

M/S Periyar & Pareekanni Rubbers Ltd vs State Of Kerala on 14 September, 2015

Equivalent citations: AIRONLINE 2015 SC 535

Author: V. Gopala Gowda

Bench: Adarsh Kumar Goel, V. Gopala Gowda

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7034-7037 OF 2015
(Arising out of S.L.P. (C) NOS. 29463-29466 of 2012)

M/S PERIYAR & PAREEKANNI RUBBERS LTD. APPELLANT

VERSUS

STATE OF KERALA

..... RESPONDENT

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

These appeals by special leave are directed against the impugned common judgment and order dated 07.04.2010 passed by the High Court of Kerala at Ernakulam in Civil Revision Petition Nos. 196, 199, 205 and 208 of 2009 (filed against the order dated 15.10.2008 of the learned Sub-Judge, Ernakulam-the Execution Court), wherein the dispute between the parties related to the claim of solatium for the enhanced amount of compensation and interest thereon in respect of the acquired land. The High Court has confirmed that solatium is payable on that portion of land value based on capitalization method of yielding rubber trees and directed to compute balance amount payable under the decree, but awarded the interest on solatium from 19.09.2001, the date when judgment by the Constitution Bench in the case of *Sunder v. Union of India*[1] was delivered by this Court and not for the prior period. The legality and validity of the impugned judgment and order is seriously challenged urging various legal contentions as the appellant is aggrieved by the denial of the interest payable on the component of solatium under Sections 23(1A), 23(2) read with Sections 28 and 34 of the Land Acquisition Act, 1894 (for short “the Act”). The solatium being the component of compensation payable to the claimant/decreed holder, the restriction upon its payment by the High Court placing reliance upon another subsequent Constitution Bench judgment of this Court in the case of *Gurpreet Singh v. Union of India*[2] is hereby challenged.

3. The brief facts of the case are stated hereunder:-

Various portions of rubber estate of the appellant situated in village Kuttamangalam was acquired by the State Government in exercise of its eminent domain power pursuant to the notification dated 10.10.1978 issued under Section 4(1) of the Act for the purpose of Periyar Valley Irrigation Project.

In 1980 and 1981 Awards were passed by the Land Acquisition Officer awarding compensation, on the market value of land which were partly based on capitalization method of the yielding rubber trees for the planted area and partly based on the value of bare land on which there were no yielding rubber plantation. Awards included solatium and interest on compensation including solatium.

Being dissatisfied with the compensation, the appellant filed Land Acquisition Reference (LAR) Nos. 425, 427, 428, 429, 432, 434, 435, 456, 458 and 463 of 1988 before the Court of III Additional Sub-Judge, Ernakulam (the Reference Court) under Section 18 of the Act.

The Reference Court after perusal of the record, by its common judgment, passed an Award on 19.11.1992 by enhancing the compensation partly based on capitalization method of the yielding rubber trees for the planted area and partly based on the value of bare land on which there were no rubber trees. The Reference Court held that the claimant is entitled to get 30% solatium, 12% additional market value from the date of the notification i.e., 10.10.1978 till the date of Award passed against it and they are also entitled to get 9% interest for the first one year from the date of dispossession and thereafter at 15% till realization of the compensation awarded in favour of the claimant/decreed holder.

In some of the abovesaid LARs, payments were made by respondent-State in full and final settlement of the enhanced compensation, solatium and interest on compensation including solatium. With respect to the remaining cases, the appellant filed Execution Petition Nos. 152, 147, 146, 149 and 145 of 1996 before the Execution Court for execution of the Award/decreed passed by the Reference Court.

The Execution Court on 15.10.2008 passed an order fixing balance amount payable by the State government after excluding solatium on that portion of the market value of the acquired land based on capitalization method of the yielding rubber trees for the planted area.

Being aggrieved by the said order of the Execution Court, the appellant filed Civil Revision Petition (CRP) Nos. 196, 199, 201, 205 and 208 of 2009 before the High Court of Kerala.

The High Court on 07.04.2010 passed the common impugned judgment and order in the said CRPs confirming that the solatium is payable by the state government for the enhanced compensation awarded for the market value of the entire land. Thus, it provided solatium for that portion of land the value of which was based on the capitalization method of yielding rubber trees and directed the

respondents to compute balance amount payable under the decree. However, the High Court awarded the interest on solatium w.e.f. 19.09.2001, the date of judgment delivered by Constitution Bench in Sunder's case (supra) instead of from the date of acquisition of the land of the appellant. Hence, these appeals are filed by the appellant urging various grounds.

Mr. V. Giri, learned senior counsel on behalf of the appellant contended that the Awards in the instant case were passed in 1980 and 1981 and the Reference Court judgment and Award was passed in 1992, the time when there was no dispute regarding the payment of interest on solatium. It is only in 1995 when this Court passed a judgment in the case of Prem Nath Kapur v. National Fertilizers Corporation. Of India Ltd.[3] which barred the payment of interest on solatium. But the decision in Prem Nath Kapur's case was subsequently reversed in Sunder's (supra) case. Therefore, there was no justification and reason for the High Court to restrict the payment of interest on solatium prior to 19.09.2001 by applying the observations made at paragraph 54 in the case of Gurpreet Singh (supra).

The learned senior counsel has further contended that the respondent-State has already settled few cases covered by the Reference Court judgment by paying the full compensation, solatium and interest on compensation including solatium without any dispute. It shows that there was no dispute between the parties as to the payment of interest on solatium by the respondents. Before the Execution Court, the dispute raised by the respondent-State was as to the amount of land value on which solatium was to be computed.

On the other hand, Ms. Bina Madhavan, learned counsel on behalf of the respondent-State government sought to justify the impugned common judgment and order by placing strong reliance upon paragraph 54 of Gurpreet Singh's case (supra), which is extracted in the reasoning portion of this judgment.

She further contended that the interest on solatium can be claimed only in pending execution cases and not in the closed cases and the execution courts are entitled to permit its recovery by the claimant/decreed holder from 19.09.2001 i.e., from the date of judgment in Sunder's case and not for any prior period.

With reference to the aforesaid rival legal submissions urged by the learned counsel on behalf of the parties, this Court is required to examine the correctness of the impugned common judgment order passed in the aforesaid CRPs by the High Court in restricting the payment of statutory interest payable on the solatium component by placing reliance upon the cases of Sunder and Gurpreet Singh (supra). In this connection, this Court is required to find out as to whether the payment of interest on solatium is the legislative statutory right conferred upon the land loser/claimant recognised by the Constitution Bench in Sunder's case. The High Court in the light of observations made in Gurpreet Singh's case (supra) at paragraph 54 has fixed the date of payment of interest payable on the solatium to the claimant/decreed holder with effect from 19.09.2001. The correctness of the same is also required to be examined by this Court.

For the aforesaid purpose, it would be necessary to refer to the question of law as referred to in Sunder's case (supra) wherein this Court deals with the conflicting decisions rendered on one hand in Union of India v. Ram Mehar[4] (three Judge Bench) and on the other, in later decisions of co-equal Benches of this Court viz., Mir Fazeelath Hussain v. Special Deputy Collector, Land Acquisition[5], Prem Nath Kapur (supra) and Yadavrao P. Pathade v. State of Maharashtra[6].

In the case of Union of India v. Ram Mehar (supra) this Court after examining the scope of the expression "market value" in Section 4(3) of the Land Acquisition (Amendment and Validation) Act, 1967, held that solatium cannot form part of the market value of the land, rather the "market value" is only one of the components to be reckoned with in the determination of the amount of compensation. The relevant para 7 of the decision reads thus :

"7.....If market value and compensation were intended by the legislature to have the same meaning it is difficult to comprehend why the word "compensation" in Section 28 and 34 and not "market value" was used. The key to the meaning of the word "compensation" is to be found in Section 23(1) and that consists (a) of the market value of the land and (b) the sum of 15% on such market value which is stated to be the consideration for the compulsory nature of the acquisition. Market value is therefore only one of the components in the determination of the amount of compensation. If the Legislature has used the word "market value" in Section 4(3) of the Amending Act of 1967 it must be held that it was done deliberately and what was intended was that interest should be payable on the market value of the land and not on the amount of compensation otherwise there was no reason why the Parliament should not have employed the word "compensation" in the aforesaid provision of the Amending Act." (emphasis supplied) Thus, it provides for the payment of interest on the market value of the land. The said judgment is later followed by two Judge Bench of this Court in Periyar & Pareekanni Rubbers Ltd. v. State of Kerala[7]. The relevant para 24 of which reads thus:-

"24.Therefore, we have no hesitation to hold that Section 25(3) contemplates payment of interests on solatium to recompensate the owner of the land for loss of user of the land from the date of taking possession till date of payment into court. The word compensation has been advisedly used by the legislature. Accordingly we hold that the appellant is entitled to interest on solatium." On the other hand, in the cases of Mir Fazeelath Hussain (supra), Prem Nath Kapur (supra) and Yadavrao P. Pathade (supra) this Court held that interest is not claimable upon solatium.

Due to the said conflicting decisions of this Court, a reference to the Constitution/larger Bench was made by this Court in the case of Sunder v. Union of India[8] (two Judge Bench). The relevant paragraph of reference order reads thus :

"Leave granted on the short question whether interest can be paid on solatium under Section 28 read with Section 34 of the Land Acquisition Act, 1894 on the ground that solatium is a part of compensation. This question squarely arises for consideration as

there is an apparent conflict between a three-Judge Bench decision of this Court in the case of Union of India v. Ram Mehar on the one hand and the later three-Judge Bench decisions of this Court in the cases of Mir Fazeelath Hussain v. Special Dy. Collector, Land Acquisition, Prem Nath Kapur v. National Fertilizers Corpn. of India Ltd. and Yadavrao P. Pathade v. State of Maharashtra on the other. The later three-Judge Bench judgments have taken the view that solatium is not a part of compensation. However, in none of the later three-Judge Bench judgments the earlier view of the three-Judge Bench judgment in the case of Union of India v. Ram Mehar that solatium is a part of compensation, has been noticed or considered. Consequently, in our view, this matter requires to be decided by a Constitution/larger Bench of this Court. We, therefore, direct that the papers may be placed before Hon'ble the Chief Justice of India for placing the appeals arising out of these proceedings for final disposal before an appropriate Constitution/larger Bench of this Court.

Prior to Sunder's Case (two Judge Bench), similar reference was made in Kapur Chand Jain & Ors. v. State Government of H.P. & Ors[9] , the relevant paras of which read thus :-

“3. Learned counsel for the petitioners invited our attention to a three- Judge Bench judgment of this Court in Union of India v. Ram Mehar and also later two decisions of two-Judge Benches of this Court in Periyar and Pareekanni Rubbers Ltd. v. State of Kerala and Narain Das Jain v. Agra Nagar Mahapalika. Relying on these judgments, he submitted that for applicability of Section 28 of the Land Acquisition Act, 1894 solatium has to be considered as a component of compensation and interest could be paid thereon; and that the High Court has wrongly not granted interest on solatium. However, there is another three-Judge Bench judgment of this Court in Prem Nath Kapur v. National Fertilizers Corpn. of India Ltd. wherein a contrary view is taken and it has been held, that no interest is payable on solatium under Section 23(2) or on additional amount payable under Section 23(1-A). For coming to that conclusion, the Bench of three learned Judges relied upon another decision of this Court in P. Ram Reddy v. Land Acquisition Officer.

4. In view of this conflict of decisions and also in view of the further fact that the three-Judge Bench of this Court in Prem Nath Kapur had no opportunity to refer to the earlier decision of a three-Judge Bench in Ram Mehar we direct that these special leave petitions be placed for decision before a three-Judge Bench of this Court. The office may obtain suitable orders from the Hon'ble Chief Justice.” The question of reference to Constitution Bench in Sunder's case (supra) reads thus :-

“Is the State liable to pay interest on the amount envisaged under Section 23(2) of the Land Acquisition Act, 1894?” In other words, the question was whether for the purpose of Section 28 read with Section 34 of the Act, solatium is a part of compensation. The answer was in affirmation to the reference question by the

Constitution Bench. By answering the said question it laid down the law with regard to the question of payment of interest.

21. From the interpretation of provisions of Sections 11, 15, 23, 24 and 31 of the Act and after placing reliance upon the decision of this Court in *State of Gujarat v. Vakhatsinghji Vajesinghji Vaghela*[10], it is clear that the amount of compensation in the Collector's Award includes not only the amount determined under Section 23(1) of the Act but also the additional amount of solatium as stipulated under Section 23(2) of the Act. The relevant paragraph 9 of the said case reads thus:

“9.The collector has to make an award of compensation under Section 11 and having regard to Sec. 15 in determining the amount of compensation, he is guided by the provisions of Section 23 and 24. Section 23 (1) requires an award of the market value of the land. Section 23 (2) requires an additional award of a sum of fifteen percentum on such market value, in consideration of the compulsory nature of acquisition.....” Further, from the reading of Sections 28 and 34 of the Act, it is clear that the ‘purpose of interest’ is to compensate an unpaid landowner who, on the one hand has been deprived of the possession of his land in pursuance of compulsory acquisition by the State Government in exercise of its eminent domain power and on the other hand, has also been kept out of the use of the money due to him for the acquisition by not being paid the money, in full or in part, in lieu of taking possession. Reliance is placed on the decision of this Court in the case of *Satinder Singh v. Umrao Singh*[11] at paragraph 19, which reads thus:

“19.....When a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily he is not making claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation....”

Section 34 of the Act provides for the payment of interest on “amount of such compensation”. The word “such” makes the reading of Section 34 read along with Section 31 necessary. Section 31 of the Act provides for the payment of compensation or deposit of the same in Court. Section 31 (1) says “On making an Award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the Award.....” Further, Section 28 of the Act provides for the direction which may be made to the Collector to pay the interest on excess compensation. It says “If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation.....” Thus, it is clear from Section 34 read with Section 31 and the term “sum” under Section 28 of the Act that the Award includes not only the sum as is determined under Section 23(1) of the Act but also the amounts payable under Section 23(1A) and Section 23(2). The same has been held by

the Constitution Bench of this Court in Sunder's case, the relevant paragraph 23 of which reads thus:

"23....We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof." After advertng to Sections 34, 28, 23(1), 23(1A), 23(2), 24, 26 and 31 of the Act, the Constitution Bench in Sunder's case (supra) answered the question regarding payment of interest on solatium in affirmation holding that Section 26 of the Act does not say that the Award would contain only the amounts granted under Section 23 (1) of the Act. It was further held that there can be no doubt that all the three heads specified in the three sub-sections of Section 23 of the Act are the sums to be awarded by the court. The words "every award under this Part" in Section 26(1) of the Act cannot be treated as the Award after delinking the amounts awarded under sub-Section (1A) or sub-Section (2) of Section 23 of the Act. Further in paragraphs 20, 21 and 23 in Sunder's case (supra), the Constitution Bench has held as under-

"20... whether exclusion of the factor " any disinclination of the person interested to part with the land acquired" from being considered as part of the compensation indicated in Section 24 of the Act would be of any aid for excluding solatium from the purview of interest accrual process...." "21. It is apposite in this context to point out that during the enquiry contemplated under Section 11 of the Act the Collector has to consider the objections which any person interested has stated pursuant to the notice given to him. It may be possible that a person so interested would advance objections for highlighting his disinclination to part with the land acquired on account of a variety of grounds, such as sentimental or religious or psychological or traditional etc. Section 24 emphasises that no amount on account of any disinclination of the person interested to part with the land shall be granted as compensation. That aspect is qualitatively different from the solatium which the legislature wanted to provide "in consideration of the compulsory nature of the acquisition." XXX XXX XXX

23. In deciding the question as to what amount would bear interest under Section 34 of the Act, a peep into Section 31(1) of the Act would be advantageous. That sub-section says:-

31. (1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section....." Further, in the said case, after advertng to Section 34 of the Act, this Court held thus:-

“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.” The judgment rendered by the Constitution Bench of this Court in Sunder’s case (supra) is the binding precedent on the question of payment of legislative statutory interest payable on solatium under Sections 23(1A), 28 and 34 of the Act which cannot be deprived to the claimant/decreed holder by the court. As the said judgment is binding upon the State Government it cannot contend that it is not liable from the date as provided under the provisions of the Act.

The Constitution Bench judgment in Sunder’s case (supra) is aptly applicable to the fact situation of the present case for the reason that the enhanced compensation includes the solatium @ 30% as provided under Section 23(2) of the Act. Therefore, the claimant/decreed holder is entitled for the interest on the solatium component which is part of the compensation payable by the State government to the claimant. The Execution Court held that the claimant/decreed holder company is entitled to claim solatium only in respect of the enhanced compensation provided for the land alone which has been separately fixed, but, not in respect of that portion of market value of the land based on capitalization method of the yielding rubber trees for the planted area which was separately fixed by the Reference Court in its Award. The High Court was right in holding that the claimant is entitled for the interest not only in respect of the land but also with respect to the trees standing on the land of which the market value is determined by the Reference Court. However, it awarded the interest on solatium from 19.09.2001 and not for the prior period by placing reliance on Gurpreet Singh case (supra), the relevant paragraph 54 of which is extracted hereunder:-

“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, the awardee/decreed-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 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 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 (19-9-2001) and not for any prior period. We also clarify that this will not entail any reappropriation 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 decision of this Court in Gurpreet Singh’s Case (supra), upon which the strong reliance is placed by learned counsel on behalf of respondent, is totally inapplicable to the fact situation of the instant case for the reason that the question that arose in the said case was distinct, which reads thus:-

“What is the rule of appropriation in execution of money decrees? Is the rule the same in the case of an award-decree under the Land Acquisition Act or, is there anything in the Land Acquisition Act, 1894 as amended by the Land Acquisition (Amendment) Act (68 of 1984) making that rule inapplicable or not wholly applicable?” The issue in the said question was examined and answered by the Constitution Bench with reference to Prem Nath Kapur’s case (supra) regarding the rule of appropriation in execution of money decrees. The examination of Sections 23(1), 23(1A), 23(2), 28, 31, 34 and 11 of the Act was made in this regard.

At paragraph 54 of Gurpreet Singh’s case, certain observations are made regarding the payment of interest on solatium. The interest on solatium can be awarded at execution stage if the Reference Court or the Appellate Court does not specifically refer to the question of interest on solatium or cases wherein 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. But where the Reference Court or appellate court has negated the same either expressly or by implication then such interest on solatium cannot be awarded as it is a well settled rule of law that the execution court cannot go behind the decree. Another point which is clearly made in the said judgment is that the interest on solatium can be claimed only in pending execution cases and not in closed execution cases, recoverable from the date of the judgment in Sunder’s case i.e., 19.09.2001 and not for any prior period. It is also held in this case that this will not entail any appropriation or reappropriation by the claimant/decreed holder. But, it is noteworthy that this was not

the question which was referred to the Court for consideration in the said case. Therefore, it is merely an observation of the court which cannot be applied as binding precedent in the instant case with regard to the entitlement of statutory interest payable under Sections 23(1A), 28 and 34 of the Act on the solatium. If applied, it would be contrary to the doctrine of stare decisis. In this regard, it is necessary to advert to the Constitution Bench (11 Judge Bench) judgment of this Court in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur & Ors. v. Union of India[12], wherein at paragraph 138, it is held that it is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment. The relevant portion of the paragraph reads as under:-

“138 ...The question as to the jurisdiction of the Courts to entertain a claim for payment of Privy Purse did not fall to be determined in Nawab Usman Ali Khan case. The only question raised was whether the Privy Purse was not capable of attachment in execution of the decree of a Civil Court, because of the specific exemption of political pensions under Section 60(1)(g) of the Code of Civil Procedure. In Kunvar Shri Vir Rajendra Singh’s case, the Court did not express any opinion that Article 366(22) was a provision relating to a covenant within the meaning of Article 363. In that case the petitioner who was not recognised as a Ruler by the President abandoned at the hearing of his petition his claim to the Privy Purse payable to the Ruler of Dholpur, and pressed his claim by succession under the Hindu Law to the Private property of the former Ruler. The Court was not called upon to decide and did not decide that Article 366(22) was a provision relating to a covenant within the meaning of Article 363. It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not fall to be answered in that judgment.” [Emphasis supplied] The said view has been followed and reiterated subsequently by this Court in a catena of cases regarding the distinction between ratio of a case and obiter dicta.

In the case of Director of Settlement v. M.R. Apparao[13], this Court extensively elaborated upon the principle of binding precedent. The relevant para 7 is reproduced hereunder:

“7...Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any

particular word or sentence. To determine whether a decision has “declared law” it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An “obiter dictum” as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight....” [Emphasis supplied] The decision of this Court in the case of Deena v. Union of India[14] is also pertaining to the extension of ratio of a decision to cases involving identical situations, be it factual or legal, but the same should not be mechanically applied to the facts of a case, the relevant para 15 reads thus:

“15. ...It is permissible to extend the ratio of a decision to cases involving identical situations, factual and legal, but care must be taken to see that this is not done mechanically, that is, without a close examination of the rationale of the decision which is cited as a precedent. Human mind, trained even in the strict discipline of law, is not averse to taking the easy course of relying on decisions which have become famous and applying their ratio to supposedly identical situations....” (emphasis supplied) The binding effect of judgment of this Court vis-à-vis State and Central Government circulars is considered in the case of CCE v. Ratan Melting & Wire Industries[15], wherein it is held that the law laid down by this Court is the law of the land. The law so laid down is binding on all Courts/Tribunals and bodies and that the circulars issued by the State or the Central Government cannot prevail over the law laid down by this Court.

From the facts of the present case and in the light of law laid down on the question of payment of interest on solatium by the Constitution Bench in Sunder’s case, it is amply clear that the said case is the binding precedent. As far as Gurpreet Singh’s case is concerned, the question which arose for its consideration was only with regard to the rule of appropriation in execution of the Award passed under the provisions of the Act. While answering the said question of law after referring to the relevant provisions of the Act, at paragraph 54, it has incidentally made some observation with regard to the payment of interest on solatium which is only an obiter but not the binding precedent as that question did not fall for consideration before the Constitution Bench. Therefore, in view of the foregoing reasons, I hold that there is no need to advert to the other judgments upon which reliance was placed by the learned counsel for both the parties. For the reason that the binding precedent laid down by the Constitution Bench of this Court in Sunder’s case on the question of payment of interest on the solatium to the claimant/decreed holder from the date of entitlement as provided under the provisions of the Act. Accordingly, I pass the following order:-

In view of the aforesaid reasons assigned by me with reference to Sunder and Gurpreet Singh cases (supra), I am of the view that the impugned common judgment and order with regard to awarding interest payable on solatium w.e.f. 19.09.2001 is vitiated in law. Accordingly, that portion of the impugned judgment and order is hereby set aside.

The civil appeals are allowed. The respondent-State Government is directed to pay interest as provided under Section 23(1A) of the Act on the solatium component of the Award under Section 23(2) of the Act in the reference Award in the earlier decisions and the interest payable under Sections 28 and 34 of the Act. The respondent-State Government is further directed to compute the same with reference to the compensation awarded by the Reference Court from the date when the claimant decree holder is entitled strictly in accordance with the abovesaid provisions of the Act including the solatium and pay to the appellant within 8 weeks from the date of receipt of copy of this judgment. No order as to costs.

.....J. [V.GOPALA GOWDA] New Delhi,
September 14, 2015 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL
APPELLATE JURISDICTION CIVIL APPEAL NOS. 7034-7037 OF 2015 (ARISING
OUT OF SLP (CIVIL) NOS.29463-29466 OF 2012) M/S. PERIYAR & PAREEKANNI
RUBBERS LTD. ...APPELLANT VERSUS STATE OF KERALA ...RESPONDENT J U
D G M E N T ADARSH KUMAR GOEL, J.

1. I have perused the proposed judgment prepared by my learned brother V. Gopala Gowda, J. I am in respectful disagreement with the same. The facts have been broadly mentioned in the judgment of Gopala Gowda, J. and need not be repeated.

2. The award of the Reference Court is dated 19th November, 1992 which did not expressly award interest on solatium. In the impugned order, the High Court restricted the interest on solatium to the period post 19th September, 2001, following the Constitution Bench judgment of this Court in Gurpreet Singh vs. Union of India[16] directing 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 [(2001) 7 SCC 211], the awardee/decreree- 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 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 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 (19-9-2001) and not for any prior period. We also clarify that this will not entail any reappropriation 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.”

2. Learned counsel for the appellants relied upon Land Acquisition Officer and Asstt. Commr. Vs. Shivappa Mallappa Jigalur^[17] laying down as follows :

“13. Coming now to the stipulation that any interest on solatium can only be granted for the period subsequent to 19-9-2001, the date of the decision in Sunder, it is evident that this again, is a limitation on the power of the execution court. The direction is actually referable to those cases in which the award of the Reference Court or the appellate court being silent, it is left open to the execution court to give direction for the deposit of interest on solatium. In such cases, the Reference Court can ask for interest only for the period subsequent to 19-9-2001. The direction in no way circumscribes the power of the court dealing with the main proceeding relating to enhancement of the compensation.

14. The matter can be looked at from another angle. The appeal being the continuation of the original proceeding, in the facts of the cases in this sub-group, there can be no question of accrual of interest only after the date of the decision in Sunder. At this stage, it may be recalled that the civil court had awarded solatium @ 30% and interest @ 9% for the first year and @ 15% from second year onwards till the date of realisation. The State’s appeal against the judgment of the civil court was dismissed. Thus, the direction for payment of solatium with interest at the rates indicated had become final. The High Court enhanced the rate of compensation. This would inevitably lead to an increase in the amount of solatium and consequently in the amount of interest on the unpaid amount of solatium.

Thus, looked at from any point of view, the question of payment of interest subsequent to 19-9-2001 does not arise.”

3. On the other hand, learned counsel for the State submitted that the judgment in Shivappa (supra) does not apply to the present case as the award dated 19th November, 1992 has attained finality. She

also relied upon Chimanlal Kuberda Modi vs. Gujarat Industrial Development Corpn.[18] laying down as follows :

“15. It is no doubt true that the execution court cannot examine the reasons so as to go behind the decree but if in the award passed, the Reference Court makes a specific reference to payment of interest but without any such reference to the payment of interest on solatium and merely payment of interest on compensation is granted, then it would be open to the executing court to apply the ratio of Sunder and declare that the compensation awarded includes solatium, and consequently, interest on the amount could be directed to be deposited in execution. That being the legal position as prevailing today, we cannot ignore the observations made in para 54 of the aforesaid judgment in Gurpreet Singh and we order accordingly that compensation awarded includes solatium and therefore interest on the said amount shall be paid by the respondent in the pending execution.” To the same effect, she also relied upon Nadirsha Shapurji Patel vs. Collector & LAO[19] and Chhanga Singh vs. Union of India[20].

4. So long as judgments relied upon by learned counsel for the State stand, the appellant cannot succeed. Any contrary view can be taken only by a larger Bench. It will thus be appropriate that the matter is placed before a Bench of 3-Judges.

NEW DELHI
SEPTEMBER 14, 2015

.....J.

[ADARSH KUMAR GOEL]

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 7034-7037 OF 2015

(Arising out of S.L.P. (C) Nos. 29463-29466/2012) M/S PERIYAR & PAREEKANNI RUBBERS LTD. ... APPELLANT(S) VERSUS STATE OF KERALA ...RESPONDENT(S) COMMON ORDER In view of divergence of opinion in terms of separate judgments pronounced by us in these appeals today, the Registry is directed to place the papers before Hon'ble the Chief Justice of India for appeals being assigned to an appropriate Bench.

.....J. (V. GOPALA GOWDA)J. (ADARSH KUMAR GOEL) NEW DELHI, SEPTEMBER 14, 2015

- (2001) 7 SCC 211
[2] (2006) 8 SCC 457
[3] (1996) 2 SCC 71
[4] (1973) 1 SCC 109
[5] (1995) 3 SCC 208
[6] (1996) 2 SCC 570
[7] (1991) 4 SCC 195
[8] (2000) 10 SCC 470
[9] (1999) 2 SCC 89
[10] AIR 1968 SC 1481
[11] AIR 1961 SC 908
[12] AIR 1971 SC 530
[13] (2002) 4 SCC 638
[14] (1983) 4 SCC 645
[15] (2008) 13 SCC 1

- (2006) 8 SCC 457
[17] (2010) 12 SCC 387
[18] (2010) 10 SCC 635
[19] (2010) 13 SCC 234
[20] (2012) 5 SCC 763

|REPORTABLE |