on a road	(iii) narrow strip of land with very small frontage compared to depth
(iv) nearness to developed area	(iv) lower level requiring the depressed portion to be filled up
(v) regular shape	(v) remoteness from developed locality
(vi) level vis-à-vis land under acquisition	(vi) some special disadvantageous factors which would deter a purchaser
(vii) special value for an owner of an adjoining property to whom it may have some very special advantage	

Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.

Atma Singh v. State of Haryana

In order to determine the compensation which the tenure-holders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23(1) of the Act lays down what the court has to take into consideration while Section 24 lays down what the court shall not take into consideration and have to be neglected. The main object of the enquiry before the court is to determine the market value of the land acquired. The expression "market value" has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. See **Kamta Prasad Singh v. State of Bihar, Prithvi Raj Taneja v. State of M.P.**,**Administrator General of W.B. v. Collector**, **Varanasi and Periyar Pareekanni Rubbers Ltd. v. State of Kerala**.

For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. See **Collector v. Dr. Harisingh Thakur**, **Raghubans Narain Singh v. U.P. Govt. and Administrator General**, **W.B. v. Collector Varanasi**. It has been held in **Kausalya Devi Bogra v. Land Acquisition Officer** and **Suresh Kumar v. Town Improvement Trust** that failing to consider potential value of the acquired land is an error of principle."

The Supreme Court had occasion to consider the question as to whether sale transactions covered by small sized plots can be taken into account and consideration, and deduced the relevant principles in ***Radha Mudaliyar v. Special Tahsildar (Land Acquisition), T.N.H. Board***[4] as under:

"13. Now, the next question that arises is whether the claimants would be entitled to receive the compensation at this rate or certain element of deduction needs to be applied in the facts and circumstances of the case. The deduction can be applied for different aspects while determining compensation. If the size of the plot is very small and the same has to be taken into consideration for non-availability of other evidence and where the land acquired is a large chunk of land, then it would be advisable to apply some deduction on that score. Reference in this regard may be made to Land Acquisition Officer v. Nookala Rajamallu : (2003) 12 SCC 334. In alternative or in addition thereto, deduction can also be applied on account of wastage of land and development charges. In the present case, the land has been acquired, which apparently was an agricultural land at the time of acquisition, to carry out the development scheme for the MEPZ sanctioned by the SIPCOT. The development purpose, being in public interest, is bound to result in utilization of part of the land for the purposes of roads, by-links, water & electricity lines and other infrastructural amenities of the project. This Court, depending on the facts and circumstances of the case, has taken the view that deduction on account of expenses of development of the sites could vary from 20% to 70; depending on the nature of the land, its situation, the purpose and stage of development as held by this Court in the case of K.S. Shivadevamma v. Assistant Commissioner and Land Acquisition Officer (1996) 2 SCC 62, Ram Piari v. Land Acquisition Collector, Solan : (1996) 8 SCC 338, Chimanlal Hargovindas v. Special Land Acquisition Officer, Poona : (1988) 3 SCC 751, Hasanali Walimchand (Dead) by Lrs. v. State of Maharashtra : (1998) 2 SCC 388. In K.S. Shivadevamma (supra), this Court held as under:

> 10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned Counsel that the extent of deduction depends upon development needs in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date, In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, ordered by the High Court, was not illegal.
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> The above view was reiterated in the case of Nookala

Rajamallu (supra).

14. On similar lines, this Court in the case of V. Hanumantha Reddy (Deceased) by Lrs. v. Land Acquisition Officer and Mandal R. Officer : (2003) 12 SCC 642, while considering that the acquired land was adjacent to developed land, held that neither its high potentiality nor its proximity to a developed land can be a ground for not deducting the development charges and that normally 1/3rd deduction could be allowed.

20. The argument of the appellants is that they have been denied solatium and interest by the High Court while referring to the judgment of this Court in Prem Nath Kapur v. National Fertilizers Corporation of India Ltd. : (1996) 2 SCC 71. It is contended that in view of the law clearly stated by this Court in the case of Sunder v. Union of India : (2001) 7 SCC 211, which has been consistently followed by different Benches of this Court, the claimants are entitled to solatium as well as the interest on the awarded amount. We find merit in this contention.

21. The Constitution Bench of this Court in the case of Sunder (supra) had clearly stated that the Court has to keep in mind that the compulsory nature of acquisition is to be distinguished from voluntary sale or transfer. In the latter, there is a willing buyer and seller. In the case of acquisition, it is compulsory and deprives the owner of an opportunity to negotiate and bargain the sale price of its land as it will entirely depend on what the Collector or the court determines as the amount of compensation in accordance with the provisions of the Act. The solatium envisaged in Sub-section (2) of Section 23 is "in consideration of the compulsory nature of acquisition". Thus, the solatium is not the same as damages on account of the landowner's disinclination to part with the land acquired. If such compensation as determined in terms of Section 23 of the Act is not paid within one year from the date of taking possession of the land, then in terms of proviso to Section 34 interest shall stand escalated to 15% per annum from the date of the 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. The Court further held that 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. Hence the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. It appears from the impugned judgment that the High Court had relied upon the judgment of this Court in the case of Prem Nath Kapur (supra) and the judgment of this Court in the case of Sunder (supra) came to be pronounced after the judgment of the High Court. While relying upon the law existing at that time, the High Court had declined to grant the interest on solatium but made it subject to the pronouncement in the case of Kapur Chand Jain v. State of Himachal Pradesh : (1999) 2 SCC 89, wherein this Court subsequently made a reference to a larger Bench and the judgment in Sunder (supra) came to be pronounced. In any case there can be no doubt in law that the claimants are entitled to the solatium and the interest thereupon at the rate specified in proviso to Section 34 of the Act for the relevant period. Even in this regard the judgment of the High Court, therefore, cannot be sustained."

Applying the above principle, fixation of the price at the rate of Rs.300/- per cent of land lying in Sy.No.245/1B (wet land) belonging to the sixth claimant cannot be faulted. Particularly, when viewed in the backdrop that the rate of Rs.300/- per cent was prevailing in the year 1975, whereas, Ex.A-5 relating to a sale transaction that took place on 03.03.1976 has shown a 10% increase in the sale price, as Ac.0.6 cents of land was sold for Rs.2,000/-, whereas, the notification in the instant case was published nearly 4 years thereafter. Further, when there are developments all around the lands acquired, the contention of the learned Senior Counsel that the Civil Court has enhanced the market value unreasonably does not hold water.

Sri R. Prasad, while pressing the cross-objections has placed strong reliance upon Ex.A-2 in support of his plea that payment of compensation at the rate of Rs.40,000/- per acre is justified for the lands in Sy.No.245/1B. It is apt to note that there is nearly a 4 year gap in between the sale covered by Ex.A-3 dated 02.08.1975 and the date of notification under Section 4(1) of the Act on 22.03.1979. In Ex.A-5 sale deed dated 03.03.1976, a 10% increase of land value was noticed. Hence, going by the principle enunciated by the Supreme Court recently in **The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Anr.**[5] wherein it was held:

> "Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to

a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the `rate' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase."

The land value by 1979 can be said to have increased by 40% (4 x 10%). But, then, towards development of the land 33 1/3rd of the value needs to be deducted/defrayed. If it is so done, the land value would only remain as it is i.e. Rs.30,000/- per acre. We are, hence, of the opinion, that the cross-objections are also liable to be rejected.

Sri R. Prasad also relied upon the judgment of a Division Bench of this Court in ***P.T. Ramanujacharyulu @ P.T. Ramanujam (died) per Lrs and others v. Special Tahsildar (LA), Nellore***[6]. The Supreme Court in ***S.A. Jain College Trust & Managing Society v. State of Haryana and another***[7] has brought out the relevant principle in paragraph 5 of the Judgment as under:

"5. The Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984) became law on 24th September, 1984. The appeal filed by the claimant was pending before the learned Single Judge of the High Court on the date when the Amendment Act came into force. The learned Single Judge delivered the Judgment on 25.10.1985. So the award of 30% solatium on the market value of the land acquired is justified. Similarly the award of interest on excess compensation fixed by the Court at the rate of 9% for the first year from the date of taking possession, and thereafter at 15% till the date of payment of the compensation for the land acquired, is equally justified. But we are of the view that the amount of 12% per annum awarded on the market value from the date of publication of the Notification under Section 4 of the Act till the date of taking possession of the land, awarded as per Section 23(1-A), is not legally justified. In this case, the proceedings for land acquisition commenced as early as 15.5.1968 and the award was made by the Collector on 29.2.1970, and the possession of the land was taken immediately thereafter. All such events happened long before the Land Acquisition (Amendment) Act of 1984. In such cases the claimants are not entitled to the benefit under Section 23(1-A) of the Land Acquisition (Amendment) Act (Amendment Act 68 of 1984). This view is fortified by the decision of this Court in Union of India v. B.K Saroja and Anr. : [1995]1SCR250."

Subsequently, the whole gamut has been traversed in **Sunder v. Union of India**[8]**,** in which, the final answer is provided as under:

> "12. Section 11 of the Act enjoins on the Collector the statutory duty to conduct an inquiry into the value of the land on the date of publication of the notification Under Section 4(1) of the Act and to make an award for the "compensation" which in his opinion should be allowed for the land. Section 31 of the Act casts obligation on the Collector that after making the award Under Section 11 he shall tender payment of "the compensation awarded by him" to the persons entitled to it according to the award. This means that law does not relish any delay in making the payment once the award is made. Thus, making the award shall normally follow payment of compensation as expeditiously as possible.
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> "14. Question of payment of interest would arise only when the compensation is not paid or deposited on or before the date or taking possession of the land. It is inequitable that the person who is deprived of the possession of the land, on account of acquisition proceedings is not given the amount which law demands to be paid to him, any delay thereafter would only be to his detriment, There must be a provision to buffet such iniquity. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made in Section 34 of the Act. That section is extracted below -
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> 34 Payment of Interest -When the amount of such compensation is not paid or deposited on or before

taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable 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.

16. Thus interest has to accrue as per Section 34 and Section 28 of the Act on the compensation awarded, whether it is as per the award initially passed by the Collector or by the Court later. What is meant by "the compensation" awarded? Both sides cited different definitions for the word "compensation" as contained in different lexicography's . In "Words and Phrases" (permanent Edn.) different connotations of the word "compensation" have been delineated, One of them relates to the law of eminent domain, where compensation means recompense in value, a quid pro quo, and must be in money. Another is relating to the property taken for public use. Then it is the fair market value at the time of taking it. From the Constitutional perspective the word 'compensation' for the property taken was understood as the just equivalent of the value of the property. But when compensation is regarded as a statutory obligation the aforecited definitions need not detract the courts in fathoming the real import of it. The exercise can be done with the aid of the provisions in the statutes, So what the Court, in the context of land acquisition, has to decide is how the Act has designed the compensation vis-a-vis the liability to pay interest, In this context we have to read Section 23 of the Act, It is extracted below -

23. Matters to be considered in determining compensation -(1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration first, the market value of the land at the date of the publication of the notification Under Section 4, Sub-section (1).

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any, sustained by the person interested , at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration Under Section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification Under Section 4, Sub-section (1), in respect of such lend to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

(2) In addition to the market-value of the land, as above provided the court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition.

22. Compulsory nature of acquisition is to be distinguished from voluntary sale or transfer. In the latter, the landowner has the widest advantage in finding out a would-be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time

> when he would be receiving consideration and parting with his title and possession over the land. But in the compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the Court fixes as per the provisions of the Act. The solatium envisaged in Sub-section (2) "in consideration of the compulsory nature of the acquisition" is thus not the same as damages on account of the disinclination to part with the land acquired.
>
> 26. We think it useful to quote the reasoning advanced by Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana v. Smt. Kailashwati and Ors., (supra).
>
> Once it is held as it inevitably must be that the solatium provided for Under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable Under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.
>
> 27. In our view the aforesaid statement of law is in accord with the sound principle 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."

Hence, the claimants are entitled to interest on enhanced amount of compensation, as determined by the Civil Court. Accordingly, we confirm the order passed by the Civil Court in O.P.No.21 of 1981.

Hence, the appeal and the cross-objections stand rejected.

Consequently, miscellaneous applications pending if any, shall also stand rejected. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

11.04.2016
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[1] AIR 1992 SC 2298

[2] (2005) 4 SCC 577

[3] (2008) 2 SCC 568

[4] AIR 2011 SC 54

[5] 2008 (11) SCALE 637

[6] 2014 (2) ALD 434 (DB)

[7] (1995) 3 Supreme Court Cases 74

[8] AIR2001SC3516