

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NOS. 5048 & 5088 OF 2001

DATE:05.01.2018

Between :

- 1.Yarlagadda Narayana Apparao, (died per LR petitioner No.2)
- 2.Y.N.C.Chowdary s/o. Narayana Apparao, Aged 33 years,
occu:Cultivation, Samalkot, Samalkot Mandal.

.... Petitioner/DHR

And

Land Acquisition Officer and Revenue Divisional Officer,
Kakinada and others.

..... Respondent/JDR

This Court made the following :



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COMMON ORDER:

These two revision petitions are filed by the Decree-holders aggrieved by the order passed by the Executing Court in E.P.No.66 of 1995 and EP No.172 of 1993, dated 08.08.2001 dismissing the Execution Petitions holding that the entire amount to which the decree holders are entitled was paid. These revisions are taken up for consideration on remand from Supreme Court in *Food Corporation of India, Kakinada rep.by District Manager v. Yarlagadda Narayana Apparao and others* (2008 (8) SCJ 178).

2. The facts as can be culled out from the record, to the extent necessary are as follows:

Two parcels of land belonging to petitioners, Acs.21.34 in Sy.No.301/2, and Acs.10.18 of land in Sy.No.301/3 was acquired under the Land Acquisition Act, 1894 (Act, 1894). Award No.2 of 1983 was made on 30.06.1983. Possession of total extent of Acs.31.52 was taken on 28.02.1983. The Land Acquisition Officer fixed the market value of the land at Rs.16,000/- per acre and accordingly, determined the compensation which includes additional market value and solatium as provided under Section 23 (1-A) and (2) of the Act. Not satisfied with the compensation determined by the Land Acquisition Officer, decree holders sought reference to the Civil Court. As per said request, reference was made, registered as O.P.No.76 of 1984. The civil Court passed its award dated 07.04.1986, enhancing the market value to Rs.39,880/- per acre. Consequently, the decree holders are entitled for the other benefits contemplated under Section 23 (1-A)

and 2 of the Act, in addition to the interest contemplated under Section 28 of the Act. Not satisfied with the said award of the Civil Court, both, the Land Acquisition Officer and the decree holders preferred appeals in A.S.No.1870 of 1986 and A.S.No.1497 of 1987 respectively. The appeal filed by the Land Acquisition Officer was dismissed while the appeal filed by the decree holders/claimants was allowed, fixing the market value of the land at Rs.80,000/- per acre instead of Rs.39,880/- as fixed by the civil Court.

3. Issue which is yet to be resolved is payment of appropriate compensation. This is third round of Revision Petition. These revisions, though earlier disposed of, are remanded from the Supreme Court to consider respective claims on principles to work out appropriate compensation payable to petitioners.

4. Petitioners filed instant EPs alleging denial of compensation amount payable to them. By order dated 19.06.1998 passed by the Executing Court, the decree holders were held entitled to receive the balance decretal amount of Rs.40,22,960/-. On a challenge by the Land Acquisition Officer in C.R.P.No.3630 of 1998, this Court set aside the order with a direction to re-examine the issue in the light of the calculation memo already filed as well as to be filed. Thereafter, the decree holders again filed fresh calculation memo showing the balance total amount payable to both the decree holders at Rs.39,38,570.97 Ps as on 18.01.1999. Counter calculation memo was filed by the judgment debtor/Land Acquisition Officer showing that the claimants are entitled only to a sum of Rs.2,14,132/- as on 17.02.1994. It was further contended by the Land Acquisition Officer that the claimants are

not entitled to any interest on the said amount. Thereafter, the Executing Court passed order dated 23.02.1999 directing the judgment debtor to deposit the balance amount of Rs.33,11,023/- as on 18.02.1999 with subsequent interest at 15% per annum on Rs.14,59,396/- from 19.02.1999 till the date of deposit of the amount. At that stage, the Food Corporation of India (FCI), which is the beneficiary of the acquired land, filed E.A.Nos.198 and 199 of 1999 to implead in the two Execution Petitions. The said EAs were dismissed by the Executing Court on 29.07.1999.

5. Aggrieved thereby, FCI filed CRP Nos.3546 and 3548 of 1999. This Court allowed the CRPs and accordingly, FCI was added as third respondent in the Execution Petitions. FCI disputed the maintainability of the Execution Petitions and filed a calculation memo showing various payments and the mode of calculation of the compensation. The Executing Court, accepting the contention of the FCI, which relied upon the decision of the Apex Court in the case of **Prem Nath Kapur vs. National Fertilizers Corporation of India Limited**¹, held that the additional market value and the solatium are different components and dismissed the Execution Petitions. Aggrieved thereby, present revision petitions are filed.

6. It was contended that compensation includes additional market value and solatium and interest is payable on additional compensation. It was contended that the Executing Court was in error in treating the additional market value and the solatium as different components than the market value and holding that the

¹ (1996) 2 SCC 71

claimants are entitled for interest only on the market value and not with reference to the other two components. Reliance was placed on Constitution Bench decision of the apex Court in the case of **Sunder v. Union of India**² and contended that **Prem Nath Kapur** is no more good law.

7. On behalf of FCI, it was contended that when certain payments have been made, those amounts have to be appropriated against the principal amount of compensation and on such adjustment made, the petitioners/deGREE holders are not entitled to further amounts.

8. This Court held that Executing Court erred in accepting the calculation memo filed by the respondents by relying on the decision in **Prem Nath Kapur**. This Court observed that in view of the later decision in **Sunder**, judgment in **Prem Nath Kapur** is no more good law. This Court observed that the calculation memo dated 21.03.2005 filed by the respondents, without computing additional market value and solatium as one unit of compensation, is not legal and not in accordance with the judgment in **Sunder**. On analysis of various claims vis-à-vis the calculation memo filed by the petitioner, the Court accepted the method of appropriation as to the payments as computed in the calculation memo filed by petitioners. Court also observed that first payment has to be adjusted against the amount of compensation including interest with reference to the award passed by the Land Acquisition Officer and it is not open to the respondents to claim the amount paid against the award passed by the Land Acquisition Officer to be

² (2001) 7 SCC 211

adjusted against the amount of market value or compensation awarded by the reference Court and the appellate Court. It is further held that even the interest forms part of the compensation for the purpose of making good the loss caused to the owner of the land and, therefore, this Court rejected the contention of the respondents that petitioners claimed interest on interest. Accordingly, CRPs were allowed by judgment dated 13.03.2005 setting aside order in EP Nos.172 of 1993 and 66 of 1995 dated 08.08.2001. Executing Court was directed to re-compute the compensation basing on the calculation memo dated 07.03.2005 filed by the petitioners by making necessary corrections as pointed out in the order.

9. Aggrieved thereby, the FCI preferred Civil Appeal Nos.5725-5726 of 2008. On behalf of appellants, it was urged that High Court erred in holding that the decision in **Prem Nath Kapur** was overruled in **Sunder** and the same is erroneous. It was also contended that in **Gurpreet Singh v. Union of India**³, Supreme Court upheld the view taken in **Prem Nath Kapur**.

10. The judgment in Civil Appeals was rendered on 17.09.2008 (reported in 2008 (8) SCJ 178 as *Food Corporation of India, Kakinada rep.by District Manager v. Yarlagadda Narayana Apparao and others*). After extracting relevant paragraphs in **Gurpreet Singh**, Supreme Court observed that it would be appropriate for the High Court to consider the matter afresh in view of the observations of the Supreme Court in **Gurpreet Singh**, extracted

³ (2006) 8 SCC 457

in paragraph-5. Accordingly, the matter was remitted to this Court for fresh consideration.

11. Heard learned counsel Sri G.Krishnamurthy, for the petitioners, learned Advocate General for Land Acquisition Officer and learned senior counsel Sri Vedula Venkata Ramana for the Railways.

12. Learned counsel for petitioners submitted that in view of the judgment of this Court in A.S.Nos.1870 of 1986 and 1497 of 1987, petitioners are entitled to interest @ 9% on the excess amount of compensation awarded, from the date on which respondents took possession of the land to the date of payment of excess compensation and thereafter @ 15% till the date of payment. This judgment has become final. In terms thereof, petitioners are entitled to higher amounts, whereas far less amount was paid. In view of judgment in **Gurpreet Singh**, the view taken by Executing Court and rejecting calculation Memo was erroneous. Wrong calculations were made by respondents. Appropriation was not made as per judgments in **Sunder** and **Gurpreet Singh**. Interest on solatium was not computed. Learned counsel for petitioner submitted calculation memo working out the amounts payable under various heads covering various periods. In all, according to counsel for petitioners, petitioners are entitled to an amount of Rs.1,80,40,016.80/-.

13. Learned senior counsel appearing for Railways submits that petitioners made unreasonable assessment of claims, whereas said claims are not maintainable. Though learned senior counsel fairly submits that in view of judgment of Supreme Court in **Gurpreet**

Singh case, and in view of the judgment of Division Bench in AS Nos.1870 of 1986 and 1497 of 1987, petitioners are entitled to claim interest on solatium, but petitioners are not entitled to the amounts claimed by them. He would submit that according to the assessment made by the Land Acquisition Officer and the claims statement filed by the learned Advocate General, petitioners are entitled to far less amount than what is claimed by them. He further submits that Railway authorities have serious objection even on the calculation made by the Land Acquisition Officer and since heavy amounts claimed by the petitioners are payable by Railways, they be given due opportunity to work out the claims that can be paid and only after calculations are arrived at and if the petitioners are entitled to higher amounts, the same would be paid. He therefore submits that the issue of determination of amounts payable to petitioners be left to be decided by the Executing Court by affording due opportunity and submits that the matter be remitted to the Executing Court for this purpose.

14. Learned counsel appearing for the learned Advocate General would submit that as per the calculation made by the Land Acquisition Officer, appropriate amounts were paid at the first stage and same cannot be reviewed at this stage. As per the enhancement granted by the reference Court and by the appellate Court, appropriate amounts are worked out and in terms thereof, far less amount is required to be paid and the amount claimed by the petitioners is exorbitant.

15. As noted from the contentions recorded above, in view of the decisions of Supreme Court in **Prem Nath Kapur, Sunder** and

Gurpreet Singh cases, there is no serious debate on issue of interest on solatium and method of appropriation. Having regard to the order that is proposed, the Court is not entering into details of respective claims on amounts payable, based on the calculation memos filed by the petitioners and the Land Acquisition Officer and leave it to be undertaken by Execution Court. Thus, only issue to be decided is whether petitioners are entitled to appropriation and interest on solatium.

16. To appreciate these aspects, it is necessary to briefly consider three important decisions rendered by the Supreme Court i.e., **Prem Nath Kapur, Sunder** and **Gurpreet Singh**.

17. First of the decisions which has relevance is **Prem Nath Kapur**. In **Prem Nath Kapur**, briefly noted, the facts are, on the award being made, the Collector had paid the compensation including solatium and interest determined under the award. When the High Court enhanced the compensation, the enhanced compensation also was deposited. When some further amounts were awarded by the High Court on the basis of damages for severance and subsequently, it enhanced the solatium and interest and the additional amount payable under Sections 23(2), 28 and 23(1-A) as amended. The decree-holder laid execution, firstly, after appropriating the amount received towards costs, then towards interest on the total compensation and solatium and then towards the land value. Though the executing court allowed the claim, the High Court set aside that order and remanded the execution case for fresh disposal according to the directions contained in that order. The directions issued by the High Court were challenged before Supreme Court.

17.1. In **Prem Nath Kapur**, two issues considered were, when does the liability of the State to pay interest cease? And whether the owner of the land is entitled to appropriate from the amount deposited towards costs and then towards interest and then principal amount and again interest on total amount?

17.2. Supreme Court held that liability to pay interest on the amount of compensation determined under Section 23 (1) of the Act continues to subsist until it is paid to the owner/deposited into the Court under Section 34 read with Section 31. Similarly, liability to pay interest on excess amount of compensation determined by the civil Court under Section 26 over and above the compensation determined by the Collector/Land Acquisition Officer under Section 11 subsists until it is deposited into the Court. It is further held that computation of interest should be calculated from the date of taking possession till the date of payment/deposit. Supreme Court further held that compensation under Section 23(1), by necessary implication, excludes liability to pay interest on solatium. Equally, the question of payment of solatium on additional amount and interest on additional amount on other components, except on compensation or excess compensation or part thereof, over and above the award under Section 11, is not payable. Supreme Court held that liability to pay interest arises as and when the compensation is further enhanced and liability to pay interest would be coterminous with the payment of the amount under Section 34 or enhanced amount granted under Section 28 or Section 54 from the date of payment/taking possession till the date of deposit of such excess

amount into the Court. The liability to pay interest is only on the excess amount of compensation determined and paid/deposited.

18. A three judge bench of Hon'ble Supreme Court, noticing conflict of views in various judgments of Supreme Court on the question as to whether "State is liable to pay interest on the amount envisaged under Section 23 of the Act, on solatium matter was referred to larger bench. In **Sunder**, on analysis of various provisions of the Act, larger Bench of Supreme Court held that, "there can be no doubt that all the three heads specified in the three sub-sections in Section 23 are the sums, to be 'awarded by the Court'. Hence, the words 'every award under this part' cannot be treated as award after delinking the amounts awarded under sub-section (1-A) or sub-section (2) of Section 23. (paragraph 23).

18.1. In paragraph-24, Supreme Court observed as under:

"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 under Section 34 was not in

the contemplation of the legislature when that section was framed or enacted.”

18.2. The view taken by this Court in **B.Ravinder Reddy Vs. Special Dy.Collector, Land Acquisition (Industries)**⁴ was approved. Supreme Court further held that view taken by Punjab and Haryana Court in **State of Punjab and Haryana vs. Kailashwati**⁵ is based on sound principle of interpretation. In **Kailashwati**, P&H Court held that solatium forms integral and statutory part of compensation awarded to land owner and interest is payable on the compensation awarded and not merely on the market value of the land. It is further held that interest awardable under Section 28, therefore, would include, within its ambit, both the market value and the statutory solatium.

19. After the judgment in **Sunder**, when similar matters came up for consideration before Supreme court, Supreme Court noticed that only the issue of payment of interest on solatium and additional amount of compensation decided in **Prem Nath Kapur** was over ruled, but the issue of mode of appropriation was not considered by the Constitutional Bench in **Sunder**. Therefore, question whether part of judgment in **Prem Nath Kapur** dealing with mode of appropriation would survive reasoning in **Sunder**, required re-consideration. Further, it was also observed that correctness of the view expressed in **Prem Nath Kapur** on appropriation required reconsideration and referred the issue for consideration by the Constitutional Bench.

⁴ AIR 1981 AP 381

⁵ AIR 1980 P&H 117

20. In **Gurpreet Singh**, the question for consideration by the Constitution Bench was whether rule of what may be called the different stages of appropriation, set out in **Prem Nath Kapur** is correct or whether the rule requires to be restated on the scheme of Land Acquisition Act understood in the context of the general rules relating to appropriation and the rules relating to appropriation in execution of money decrees and mortgage decrees.

21. In **Gurpreet Singh**, Supreme Court observed as under:

“50. It is true that the understanding of the expression “compensation awarded” for the purpose of Section 28 of the Act in *Prem Nath Kapur* [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] was modified. To that extent one strand of reasoning in *Prem Nath Kapur* [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] also stands discredited. But as we see it, on the question of appropriation, the decision in *Sunder* [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] does not have such an impact as to compel us to jettison the reasoning adopted in *Prem Nath Kapur* [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] . Slightly deviating from the reasoning in *Prem Nath Kapur* [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] we have indicated earlier that even going by Order 21 Rule 1 of the Code, the position would be as envisaged in *Prem Nath Kapur* [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] . That apart, **we are inclined to respectfully agree with the reasoning in Prem Nath Kapur [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] that on the wording of Section 34 and Section 28 of the Act read with and understood in the light of the stages of the award of compensation, the question of appropriation would be at different stages and a decree-holder would not be entitled to reopen the entire transaction to claim a reappropriation of the amounts already received by him and appropriated at that particular stage. The reliance on the doctrine of merger does not enable the decree-holder to get over the scheme adopted by the Act.**

51. *Prem Nath Kapur* [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] also indicates that when the decree itself specifies the amount payable under different heads (the decree has to do so under Section 26 of the Act) and amounts are deposited towards those different heads, the appropriation would be on the basis of the direction under the decree which must be taken to be one for crediting the various sums paid under particular heads. On the scheme of the Act, especially the wordings of Section 34 and Section 28 of the Act, it is not possible to say that the said approach made in *Prem Nath*

Kapur [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] is erroneous or is unreasonable or is not (*sic*) a line of approach that is not warranted. Therefore, when the judgment-debtor State makes a deposit along with the calculation appropriating distinct sums towards various heads of compensation as awarded by the Reference Court or by the appellate court in the appellate decree, and the amount is received by the decree-holder, the decree-holder must be taken to be not entitled to seek an appropriation as if the judgment-debtor has not made any intimation and that he is entitled to appropriate at his volition. Considering the scheme of compensation under the Act in the context of the specific nature of the items specifically referred to in Section 23 of the Act, we are of the view that the approach adopted in *Prem Nath Kapur* [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] is justified. A reappropriation by seeking to reopen the satisfaction already rendered might result in interest being made payable even on that part of the principal amount that had already been deposited and received by the decree-holder and that would be in the realm of unjust enrichment.

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53. Thus, on the whole, *we are satisfied that the essential ratio in Prem Nath Kapur [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] on appropriation being at different stages is justified though if at a particular stage there is a shortfall, the awardee-decree-holder would be entitled to appropriate the same on the general principle of appropriation, first towards interest, then towards costs and then towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment-debtor while making the deposit intimating the decree-holder of his intention.* We, thus, approve the ratio of *Prem Nath Kapur* [(1996) 2 SCC 71 : 1995 Supp (5) SCR 790] on the aspect of appropriation.” (emphasis supplied)

22. In view of principle laid down in **Prem Nath Kapur**, approved in **Gurpreet Singh**, appropriation is at different stages. However, at a particular stage, if there is a shortfall, the decree holder is entitled to appropriate same, first towards interest, then towards costs and then towards principal. As held by the Supreme Court in **Prem Nath Kapur** and upheld in **Gurpreet Singh**, if amount deposited did not indicate towards specified heads, it is permissible to appropriate by applying general principle of appropriation, subject of course if there was a shortfall of total

amount payable. Further, it appears the Land Acquisition Officer has not specified various headings under which the amounts were deposited. In view thereof, in the instant case, if there was shortfall of the amount deposited, at different stages of determination of compensation/enhancement of compensation, petitioners are entitled to appropriate first towards interest, then towards costs and then towards principal amount.

23. In **Gurpreet Singh**, Supreme Court also considered the issue of claim of interest on solatium, even though not specifically granted in the decree. Supreme Court held that unless claim for interest on solatium is expressly rejected by reference Court or the appellate Court, or claim was not made at all, 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.

24. In the case on hand, in AS Nos.1870 of 1986 and 1497 of 1987, it was specifically contended that civil Court failed to grant interest on solatium and 12% interest per annum under Section 23-A of the Act. By following decision of this Court in **B.Ravinder**, Division Bench held that interest is payable on solatium also.

24.1. It is useful to extract the relevant portion of the judgment of the Division Bench in Appeal Nos.1870 of 1986 and 1497 of 1987. It reads as under:

“The Civil Court adopted the yardage basis and gave deduction of 20% towards development and then awarded compensation at Rs.39,880/- per acre. It awarded solatium at 30% in accordance with Section 23 (2) and it also awarded

interest at 15%; it granted 12% towards additional compensation under Section 23 (1)(a) but it has not awarded interest on solatium. ***It is laid down by a Division Bench of this Court in R.Ravinder v. Spl. Dy.Collector, L.A., that it is the duty of the Court to grant solatium as well as the interest if other conditions are satisfied and thus interest is payable on solatium also. This decision is binding on us and it should also be remembered that all statutory benefits that are liable to be granted under the Act have necessarily to be granted by the Court.*** Hence, we direct that in addition of the compensation at the rate of Rs.80,000/- per acre, the claimants are entitled to solatium at 30% under Section 23 (2) of the Act; the claimants are also entitled to 12% additional compensation under Section 23 (1)(a) and ***they will be entitled to interest from the date of taking possession i.e., 28.02.1983.*** They will be entitled for interest on the excess compensation at the rate of 9% from the date on which they took possession of the land to the date of payment of the excess compensation and thereafter at 15% till the date of payment.” (emphasis supplied)

25. One other issue considered by the Supreme Court in **Gurpreet Singh** is with reference to cut-off date in applying interest on solatium. In paragraph-54, Supreme Court clarified that as the judgment in **Sunder** was decided on 09.09.2001 interest on solatium can be claimed only in pending executions and not in closed executions and entitled to permit its recovery from the date of judgment in **Sunder** only and not for any prior period. With reference to this observation, learned senior counsel was requested to assist the Court on the scope of application of claims for interest by the petitioners.

25.1. Having regard to the judgment of the Division Bench in two appeals, extracted above, learned senior counsel fairly submitted that since the appellate Court has awarded interest on solatium

and issued clear directions, the cut-off date indicated in **Gurpreet Singh** has no application to the case on hand.

25.2. Thus, petitioners are entitled to interest on solatium.

26. Following the principles laid down by Supreme Court in the above decisions, compensation and interest payable to petitioners has to be worked out as under:

i) Petitioners are entitled to interest on solatium as per decree in A.S.Nos.1870 of 1986 and A.S.No.1497 of 1987.

ii) The appropriation is at different stages and petitioners are not entitled to reopen the entire transaction to claim re-appropriation of amounts already received by them. The petitioners are not entitled to claim interest on the principal amount already received. However, if there was a shortfall of amount payable to them at various stages, they are entitled to appropriate first towards interest, then towards costs and then towards principal.

iii) As seen from record, this court directed depositing of certain amount and liberty to withdraw the same. The amount withdrawn, if any, shall be appropriated towards interest, then towards costs and the balance towards principal as on date of withdrawal of the amount and claim interest on the balance amount of enhanced compensation. Petitioners are not entitled to interest towards amount appropriated from out of such withdrawn amount.

27. The Civil Revision Petitions are allowed. Matters are remitted to the Execution Court for consideration of claims of petitioners. The Execution Court shall permit respective parties to file

Calculation Memos. Duly assess respective claims having regard to principles of determination noted above and pass appropriate order as deemed fit and proper in the interest of justice. Having regard to long history of litigation, Execution Court is requested to dispose of the Execution Petition Nos.66 of 1995 and 172 of 1993 expeditiously, preferably within three months from the date of receipt of copy of this order. Petitioners as well as respondents shall exchange respective Calculation Memos and file them within six weeks from the date of receipt of copy of this order.

Miscellaneous petitions if any pending in these revision petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 05.01.2018
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