

# SUPREME COURT OF INDIA

Food Corporation of India, Kakinada Rep. by District Manager

Vs.

Yarlagadda Narayana Apparao

C.A.Nos.5725-5726 of 2008

(Dr. Arijit Pasayat and Harjit Singh Bedi JJ.)

17.09.2008

## JUDGMENT

**Dr.Arijit Pasayat, J.**

1. Leave granted.

2. Challenge in these appeals is to the judgment of the learned Single Judge of the Andhra Pradesh High Court allowing the Civil Revision Petition Nos.5048 and 5088 of 2001, filed by the present respondent no.1 in each case. In the civil revision petition it was indicated that the proforma respondents in these appeals were not necessary parties. The basic dispute relates to liability to interest on the amount envisaged under Section 23(2) of the *Land Acquisition Act, 1894* (in short the `Act') conveniently called "solatium". The High Court allowed the civil revision petitions being of the view that the decision of this Court in *Prem Nath Kapur and Anr. v. National Fertilizer Corpn. of India Ltd. and Ors.*<sup>1</sup> was overruled by the Constitution Bench of this Court in *Sunder v. Union of India*<sup>2</sup>.

3. Mr. Amrendra Sharan, Additional Solicitor General, submitted that both Prem Nath's case (supra) and Sunder's case (supra) were considered by a Constitution Bench of this Court in *Gurpreet Singh v. Union of India*<sup>3</sup>. It was submitted that view in Prem Nath's case (supra) was stated to be correct one in the said case. Therefore, the view of the High Court cannot be maintained.

4. In response, learned counsel for the respondent submitted that the High Court's judgment does not suffer from any infirmity to warrant interference.

5. In Gurpreet Singh's case (supra) this Court observed, inter alia, as follows:

“53. Thus, on the whole, we are satisfied that the essential ratio in *Prem Nath Kapur* (Supra) 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 on the aspect of appropriation.

54. One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in courts all over the country, we permitted the counsel to address us on that question. That question is whether in the light of the decision in *Sunder* (Supra), the awardee/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.”

6. In view of what has been stated above, it would be appropriate for the High Court to consider the matter afresh in view of the aforesaid quoted observations of this Court. Accordingly, the matter is remitted to the High Court for fresh consideration.

7. The appeals are disposed of without any order as to costs.

<sup>1</sup>(1996 (2) SCC 71)

<sup>2</sup>(2001 (7) SCC 211)

<sup>3</sup>(2006 (8) SCC 457)