



C.R.P.(NPD).No.860 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.860 of 2011
and M.P.Nos.1 & 2 of 2011

The Nilgiris District Co-Operative Milk
Producers Union,
Rep. By its General Manager,
Udhagamandalam.
(Impleaded as per order in E.A.No.60/09
dated 07.12.2009)
Petitioner

..

Vs.

Cassim sait (Since deceased)
1.Ahmed Sait
Ali Sait (Since deceased)
2.Zulaika Alias Sherein
3.Hanifa Zaveed alias Yasmin
4.Sarah Oomer @ Shamima
5.Amina Faisel Patel @ Parveen
6.Zainab Gaya @ Nasreen
7.Tahseen Zaffar
8.Abdul Rahaman Cassim Said
9.Rashida
10.Fakeer Mohammed @ Junaid
11.Humairae Ayub
12.The Land Acquisition Officer
and Sub-Collector,



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Coonoor.

.. Respondents

(respondents 9 to 11 - LRs of Ali Sait
impleaded as per order in
E.A.No.17/2009 dated 08.06.2009)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 08.02.2011 made in E.P.R.No.17 of 2008 in L.A.O.P.No.13 of 1989 on the file of the District Court, the Nilgiris, Ootacamund.

For Petitioner : Mr.G.Muniratnam

For Respondents : No appearance (For R1, 8 & 10)

No appearance (For R2 to 7, 9 & 11)

Mr.D.Gopal (For R12)
Government Advocate (CS)

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the order and decree dated 08.02.2011 made in E.P.R.No.17 of 2008 in L.A.O.P.No.13 of 1989 on the file of the District Court, the Nilgiris, Ootacamund.



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2.The petitioner is 2nd respondent in E.P.R.No.17 of 2008 on the file of the District Court, the Nilgiris, Ootacamund, filed by the respondents 1 to 11 herein, along with the deceased Cassim Sait. The 12th respondent is Land Acquisition Officer. At the request of the petitioner, the 12th respondent, after following the procedure, acquired 11.32 acres for the purpose of putting up newly proposed Diary Complex consisting of Milk Reception and processing wing, milk by-products wing, including cheese plant, cold storage, dairy stores and cattle feed stores, boiler room, etc. The 12th respondent passed an award dated 26.08.1981, fixing the value of the land at Rs.50,000/- per acre and fixed Rs.150/- for trees standing in Survey No.1106/4a3 and Rs.1552.50/- for crops standing in the land acquired, together with interest at the rate of 4% from the date of possession, till the date of deposit. The 12th respondent also awarded 15% solatium for the amount fixed. The petitioner calculated the amounts payable as per the award and deposited a sum of Rs.6,69,599.70/- on 26.08.1981. The respondents 1 to 11/the land owners withdrew the



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amount deposited, on 29.08.1981. The land owners filed O.P.No.38 of 1981 before the Sub Court, Uthagamandalam, for enhancement of compensation. The learned Sub Judge fixed the value of the land at Rs.5,00,000/- per acre, Rs.1702.50/- for crops and trees, 15% for solatium together with interest at the rate of 4% from the date of possession i.e., 05.01.1981 to till the date of award i.e., 26.08.1981. The 12th respondent filed First Appeal in A.S.No.388 of 1984 before this Court. This Court, in C.M.P.No.7917 of 1984 in A.S.No.388 of 1984, granted stay on condition to deposit entire enhanced amount. Challenging the said order made in C.M.P.No.7917 of 1984, the 12th respondent filed L.P.A.No.71 of 1984. The Division Bench of this Court, by order dated 17.09.1984 in C.M.P.No.12781 of 1984 in L.P.A.No.71 of 1984, directed the petitioner to deposit Rs.15,00,000/-. As per the said order, the petitioner deposited a sum of Rs.15,00,000/- on 18.10.1984. The respondents 1 to 11/land owners withdrew the said amount. Again, this Court, by the order dated 19.12.1985, directed the petitioner to deposit further sum of Rs.15,00,000/-. Aggrieved by the said order dated 19.12.1985, S.L.P.No.3797 of 1986 was filed by the petitioner and the



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same was dismissed. Subsequent to dismissal of S.L.P., the petitioner deposited another sum of Rs.15,00,000/- on 15.04.1986. The respondents 1 to 11/land owners withdrew the said amount.

3.This Court, by the judgment and decree dated 11.08.1988, allowed the First Appeal in A.S.No.388 of 1984, setting aside the award of the learned Sub Judge in O.P.No.38 of 1981 dated 26.09.1983 and remanded back the O.P. to the learned District Judge and the said O.P.No.38 of 1981 was renumbered as L.A.O.P.No.13 of 1989. Aggrieved by the judgment in the First Appeal, the respondents 1 to 11/land owners filed S.L.P.No.10133/1988 and the same was dismissed on 30.09.1988, directing the learned District Judge to dispose the L.A.O.P.No.13 of 1989 within a period of four months from the date of copy of that order. The learned District Judge, by the order dated 09.05.1996, fixed the land value at Rs.2,40,000/- per acre together with interest at 12% for the value fixed and granted 30% solatium and confirmed the value fixed for trees and crops. Aggrieved by the said order, the 12th respondent filed First Appeal in A.S.No.237 of 1997 and the same



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was dismissed on 11.08.2006. The respondents 1 to 11 filed E.P.R.No.17 of 2008 in L.A.O.P.No.13 of 1989. Pending E.P.R, the petitioner deposited further sum of Rs.9,36,286.40/- on 06.05.2010 and the same is pending in the deposit to the credit of E.P. The learned District Judge directed the petitioner to deposit Rs.25,26,996.30/- on or before 08.03.2011.

4.Challenging the said order dated 08.02.2011 made in E.P.R.No.17 of 2008 in L.A.O.P.No.13 of 1989, the present Civil Revision Petition is filed.

5.The learned counsel appearing for the petitioner reiterated the above averments and contended that the learned Judge failed to consider that the petitioner deposited Rs.36,69,599.70/- and the said amount was already withdrawn by the land owners in the year 1986 itself. The order of the learned District Judge made in L.A.O.P.No.13 of 1989 is passed only on 09.05.1996, after 10 years of withdrawal of entire amount deposited by the petitioner. The learned District Judge, in L.A.O.P.,



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ordered 12% interest only on the land value fixed and no interest was ordered on solatium. The learned Judge, in the E.P., calculated interest on solatium also and directed the petitioner to deposit the said amount. The compensation amount has been deposited by the petitioner to the tune of Rs.36,66,599.70/- and the same was withdrawn by the land owners on 11.05.1981, 28.08.1981, 17.10.1984 and 15.04.1986. The learned Judge without taking note of the said fact, committed an error in calculating the interest for compensation and solatium, as if the petitioner has deposited the award amount subsequent to the order dated 09.05.1996 in L.A.O.P.No.13 of 1989. The learned Judge has committed an error in calculating interest at the rate of 12% for the entire period from 11.05.1981 to till the date of realization. The petitioner had already deposited the compensation amount and the entire amount was withdrawn by the land owners as early as in the year 1986 itself. The petitioner deposited the amount without waiting for the order passed in L.A.O.P.No.13 of 1989. The learned Judge ought to have held that the land owners have already withdrawn the entire amount with interest and hence, they are not entitled to claim anything in the E.P.R.No.17 of 2008.



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Pending E.P., the petitioner has also made erroneous calculation and deposited further sum of Rs.9,36,286/- over and above the amount of Rs.36,69,599.70/- on 20.04.2010. After remand, the learned Judge passed the order in L.A.O.P.No.13 of 1989 only on 09.05.1996. Before the said order, the petitioner deposited more than the amount awarded. The land owners are entitled to interest at the rate of 12% only on the land value, if entire amount is not deposited. The learned Judge, without considering the fact that entire amount was deposited as early as in the year 1986 itself, committed an error in awarding interest on solatium, cost for trees and crops, etc. The judgments relied on by the learned Judge are totally different from the facts and circumstances of the present case. The learned counsel appearing for the petitioner contended that the petitioner is liable to pay interest only on Rs.1,90,000/-, after deducting Rs.50,000/- fixed by the Land Acquisition Officer and not on Rs.2,40,000/-. The learned counsel for the petitioner relied on para nos.27 and 31 of the judgment of the Hon'ble Apex Court reported in **(2006) 8 SCC 457 [Gurpreet Singh Vs. Union of India]**, which reads as follows:

“27.As an illustration, we can take the following



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situation. Suppose, a decree is passed for a sum of Rs.5,000/- by the trial court along with interest and costs and the judgment debtor deposits the same and gives notice to the decree holder either by approaching the executing court under Order XXI Rule 2 of the Code or by making the deposit in the execution taken out by the decree-holder under Order XXI Rule 1 of the Code. The decree holder is not satisfied with the decree of the trial court. He goes up in appeal and the appellate court enhances the decree amount to Rs.10,000/- with interest and costs. The rule in terms of Order XXI Rule 1, as it now stands, in the background of Order XXIV would clearly be, that the further obligation of the judgment debtor is only to deposit the additional amount of Rs. 5,000/- decreed by the appellate court with interest thereon from the date the interest is held due and the costs of the appeal. The decree holder would not be entitled to say that he can get further interest even on the sum of Rs.5,000/- decreed by the trial court and deposited by the judgment debtor even before the enhancement of the amount by the appellate court or that he can re-open the transaction and make a re-appropriation of interest first on Rs.10,000/-, costs and then the principal and claim interest on the whole of the balance sum again. Certainly, at both stages, if there is short-fall in deposit, the decree holder may be entitled to apply the deposit first towards interest, then towards costs and the balance towards the principal. But that is different from saying that in spite of his deposit of the amounts decreed by the trial court, the judgment debtor would still be liable for interest on the whole of the principal amount in case the



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appellate court enhances the same and awards interest on the enhanced amount. This position regarding execution of money decrees has now become clear in the light of the amendments to Order XXI Rule 1 by Act 104 of 1976. The argument that what is awarded by the appellate court is the amount that should have been awarded by the trial court and so looked at, until the entire principal is paid, the decree holder would be entitled to interest on the amount awarded by the appellate court and therefore he can seek to make a re-appropriation by first crediting the amount deposited by the judgment debtor pursuant to the decree of the trial court towards the cost in both the courts, towards the interest due on the entire amount and only thereafter towards the principal, is not justified on the scheme of Order XXI Rule 1 understood in the context of Order XXIV Rules 1 to 4 of the Code. The principle appears to be that if a part of the principal has been paid along with interest due thereon, as on the date of issuance of notice of deposit, interest on that part of the principal sum will cease to run thereafter. In other words, there is no obligation on the judgment debtor to pay interest on that part of the principal which he has already paid or deposited.

.....

31. Under [Section 54](#) of the Act, a person, still not satisfied with the decree of enhancement in his favour on the reference under [Section 18](#) of the Act, has a right to file an appeal to the High Court and from the decision of the High Court in such an appeal, an appeal to the Supreme Court. If one were to go by the definition of 'Court' occurring in [Section](#)



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3(d) of the Act, Section 28 providing for payment of interest on excess compensation may not apply to an appeal under Section 54 of the Act on the excess, if any awarded by the High Court or in subsequent appeal by the Supreme Court. But when in an appeal under Section 54 of the Act, the appellate court further enhances the compensation, it awards the compensation that the reference court ought to have awarded and so understood, Section 28 of the Act may be applied at the appellate stage. If the expression 'Court' used in Section 28 of the Act is understood in the generic sense, (on the basis that the context otherwise requires it), the result would be the same. The other provision relevant to be noted is Section 53 of the Act which makes the Code of Civil Procedure applicable to all proceedings before the Court under the Act save in so far as the provisions of the Code are found to be inconsistent with anything contained in the Act. Section 54 also does not keep out the Code, but makes the appeal under it subject to the provisions of the Code applicable to appeals from original decrees. ”

The learned counsel appearing for the petitioner further contended that the petitioner is entitled to counter interest on the amounts already deposited pending appeal. The petitioner, due to erroneous calculation, has already deposited excess amount of Rs.6,26,918.37/-. The learned counsel for the petitioner filed memo of calculation and submitted that the



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order of the learned District Judge dated 08.02.2011 made in E.P.R.No.17 of 2008 in L.A.O.P.No.13 of 1989 is erroneous and prayed to set aside the said order.

6.Though the respondents 1, 8 and 10 entered appearance, on 06.12.2021, there was no representation for them. Today also none appeared on behalf of them.

7.Though notice has been served on the respondents 2 to 7, 9 and 11 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

8.Heard the learned counsel appearing for the petitioner as well as Mr.D.Gopal, learned Government Advocate (CS) appearing for the 12th respondent and perused the entire materials available on record.

9.In the present Civil Revision Petition, the only issue to be decided is whether the calculation made by the learned Judge in the E.P. is correct



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or the amounts payable by the petitioner is only as per the calculation filed by the petitioner.

10.From the materials on record, it is seen the cost of land acquired was finally determined by the order dated 09.05.1996 by the learned District Judge in L.A.O.P.No.13 of 1989. The said order has become final as the appeal filed by the 12th respondent was dismissed. The operative portion of the said order reads as follows:

“16. இறுதியாக 21 முதல் 23 வரையுள்ள கோரிக்கையாளர்களுக்கு பாத்தியப்பட்ட அரசால் கையகப்படுத்தப்பட்ட நிலத்திற்கு ஏக்கர் ஒன்றுக்கு ரூ.2,40,000 விலை நிர்ணயம் செய்து மேற்படி தொகைக்கு 30 சதவீதம் ஆறதல் தொகையும் மற்றும் நிர்ணயம் செய்யப்பட்ட தொகைக்கு நிலத்தை சுவாதீனம் எடுத்து தேதியாக 5.1.1981 முதல் 12% வட்டியும் கையகப்படுத்தப்பட்ட நிலத்திலிருந்து மரங்களுக்கு ரூ.150 வீதம் இழப்பீடாகவும் நிலங்களில் இருந்த பயிர்களின் மதிப்புக்கு ரூ.1552.50 இழப்பீடாகவும் வழங்கப்பட வேண்டுமென்றும் தீர்வம் வழங்கப்படுகிறது. இவ்வழக்கின் சூழ்நிலையில் செலவுத்தொகை வழங்கப்படவில்லை. அரசு வழங்குரைஞரின் ஊதியம் ரூ.500 என நிர்ணயம் செய்யப்படுகிறது.”

11.From the said order, it is seen that the learned District Judge granted 12% interest only for the land value fixed. No interest was



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granted on solatium and value of trees and crops. The learned District Judge, in the E.P., calculated interest on solatium. The same is liable to be set aside and is hereby set aside.

12.Originally, the 12th respondent/Land Acquisition Officer passed an award on 26.08.1981, fixing the value of the land at Rs.50,000/- per acre together with 4% interest and 15% solatium and Rs.1702.50/- for crops and trees standing in the land. The petitioner calculated the amounts as per the award dated 26.08.1981 and deposited a sum of Rs.6,69,599.70/- and the same was withdrawn by the land owners on 29.08.1981. As per the final order dated 09.05.1996 made in L.A.O.P.No.13 of 1989, determining the value of the land, 12% interest was awarded for the period from the date of taking possession i.e., 05.01.1981, for the value of the land fixed. The petitioner has taken possession of the land on 05.01.1981. The contention of the learned counsel appearing for the petitioner is that the petitioner has deposited the amount calculated at Rs.50,000/- per acre together with interest at the rate of 4% and solatium 15% and Rs.1702.50/- for trees and crops on 26.08.1981. Therefore, the petitioner has to pay Rs.1,90,000/- for 11.32



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acres and 12% interest only on Rs.1,90,000/- per acre for the land acquired. The said contention has considerable force and is acceptable, as per the judgment of the Hon'ble Apex Court reported in **(2006) 8 SCC 457** (cited supra). The petitioner is liable to pay compensation only at the rate of Rs.1,90,000/- for 11.32 acres, after deducting Rs.50,000/- from Rs.2,40,000/- being the amount already fixed by the Land Acquisition Officer. The petitioner is liable to pay interest at the rate of 12% per annum on the sum of Rs.21,50,800/- (Rs.1,90,000/- x 11.32), from 05.01.1981, the date of possession, till 2010, when the petitioner lastly deposited Rs.9,36,286/- in E.P.No.17 of 2008, to the credit of L.A.O.P.No.13 of 1989. The learned Judge has erroneously calculated interest on Rs.2,40,000/-, solatium and calculated value of trees and crops, contrary to the ratio laid down by the Hon'ble Apex Court in the judgment reported in **2006 (8) SCC 457** (cited supra). The learned Judge has also not properly considered the amount deposited by the petitioner and amount withdrawn by the land owners.

13.In view of the above error committed by the learned Judge, the



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impugned order dated 08.02.2011 made in E.P.R.No.17 of 2008 in L.A.O.P.No.13 of 1989 is liable to be set aside and is hereby set aside. E.P.R.No.17 of 2008 in L.A.O.P.No.13 of 1989 is remitted to E.P. Court for fresh calculation as per the judgment of the Hon'ble Apex Court, referred to above. It is open to the petitioner and respondents to file their respective memos of calculation for consideration of the learned Judge.

With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

11.01.2022

Index :: Yes/No
gsa

To

The District Judge,
The Nilgiris,
Ootacamund.



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V.M.VELUMANI, J.

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