

Prem Nath Kapur & Anr. Etc vs National Fertilizers Corporation on 29 November, 1995

Equivalent citations: 1996 SCC (2) 71, JT 1995 (9) 23

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
PREM NATH KAPUR & ANR. ETC.

Vs.

RESPONDENT:
NATIONAL FERTILIZERS CORPORATION

DATE OF JUDGMENT 29/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)
MANOHAR SUJATA V. (J)

CITATION:
1996 SCC (2) 71 JT 1995 (9) 23
1995 SCALE (7) 109

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NO. 11399 OF 1995 [Arising out of SLP (C) No. 7840 of 1987] J U D G M E N
T K. Ramaswamy, J.

Leave granted.

Notification under Section 4 (1) of the Land Acquisition Act, 1894 [for short, "the Act"] acquiring large track of land including the land belonging to the appellants, was published on February 5,

1973. On October 9, 1975, the Collector made his award determining compensation @ Rs. 10,080/- per acre. On reference under Section 18, the Civil Court, by award and decree dated January 2, 1979, confirmed the award of the Collector. In another reference of the cosharers, the District Judge by his award and decree dated January 24, 1980 enhanced the compensation. On further revision, the High Court by order dated May 23, 1983 determined the compensation @ Rs.24,000/- per acre while dismissing the appeal of the respondent-Corporation. On January 9, 1975, after the award was made, the Collector paid the compensation including solatium and interest determined thereon. After the High Court enhanced the compensation in revision, the same was deposited on January 14, 1984. It is not necessary to dilate but suffice it to mention that the appellants by way of revision claimed compensation for damages for severance of other lands from acquired land as provided under clause thirdly of Section 23(1). In another revision, the appellants claimed solatium and interest on damages for severance of the lands which was also granted by the High Court. In yet another revision, the High Court enhanced solatium and interest and additional amount under Sections 23(2), 28 and 23 (1-A) as amended by Act 68 of 1984. The appellants laid execution, firstly, after appropriating the amount received towards costs, then towards interest on the total compensation and solatium and then for compensation in respect of the lands. Executing Court granted the relief, but the High Court in revision set aside the order dated March 11, 1987 in Civil Revision No. 3814 of 1986 and directed the Executing Court to dispose of the matter in the light of the law laid down therein. Thus these appeals by special leave. Another Bench of this Court issued notice suo motu on the amounts awarded towards severance charges, interest and solatium thereon and additional benefits under the Amendment Act.

Shri Pankaj Kalra, learned counsel for the appellants contended that the present controversy having been concluded by a recent judgment of this Court in *Mathunni Mathai v. Hindustan Organic Chemicals* [JT 1995 (4) SC 233], is no longer *res integra*. He further contended that the appellants are entitled to appropriate the costs from the principal amount of compensation, then towards interest on total amount of compensation from the date of taking possession till date of payment as determined by the Collector as well as the High Court. The hierarchy of courts would determine the compensation after considerable delay and the owner or interested person is entitled to be compensated for loss in value of their land. On determination thereof, the State as judgment-debtor is liable to restitute the owner with just compensation by way of principal amount and interest accrued thereon. The owner of the land as judgment-creditor is entitled to appropriate the principal amount deposited by the Collector, in the first instance, towards costs, then towards interest on total amount and the balance amount and interest accrued thereon is entitled to be recovered in execution. Therefore, the High Court was not right in holding that the appellants were entitled to the interest only from the respective dates of the award of the Collector or the orders of the court. The direction not to appropriate the amount deposited by the Collector first towards costs and then interest is clearly illegal. In support thereof, Shri Kalra placed strong reliance on the judgment of this Court in *Meghraj & Ors. v. Bayabai & Ors.* [AIR 1970 SC 161].

The question, therefore, is when does the liability of the State to pay interest ceases? 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?

In this behalf, it is appropriate to notice relevant provisions of the Act. Section 23(1), clause firstly, envisages that in determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration "the market-value of the land" at the date of the publication of the notification under Section 4(1). Sub-section (2) of Section 23 provides that "in addition to the market-value" of the land, 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"; preceding September 24, 1984, at 15% on such market-value. Similarly, under Section 23 (1-A), as inserted by Act 68 of 1984, "in addition" to the market-value of the land, 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 publication of Section 4 (1) notification to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Section 31 enjoins that the Collector on making the award under Section 11, shall tender payment of the compensation to the persons interested entitled thereto according to the award. He shall also pay the same to them, unless prevented by one or more contingencies mentioned in sub-section (2). In that event, he "shall deposit the amount of compensation in the court to which a reference under Section 18 would be submitted". Section 34 directs that when the amount of compensation is not paid or deposited on before the taking possession of the land, the Collector "shall pay the amount awarded with interest thereon" at the rates preceding Amendment Act 68 of 1984 at six per centum per annum or as per the rates prescribed by local Amendments made by the appropriate State Legislatures, from the date of taking possession "until it shall have been so paid or deposited". After the Amendment Act came into force on September 24, 1984, the rate of interest was revised as 9 per centum per annum. The proviso to Section 34 further enjoins that if such compensation or any part thereof "is not paid or deposited" within a period of one year from the date of taking possession, interest at the rate of 15 per centum per annum shall be payable from the date of expiry of one year on the amount of compensation or part thereof which has not been "paid or deposited"

before the date of such expiry.

In the event of the amount having been deposited into the court in the contingencies specified in sub-section (2) of Section 31 or on reference under Section 30, Section 33 gives power to the Court, on an application by a party interested or claiming an interest in such money, to pass an order to invest the money so deposited in such Government or other approved securities as it may think proper, and may direct the interest or other proceedings of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

On reference under Section 18 and after enquiry made by the Court under Sections 20 and 21, Section 26 (2) declares that the award made shall be deemed to be "decree" under Section 2 (2) of Civil Procedure Code (for short, "CPC") and the statement of grounds as "judgment" under Section 2 (9) of the CPC. Section 28 enjoins that the award of the Court may direct that the Collector "shall pay interest on

such excess or part thereof" (emphasis supplied), at the rates similar to those mentioned in Section 34 from "the date on which he took possession of the land to the date of payment of such excess into Court". The duty to pay enhanced rate of interest as provided in the proviso to Section 34 is similarly provided in the proviso to Section 28 as per Section 18 of the Amendment Act 68 of 1984. Section 53 of the Act makes CPC applicable to the proceedings before the court under the Act. It provides that "save in so far as they may be inconsistent with anything contained in this Act" [emphasis supplied], the provisions of the CPC shall apply to all proceedings before the Court under the Act.

A reading of the above provisions would establish that the award consists of (a) the compensation determined under Section 23 (1), (b) solatium on the market-value determined under Section 23 (2), as additional sum for compulsory nature of acquisition, and (c) payment of interest on the amount of compensation under Section 11, on excess or part thereof under Section 26 awarded by court from the date of taking possession till date of payment or deposit into the court at the rates specified under the respective provisions of Sections 34 and 28. Under Section 23 (1-A), additional amount at 12 per centum per annum shall be paid or deposited from the date of notification under Section 4 (1) till date of award or taking possession of land, whichever is earlier. The additional amount under Section 23 (1-A) and solatium under Section 23 (2) are in addition to the compensation under Section 11 and excess amount determined under Section 23 (1) read with Section 26 or Section 54. Equally, under Section 26 of the Act award is deemed to be a decree under Section 2 (2) of the CPC for the excess amount determined by the Court; this would be so proprio vigore, when the appellate court under Section 54 has further enhanced the compensation.

After notification under Section 4 (1) was published in the Gazette and an enquiry under Section 5-A conducted, publication of the declaration under Section 6 in the Gazette gives conclusiveness to the public purpose. The State is authorised to empower a specified officer to proceed for taking steps under the Act to determine the compensation. On service of notice under Section 9 read with Section 10, enquiry under Section 11 would be conducted and the Collector/Land Acquisition Officer makes an award thereunder. Section 12 enjoins him to serve notice, unless the party is present either in person or through counsel at the time of making of the award, to the claimant or the persons interested or known to be interested, of his making of the award. Section 16 empowers him to take possession of the land which shall thereupon "vest absolutely in the Government free from all encumbrances". In case of urgency, sub-section (4) of Section 17 empowers the appropriate Government to dispense with the enquiry under Section 5-A and thereafter declaration under Section 6 would be published. Under sub-section (1) of Section 17, appropriate Government, in cases of urgency, is empowered to direct the Collector, though no award under Section 11 has been made, to take possession of the lands after service of notice under Section 9 and on the expiration of 15 days from the publication of such notice. Such

land shall thereupon vest absolutely in the Government free from all encumbrances.

It would thus be seen that Section 34 of the Act fastens liability on the Collector to pay interest on the amount of compensation determined under Section 23 (1) with interest under Section 34 from the date of taking possession till date of payment or deposit into the court to which reference under Section 18 would be made. After the enquiry under Section 20 read with Section 21 on determination of excess amount of compensation, Section 28 empowers the court, if in its opinion the Collector ought to have awarded compensation as determined by him, to award interest "in excess of sum which the Collector did award as compensation"

The award of the court may direct the Collector to pay interest on such excess or part thereof from the date on which he took possession of the land to the date of payment of such excess "into Court" at the rates specified thereunder. In other words, Sections 34 and 28 fasten the liability on the State to pay interest on the amount of compensation or on excess compensation under Section 28 from the date of the award and decree but the liability to pay interest on the excess amount of compensation determined by the Court relates back to the date of taking possession of the land to the date of the payment of such excess "into the court". Section 34 when contrasted with Section 28, visualises payment of interest from the date of taking possession when enquiry under Section 5-A was dispensed with and possession was taken under sub-section (1) of Section 17 till date of payment or deposit into the court while Section 28 enjoins the Collector to make payment of interest at the specified rates "on such excess or any part thereof" from the date of taking possession of the land to the date of payment of such excess amount or part thereof into the court. Section 53 specifically envisages that to the extent of any inconsistency in the provisions of the Act, the applicability of CPC to the proceedings under the Act stands excluded and the provisions of the Act shall prevail. In other words, to the extent of the specific provisions provided in the Act when found inconsistent with the CPC, only the provisions in the CPC which are consistent with the provisions of the Act, would stand attracted to the proceedings under the Act. By necessary exclusion, the inconsistent provisions of CPC stand excluded.

The basic question, therefore, would be whether the claimant is entitled to appropriate from the principal amount of compensation determined under Section 23 (1) towards costs, and then towards interest payable under either Section 34 or Section 28 or after Amendment Act came into force w.e.f. September 24, 1984, additional amount under Section 23 (1-A). Even in general principles of law, Section 60 of the Contract Act provides that where the debtor has omitted to intimate and there are no other circumstances indicating as to which debt the payment is to be applied, the creditor may apply it at his discretion, to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being, as to the limitation of suits. It would, therefore, be clear that the debtor may indeed exercise that right and may specify his appropriation expressly or his intention may be implied as shown by other circumstances, indicating that his intention at the time of payment was to appropriate the amount deposited by him to a specific debt or account towards the debt.

It is clear from the scheme of the Act and the express language used in Sections 23 (1) & (2), 34 and 28 and now Section 23 (1-A) of the Act that each component is a distinct and separate one. When compensation is determined under Section 23 (1), its qualification, though made at different levels, the liability to pay interest thereon arises from the date on which the qualification was so made but, as stated earlier, it relates back to the date of taking possession of the land till the date of deposit of interest on such excess compensation into the court. Equally, when the appellate court under Section 54 further enhances the compensation, interest is payable on such excess amount determined under Section 23 (1). In other words, the liability to pay interest arises as and when the compensation is further enhanced and liability to pay interest would be co-terminus with the payment of the amount under Section 34 from the date of taking possession till date of payment or deposit or under Section 28 or Section 54 from the date of 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 under Section 23(1) and not on the amount already determined by the Land Acquisition Officer under Section 11 and paid to the party or deposited into the court or determined under Section 26 or Section 54 and deposited into the court or on solatium under Section 23(2) and additional amount under Section 23(1-A).

Thus we hold that the liability to pay interest on the amount of compensation determined under Section 23 (1) continues to subsist until it is paid to the owner or interested person or deposited into court under Section 34 read with Section 31. Equally, the liability to pay interest on the 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 court. Proprio vigore in case of further enhancement of the compensation on appeal under Section 54 to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into court. The liability to pay interest ceases on the date on which the deposit into court is made with the amount of compensation so deposited. As held earlier, the computation of the interest should be calculated from the date of taking possession till date of payment or deposit in terms of Section 34 or deposit into court in terms of Section 28, as the case may be.

Equally, the right to make appropriation is indicated by necessary implication, by the award itself as the award or decree clearly mentions each of the items. When the deposit is made towards the specified amounts, the claimant/owner is not entitled to deduct from the amount of compensation towards costs, interest, additional amount under Section 23 (1-A) with interest and then to claim the total balance amount with further interest. The ratio of *Joginder Singh & Ors. v. State of Punjab & Anr.* [AIR 1985 SC 382] has no application to the facts of this case. Right to compensation and the qualification thereof are two distinct concepts. The right to compensation arises when the land vests in the State while its qualification may be concluded at a later stage through several hierarchical stages referred to hereinbefore. The question therein was whether the High Court while enhancing the compensation would direct payment of interest on enhanced amount at 4 per cent per annum. This Court held that the distinction made by the High Court in payment of interest from date of taking possession till date of its judgment was incorrect. Accordingly, it directed payment of interest @ 6 per cent per annum on the enhanced compensation from the date of taking possession of the land till date of payment.

Equally, the contention that the claimant is entitled to interest on solatium is also not warranted by express provisions under Section 23 (2), i.e., "in addition to"

market-value, solatium was required to be paid. Section 34 or Section 28, as the case may be, fastens liability to pay interest only on amount of compensation or such excess amount of compensation or part thereof determined under Section 23 (1). In other words, by virtue of the language of Section 23 (2), viz., "in addition to the market-value", as provided in Section 23 (1), solatium becomes payable. Compensation under Section 23 (1), by necessary implication, excludes the liability to pay interest on solatium. Equally, the question of payment of solatium on additional amount was also considered by this Court in *P.Ram Reddy v. State of Andhra Pradesh* [(1995) 2 SCC 305] where it was held that no solatium is payable on additional amount payable under Section 23 (1-A). So too, no interest is payable on additional amount under Section 23 (1-A) on other components or part thereof determined under Section 23(1) over and above the award under Section 11 by Civil Court under Section 26 or on appeal under Section 54, respectively.

The ratio in *Megharaj* case [supra] is equally inapplicable to the appropriation of debt under the Act. It is seen that by operation of Section 53 of the Act, Order 21, Rule 1 being inconsistent with the express provisions contained in Section 34 and 28, stands excluded. The ratio therein, therefore, is applicable only to a debtor and creditor in an ordinary civil suit governed by the provisions of the CPC. Order 21 Rule 1 being inconsistent with the express provisions contained in Section 34 and 28 of the Act, it cannot stand extended to the cases covered by the Act. It is unfortunate that these provisions were not brought to the attention of this Court when it decided *Mathunni Mathai* case [supra], which make all the difference. With due respect to our learned brethren who decided that case, we are, therefore, constrained to observe that *Mathunni Mathai* case cannot be taken to have laid down the correct law.

Counsel appearing for the respondents in fairness has conceded that since the respondents did not file any appeal against the order passed by the High Court allowing damages for severance of the land and solatium and interest thereon, is not in a position to assail the correctness thereof. However, the revisional order for payment of additional benefits and enhanced solatium and interest under the Amendment Act 68 of 1984 is clearly in excess of the power or jurisdiction of the High Court. The power to award additional amount under Section 23 (1-A) and solatium under Section 23 (2) are in addition to the marketvalue determined under Section 23 (1). Equally, interest under Section 28 is on excess amount. In other words, the power and jurisdiction to award amounts under Sections 23 (1-A), 23 (2) and 28 would arise only when the Court or High Court under Section 54 enhanced compensation. There was no error in the original order for amendment of it under Section 151 or Section 152 of the CPC, as, when enhancement of compensation was made in revision in 1984, the Amendment Act 68 of 1984 could not apply as held by this Court in *Union of India v. Raghubir Singh* [(1989) 3 SCR 316] and *K.S.*

Paripoornan [II] v. State of Kerala [(1995) 1 SCC 367]. This Court in catena of decisions, to name a few, Union of India v. Smt. Pratap Kaur [Deed] through Lrs. & Anr. etc. [JT 1955 (2) SC 569], State of Maharashtra v. Maharau Srawan Hatkar [JT 1995 (2) SC 583], State of Punjab & Anr. etc. v. babu Singh & Ors. [C.A. Nos. 3287-95 of 1995] decided on February 28, 1995 and State of Punjab & Anr. vs. Jagir Singh etc. [C.A. Nos. 9911-12 of 1995] decided on October 30, 1995, has laid the above ratio and the same are applicable to the facts of the case.

The appeals are dismissed accordingly. The Executing Court shall now proceed with the execution in accordance with law declared hereinbefore. No costs.