

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

**CIVIL REVISION PETITION Nos.4727, 4728, 4786, 4729,
4981, 4730 & 4731 of 2014 and 243 & 753 of 2015**

COMMON ORDER:

Among these revision petitions outcome of separate orders dated 22.08.2014 of the learned Senior Civil Judge, Narsapuram, West Godavari District, in E.P.No.6 of 2010 in LAOP.No.61 of 1988 (CRP.No.4727 of 2014) filed by the 4 decree holders against the J.Drs. i.e., LAO-Sub Collector, Narsapur and AP Housing Board, Hyderabad; in E.P.No.7 of 2010 in LAOP.No.66 of 1988 filed by decree holder against the J.Drs. supra by showing 3 private parties endorsed not necessary parties and filed by the LAO, 1st J.Dr. against the decree holder supra by showing Housing Board as 2nd respondent J.Dr.No.2 and the 3 private individuals endorsed not necessary parties (CRP.Nos.4728 & 4786 of 2014); in E.P.No.8 of 2010 in LAOP.No.63 of 1988 filed by one of the decree holders against the LAO J.Dr.No.1, among other decree holders KV Rao died represented by LR's respondent Nos.2 to 7, APHB 2nd J.Dr., SRM Rao died, SVR Murthy died, S.Venkayamma died, DRRS Kumar, DLCL Padmaja, G.Nagamani, S.Suryanarayana, S.Satyavathi, all endorsed not necessary parties, but for the LAO and APHB, J.Drs. supra and the other filed by LAO against the above other persons (CRP.Nos.4729 & 4981 of 2014; in E.P.No.9 of 2010 in LAOP.No.62 of 1988 filed by decree holder K.Satyanarayana since died by LR's KVN Rao and KVS Rao against the J.Drs. supra and by the LAO against the others supra (CRP.Nos.4730 of 2014 & 243 of 2015); in E.P.No.10 of 2010 in LAOP.No.64 of 1988 filed by decree holder against the J.Drs. supra by showing 3 private individuals as not necessary

parties and by the LAO against the others supra (CRP.Nos.4731 of 2014 & 753 of 2015).

Against the respective common order/award passed by the learned Senior Civil Judge dated 10.09.1999 in LAOP.Nos.61 to 69 of 1988 under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act'), appeals were maintained by the claimants respectively in A.S.Nos.441, 484, 605 & 1168 of 2000 against O.P.Nos.62, 63, 61 & 66 of 1988. The Division Bench of this Court by common judgment dated 25.09.2008 observed that the land acquired for purpose of housing scheme is Ac.26.74 cents in R.S.Nos.474, 469/A1, 469/A2A, 469/B1 covered by the notification and award No.4/88 dated 07.03.1988 and possession taken earlier to it on 10.02.1984; the LAO fixed market value at Rs.55,275/- per acre that was received under protest and on claims maintained and the reference Court confirmed the award passed by the LAO by dismissing the O.P.Nos.61, 62, 63 & 66 of 1988 and this Court by sitting in appeal as referred supra from appreciation of the evidence allowed the appeals in part by fixing market value of land at Rs.1,50,000/- per acre with all statutory benefits under the Act No.68/1984 and as declared by the Supreme Court in **Sunder Vs. Union of India**¹ and with no costs.

After the appeal judgment the decree holders in LAOP.No.61 of 1988 filed E.P.No.6 of 2010 supra decree for recovery of an amount of Rs.1,27,33,431.18 Ps. as on 22.02.2010 viz., as per the High Court judgment supra fixed Rs.1,50,000/- per acre for Ac.14.80 cents comes to Rs.22,20,000/- + 30% solatium thereon comes to Rs.6,66,000/- = Rs.28,86,000/- + 12%

¹ AIR 2001 SC 3516

additional market value from draft notification dated 30.12.1985 till date of award dated 17.03.1988 + 9% interest for one year and 15% interest further thereafter and by showing deduction of whatever the payments made by LAO of Rs.18,39,225.85 Ps. The J.Drs. filed counter impugning the said calculation, the impugned order passed by the lower Court in the execution petition seeking the relief for attachment of movable property of the J.Drs. and to bring to sale and realize the amount saying the calculation memo filed by LAO along with counter is accepted with liberty to the decree holders to appoint any arithmetical calculation errors in said calculation memo of the LAO with the observation that as per the law laid down by the Supreme Court, the decree holder/claimant is not entitled to the interest amount as claimed under Section 34 of the Act from the date of taking possession which is prior to publication of Section 4(1) notification. As per the expression of the Apex Court in **Sunder supra** interest is payable on solatium also. The Apex Court in subsequent expression of **RL Jain (D) By LRs. Vs. DDA and Others**² held interest amount cannot be awarded in cases where possession is taken prior to Section 4(1) notification of the Act and where land owner is entitled to rent or damage for such period. What the High Court in the appeal common judgment held is claimants are entitled to statutory benefits. Interest prior to date of taking possession cannot be awarded under Section 34 of the Act from the above, thereby the calculation filed by the decree holder is not in accordance with the provisions of the Act and settled principles in accepting the calculation memo of the LAO with observation of

² AIR 2004 SC 1904

claimants entitled to 12% additional market value from date of notification to date of award on the market value fixed in the appeal and also entitled to all statutory benefits including damages as shown in the calculation memo of the J.Dr. @ 9% per annum for the period of one year from the date of award and thereafter 15% per annum till date of payment. The calculation of the J.Dr. shows market value as per the High Court judgment is Rs.1,50,000/- per acre as against the market value fixed in the award of the LAO of Rs.55,275/- per acre and for the Ac.14.80 cents on said market value as above 30% solatium is calculated besides 9% per annum PPF rate from date of taking possession to date of draft notification that is from 10.02.1984 to 12.04.1986 besides 12% additional market value from draft notification dated 12.04.1986 to date of award on 17.03.1988 apart from interest for one year from date of award 17.03.1988 @ 9% p.a. and later @ 15% in showing the amount payable comes to Rs.1,06,56,855/- so far as the enhanced value by the High Court judgment concerned.

In E.P.No.7 of 2010 with similar calculation for Ac.2.12 cents the enhanced amount payable shown as Rs.15,26,524/- whereas the calculation memo of the decree holder in the EP is Rs.18,23,978/-.

In so far as E.P.No.8 of 2010 concerned, the decree holder shown for the Ac.2.02 cents market value as per the appeal judgment at Rs.1,50,000/- per acre with solatium and 12% additional market value from draft notification till date of award and 9% from date of possession for one year and thereafter at 15% and by showing the amount paid by LAO of Rs.2,51,029.45

Ps. on 17.03.1988 for a sum of Rs.17,37,522.75 Ps. Whereas the calculation filed by the LAO besides 30% solatium on the market value for damages/rent from the date of possession taken on 10.02.1984 till draft notification on 12.04.1986 and additional market value from said draft notification till date of award 17.03.1988 and interest @ 9% for one year from date of award and thereafter at 15% per annum comes to Rs.14,54,519/-.

Likewise in E.P.No.9 of 2010, the claim of the decree holder for Ac.3-99 cents as per the enhanced market value fixed by the High Court of Rs.1,50,000/- per acre with 30% solatium and 12% additional market value from date of draft notification 30.12.1985 till date of award and 9% from date of possession for one year and thereafter 15% p.a. by deduction of the amount paid by the LAO of Rs.4,95,845.25 Ps. in arriving of the amount at Rs.34,32,544.72 Ps. Whereas the calculation by the LAO is by showing on the enhanced market value, 30% solatium, damages/rent from date of possession on 10.02.1984 and 12% additional market value from date of draft notification on 12.04.1986 to date of award, and interest at 9% for one year from date of award and later at 15% showing the amount due of Rs.28,73,031/-.

Likewise in E.P.No.10 of 2010, the claim of the decree holder for Ac.0-48 cents as per the enhanced market value fixed by the High Court of Rs.1,50,000/- per acre with 30% solatium and 12% additional market value from date of draft notification 30.12.1985 till date of award and 9% from date of possession for one year and thereafter 15% p.a. by deduction of the amount paid by the LAO of Rs.59,650.55 Ps. in arriving of the amount at

Rs.4,12,985.18 Ps. Whereas the calculation by the LAO is by showing on the enhanced market value with 30% solatium, damages/rent from date of possession on 10.02.1984 till date of draft notification and 12% additional market value from date of draft notification on 12.04.1986 to date of award, and interest at 9% for one year from date of award and later at 15%, showing the amount due of Rs.3,45,630/-.

The contentions in the revision filed by the claimants/decreed holders respectively are that they are entitled to additional market value from the date of draft notification dated 30.12.1985 but not from last date of publication dated 12.04.1986 as per the law laid down in **Sunder supra** of statutory benefits the claimants/decreed holders are entitled as also held by the appeal judgment of High Court and thereby the lower Court's order accepting the J.Dr. calculation and not accepting decreed holders calculation is incorrect.

The grounds urged by the LAO are that the Court below failed to consider the revised calculation filed by the LAO dated 30.08.2011 stating earlier calculation memo dated 19.04.2011 is inadvertent outcome of calculating interest from draft notification to date of award and the lower Court instead of the calculation dated 19.04.2011 accepting the revised calculation filed by the J.Drs. of 30.08.2011.

The grounds since common respectively of the claimants/decreed holders vis-à-vis LAO/J.Dr. no way require repetition.

Heard both sides at length and perused the material on record.

Before coming to discuss on facts further, Coming to the legal position on solatium and interest, Section 34 CPC which deals with pendente-lite and post-lite interest concerned, (which is non substantive like a pre-lite interest either covered by a specific statute or by Interest Act, 1978 or by a contract, if not on equity or trade-custom and usage) clearly speaks as a general principle that 'omission to award interest tantamounts to refusal'. In the Land Acquisition Act, Section 23 or even Section 34 leave about any of the sections 1 to 54 there is no any specific provision contra or otherwise than the general principle of omission tantamounts to refusal of interest.

What is laid down in **Sunder supra** that is further clarified in **Gurpreet Singh's** case, which are the constitutional bench expressions of the Apex Court supra are only the guidance with reference to the above general principle under Section 34 Sub-section 2 CPC, even though Section 34 was not referred in the two constitutional bench expressions. The Sunder's expression on its perusal speaks the entitlement of interest on solatium even not specified by virtue of the expression with prospective affect.

Referring to **Sunder's** case in **Gurpreet Singh's** case (supra) it is clearly held, particularly in Paragraph No.54 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 the counsel to address us on that question. That question is whether in the light of the decision in **Sunder** supra, the awardee/deed-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's** case 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** Supra (19-9-2001) 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."

The market value fixed at Rs.1,50,000/- per acre respectively not in dispute. 30% solatium thereon as per Section 23(2) of the amended Act No.68/1984 with effect from 24.09.1984 for the awards made and orders passed after 30.04.1982 concerned, to apply not in dispute. So far as additional market value under Section 23(1-A) as per the amended provision of Act No.68/1984 with effect from 24.09.1984 incorporating for payment of 12% that is also applicable to the awards made and orders passed on or after 30.04.1982, which is from the date of Section 4(1) notification to date of award since possession taken long prior to Section 4(1) notification, this cannot be disputed. The amount what is paid already by the LAO is not in dispute respectively. So far as interest payable under Section 34 of the Act concerned, if the amount not paid on or before taking possession, interest payable is 6% from date of taking possession till amount paid or deposited, prior to the amended Act No.68/1984 with effect from 24.09.1984 and after that it is 9%

and as per the amended proviso to Section 34 if compensation not paid or deposited within one year from date of possession taken interest payable is 15% from expiry of one year period of taking possession.

Here prior to the amended Act No.68/1984 with effect from 24.09.1984 and prior to the draft notification dated 12.04.1986 possession was taken. If such is the case, even damages or rent or interest as the case may be from date of possession up to 24.09.1984 it shall be 6% and later it is 9% from reading of Section 34 of the Act and amended Act supra. Here in the J.Dr. calculation damages/rent from date of taking possession to draft notification at 9% i.e., from 10.02.1986 to 12.04.1986 on the market value with solatium was granted.

A perusal of the impugned orders of the learned Senior Civil Judge refers the expression of the Apex Court in **R.L. Jain supra** and observed therefrom of where possession taken prior to Section 4(1) notification concerned, the amount awarded to be payable with interest @ 9% p.a. from date of taking possession only if it have been paid or deposited to mean, where possession is taken prior to issuance of preliminary notification under Section 4(1) it is just and equitable that Collector may determine rent or damages for use of property to which land owner is entitled while determining the compensation amount payable to land owner for the acquisition of the property. For belated payment of such amount appropriate interest at prevailing bank rate may be awarded. Referring to it what the lower Court observed is LAO in their calculation shown awarding of damages/rent from date of

taking possession till date of Section 4(1) notification at 9% p.a. and beyond that for that period claimant is not entitled to any further interest under Section 34 of the Act though all the statutory benefits otherwise they are entitled from the expression of Sunder supra as per the Division Bench judgment of the High Court. Thus, the calculation of the interest under Section 34 of the Act at 9% for one year from the date of taking possession and thereafter at 15% p.a. does not arise in view of the expressions of the Apex court in **R.L. Jain supra** as rightly concluded by the lower Court.

Having regard to the above, so far as CRP.No.4727 of 2014 in E.P.No.6 of 2010 in O.P.No.61/1988 concerned, for the land of Ac.14.80 cents at Rs.1,50,000/- per acre it comes to Rs.22,20,000/-, 30% solatium thereon comes to Rs.6,66,000/- + 12% additional market value from date of draft notification on 12.04.1986 to the date of award on 17.03.1988 comes to Rs.5,10,600/- = Rs.33,96,600/-. 9% interest thereon (for damages/rent) from date of taking possession till draft notification i.e., 10.02.1984 to 12.04.1986 on said amount comes to Rs.6,62,337/-. As LAO paid compensation of Rs.18,39,226/- by the date of passing award that was accepted on protest, from the claimants are entitled under Section 60 of the Indian Contract Act under the Doctrine of appropriation to adjust the payment first out of the interest due and balance towards principal amount, out of said amount paid on deduction of the damages/rent/interest @ 9% from date of draft notification till date of award calculated at Rs.6,62,337/- from Rs.18,39,226/- comes to Rs.11,76,889/-, the balance amount is to be deducted

out of the principal amount of Rs.33,96,600/- = Rs.22,19,711/- as on 17.03.1988. Thus interest @ 15% on said amount of Rs.22,19,711/- from date of award dated 17/18.03.1988 till date of filing of EP on 17.03.2010 = Rs.73,25,046/-. The amount due as on 18.03.2010 from the J.Dr. to the decree holders comes to Rs.95,44,757/-. The decree holder is entitled to said amount with subsequent interest @ 15% p.a. on Rs.22,19,711/- from 18.03.2010.

Having regard to the above, so far as CRP.Nos.4728 & 4786 of 2014 in E.P.No.7 of 2010 in O.P.No.66/1988 concerned, for the land of Ac.2.12 cents at Rs.1,50,000/- per acre it comes to Rs.3,18,000/-, 30% solatium thereon comes to Rs.95,400/- + 12% additional market value from date of draft notification on 12.04.1986 to the date of award on 17.03.1988 comes to Rs.73,140/- = Rs.4,86,540/-. 9% interest thereon (for damages/rent) from date of taking possession till draft notification i.e., 10.02.1984 to 12.04.1986 on said amount comes to Rs.94,875/-. As LAO paid compensation of Rs.2,63,456.70 Ps. by the date of passing award that was accepted on protest, from the claimants are entitled under Section 60 of the Indian Contract Act under the Doctrine of appropriation to adjust the payment first out of the interest due and balance towards principal amount, out of said amount paid on deduction of the damages/rent/interest @ 9% from date of draft notification till date of award calculated at Rs.94,875/- from Rs.2,63,457/- comes to Rs.1,68,582/-, the balance amount is to be deducted out of the principal amount of Rs.4,86,540/- = Rs.3,17,958/- as on 17.03.1988. Thus interest @ 15% on said amount of

Rs.3,17,958/- from date of award dated 17/18.03.1988 till date of filing of EP on 17.03.2010 = Rs.10,49,261/-. The amount due as on 18.03.2010 from the J.Dr. to the decree holders comes to Rs.13,67,219/-. The decree holder is entitled to said amount with subsequent interest @ 15% p.a. on Rs.3,17,958/- from 18.03.2010.

Having regard to the above, so far as CRP.Nos.4729 & 4981 of 2014 in E.P.No.8 of 2010 in O.P.No.63/1988 concerned, for the land of Ac.2.02 cents at Rs.1,50,000/- per acre it comes to Rs.3,03,000/-, 30% solatium thereon comes to Rs.90,900/- + 12% additional market value from date of draft notification on 12.04.1986 to the date of award on 17.03.1988 comes to Rs.69,690/- = Rs.4,63,590/-. 9% interest thereon (for damages/rent) from date of taking possession till draft notification i.e., 10.02.1984 to 12.04.1986 on said amount comes to Rs.90,400/-. As LAO paid compensation of Rs.2,51,029.45 Ps. by the date of passing award that was accepted on protest, from the claimants are entitled under Section 60 of the Indian Contract Act under the Doctrine of appropriation to adjust the payment first out of the interest due and balance towards principal amount, out of said amount paid on deduction of the damages/rent/interest @ 9% from date of draft notification till date of award calculated at Rs.90,400/- from Rs.2,51,029/- comes to Rs.1,60,629/-, the balance amount is to be deducted out of the principal amount of Rs.4,63,590/- = Rs.3,02,961/- as on 17.03.1988. Thus interest @ 15% on said amount of Rs.3,02,961/- from date of award dated 17/18.03.1988 till date of filing of EP on 17.03.2010 = Rs.9,99,771/-. The amount due

as on 18.03.2010 from the J.Dr. to the decree holders comes to Rs.13,02,732/-. The decree holder is entitled to said amount with subsequent interest @ 15% p.a. on Rs.3,02,961/- from 18.03.2010.

Having regard to the above, so far as CRP.Nos.4730 of 2014 & 243 of 2015 in E.P.No.9 of 2010 in O.P.No.62/1988 concerned, for the land of Ac.3.99 cents at Rs.1,50,000/- per acre it comes to Rs.5,98,500/-, 30% solatium thereon comes to Rs.1,79,550/- + 12% additional market value from date of draft notification on 12.04.1986 to the date of award on 17.03.1988 comes to Rs.1,37,655/- = Rs.9,15,705/-. 9% interest thereon (for damages/rent) from date of taking possession till draft notification i.e., 10.02.1984 to 12.04.1986 on said amount comes to Rs.1,78,562/-. As LAO paid compensation of Rs.4,95,845.25 Ps. by the date of passing award that was accepted on protest, from the claimants are entitled under Section 60 of the Indian Contract Act under the Doctrine of appropriation to adjust the payment first out of the interest due and balance towards principal amount, out of said amount paid on deduction of the damages/rent/interest @ 9% from date of draft notification till date of award calculated at Rs.1,78,562/- from Rs.4,95,845/- comes to Rs.3,17,283/-, the balance amount is to be deducted out of the principal amount of Rs.9,15,705/- = Rs.5,98,422/- as on 17.03.1988. Thus interest @ 15% on said amount of Rs.5,98,422/- from date of award dated 17/18.03.1988 till date of filing of EP on 17.03.2010 = Rs.19,74,792/-. The amount due as on 18.03.2010 from the J.Dr. to the decree holders comes to Rs.25,73,214/-. The decree holder is entitled to said amount

with subsequent interest @ 15% p.a. on Rs.5,98,422/- from 18.03.2010.

Having regard to the above, so far as CRP.Nos.4731 of 2014 & 753 of 2015 in E.P.No.10 of 2010 in O.P.No.64/1988 concerned, for the land of Ac.0.48 cents at Rs.1,50,000/- per acre it comes to Rs.72,000/-, 30% solatium thereon comes to Rs.21,600/- + 12% additional market value from date of draft notification on 12.04.1986 to the date of award on 17.03.1988 comes to Rs.16,560/- = Rs.1,11,160/-. 9% interest thereon (for damages/rent) from date of taking possession till draft notification i.e., 10.02.1984 to 12.04.1986 on said amount comes to Rs.21,481/-. As LAO paid compensation of Rs.59,650.55 Ps. by the date of passing award that was accepted on protest, from the claimants are entitled under Section 60 of the Indian Contract Act under the Doctrine of appropriation to adjust the payment first out of the interest due and balance towards principal amount, out of said amount paid on deduction of the damages/rent/interest @ 9% from date of draft notification till date of award calculated at Rs.21,481/- from Rs.59,650/- comes to Rs.38,169/-, the balance amount is to be deducted out of the principal amount of Rs.1,11,160/- = Rs.72,991/- as on 17.03.1988. Thus interest @ 15% on said amount of Rs.72,991/- from date of award dated 17/18.03.1988 till date of filing of EP on 17.03.2010 = Rs.2,40,870/-. The amount due as on 18.03.2010 from the J.Dr. to the decree holders comes to Rs.3,13,861/-. The decree holder is entitled to said amount with subsequent interest @ 15% p.a. on Rs.72,991/- from 18.03.2010.

With the above observations, all the revision petitions are disposed of for the Executing Court to proceed further for recovery of what is due from the above to respective decree holders of respective execution petitions after deducting any further payments/deposits if made, by respective mode of execution as sought.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 09.02.2018
ska

