

# SUPREME COURT OF INDIA

Ivo Agnelo Santimano Fernandes

Vs.

Government of Goa

C.A.No.7245 of 2003

(G.S. Singhvi and A.K.Ganguly,JJ.,)

23.02.2011

## JUDGEMENT

**A.K.Ganguly,J.,**

1. Heard counsel for the parties.
2. A notification dated 6.09.1984 under Section 4 of the Land Acquisition Act, 1894 (hereinafter, 'the Act'), was issued for acquisition of land at Sanguem, Goa, for the construction of a sports complex. The concerned dispute relates to land in Survey Nos. 111/1 and 111/2. The Land Acquisition 1 Collector (hereinafter, 'LAC') awarded compensation at Rs.45/- per sq. meter.
3. Aggrieved, landowners-appellants 1 to 3 and one Ana Conceicao Antonieta Santimano filed reference petitions against the order of the LAC under Section 18 of the Act. The District Judge, South Goa, passed an award dated 19.08.1992, wherein the rate of Rs.45/- per sq. meter given by the LAC was upheld. Additionally, they were held entitled to severance charges @ 20% p.a. of Rs.45/- per sq. meter in respect of the non- acquired portion of 37,731 sq. meters. They were also granted compensation in respect of a boundary wall amounting to Rs.31,720/-, and other statutory benefits. The total sum thus awarded to them was Rs.8,80,372/-
4. On 7.3.1996, an order was issued by the Director of Sports and Youth Affairs, releasing funds to the extent of Rs.8,80,372/-, placing the same at the disposal of Addl. Dy. Collector, L.A., South, Margoa, Goa, towards payment of the decretal order of the District Judge, South Goa, Margoa in the said land acquisition matter.
5. On 11.3.1996, Ana Conceicao Antonieta Santimano expired leaving behind a Will dated 19.4.1995 bequeathing the additional compensation payable by the government, to her son Herbert Santimano Fernandes (appellant No. 2). The appellants 4, 5 and 6 are the other legal representatives of the deceased Ana Conceicao Antonieta Santimano.

6. The death of Ana Conceicao Antonieta Santimano was not intimated to the government. Accordingly, pursuant to the award, the respondents prepared two cheques each in the sum of Rs.2,06,436/- (after deduction of taxes) in favour of the deceased Ana Conceicao Antonieta Santimano and appellant 1, and two cheques each in the sum of Rs.2,06,437/- (after deduction of taxes) in the names of appellants 2 and 3. The Government addressed a letter dated 1.4.1996 to the deceased Ana Conceicao Antonieta Santimano and appellants 1 to 3, requesting them to collect their cheques on 8.4.1996. The appellants 2 and 4 collected their cheques on 9.4.1996. However, the other two cheques were not collected by the respective claimants. On 13.9.1996, the respondents thus deposited the uncollected cheques in their Revenue Deposit by way of challan and utilized the same.

7. The appellants filed an execution application (No. 3/98) for the recovery of the balance amount along with interest accrued thereon. In the said execution application, the appellants raised a dispute as to apportionment of compensation within the meaning of Section 31(2) of the Act, contending that Ana Conceicao Antonieta Santimano was entitled to Rs.2,83,159.67/- and Ivo Agnelo Santimano Fernandes was entitled to Rs.2,83,159.67/- as per Survey No.111/1; and Ana Conceicao Antonieta Santimano was entitled to Rs.1,57,026.20/- and Herbert Santimano Fernandes was entitled to Rs.1,57,026.20/- as per Survey No. 111/2. It was contended that appellant (Nancy Fernnades Viviera Menezes) was not entitled to receive any sums as no enhancement was awarded with respect to the area belonging to her. The interested party, Ivo Agnelo Santimano Fernandes, was thus entitled to receive a difference of Rs.58,952/-.

8. The District Judge, South Goa, by order dated 29.10.1999, directed that the amount of Rs.2,06,436/- each for which the cheques had been drawn, be paid to the appellants 1 and 3, leaving the question of interest to be determined subsequently. Thus, on 23.3.2000, fresh cheques for an amount of Rs.60,000/- in the name of Ivo Agnelo Santimano Fernandes and for Rs.3,52,873/- in the name of Herbert Santimano Fernandes were issued by the respondents and deposited in court.

9. The District Judge, South Goa, by way of order dated 18.8.2000, held that there was a dispute as to apportionment of compensation, and in light of the judgment in the case of *Prem Nath Kapur & Anr. v. National Fertilizers Corporation of India Ltd. & Ors., reported in'* held that the liability of the respondents to pay interest subsisted till the respondents had not deposited the amount in the court. Since, the respondents had deposited the amount of compensation in their Revenue account and had utilized the same instead of depositing it in Court, the respondents were liable to pay interest @ 15% p.a. on compensation. The relevant portion of that determination reads as follows:

"The decree holders have not contested the figures mentioned in the reply Exh. 20 dated 15.7.2000 filed by the judgment debtors, which show that an amount of Rs.8,80,372/- was due and payable to them upto 31.3.1996. Decree holders nos. 1 and 2 would be therefore, entitled to receive further interest at the rate of 15% from 1.4.1996 to 8.4.1996 on the said sums of Rs.2,06,436/- and Rs.2,06,437/- respectively. Likewise, decree holder no. 1 would also be entitled to receive further

interest at the rate of 15% on Rs.60,000/- from 1.4.1996 to 7.1.2000 and decree holder no. 2 would also be entitled to receive further interest at the rate of 15% on Rs.3,52,872/- from 1.4.1996 to 7.1.2000. Judgment debtors are hereby directed to pay the same to the said decree holders nos. 1 and 2 respectively."

10. Aggrieved by that order of the District Judge, South Goa passed in the execution proceeding, the respondents preferred a revision before the High Court of Bombay at Goa.

11. Before the High Court it was contended by counsel for the respondents that a bare perusal of Sections 28 and 34 of the Act read with Order XXI Rule I of the CPC would clearly indicate that the State was not liable to pay any additional interest except for the period from 1.4.1996 to 8.4.1996. The respondents further contended that as far as the State was concerned, they had actually tendered and paid the money to the original claimants by drawing four cheques for the amount mentioned therein with regard to the four original claimants by cheques dated 29.3.1996 and also by communicating a letter dated 1.4.1996 that the claimants ought to come and collect their respective amounts payable under the cheques on 8.4.1996; and once the State prepared the cheques and kept them ready to be collected, there was no duty cast on the State to deposit the same in court unless and until the State was informed that Ana Conceicao Antonieta Santimano could not claim the amount and she had bequeathed her amount to Herbert. The respondents contended that an ex facie reading of Sections 28 and 34 of the Act and Order XXI Rule 1 of CPC make it clear that the claimants could not insist on the State depositing the amount only in court and it cannot be contended that State was not entitled to pay the said amount directly to the claimants.

12. On the other hand, the counsel for the appellants urged that Sections 28 and 34 of the Act make it abundantly clear that the interest could be paid only in Court, otherwise liability on the State to pay interest would continue. As per Section 53 of the Act, the provisions of Order XXI Rule 1 of CPC could not come in the way of the contention of the appellants in as much as the said provision was inconsistent with the provisions of the Act and thus, the bar with regard to grant of interest as provided under Order XXI Rule 1 of CPC would not apply in the instant case. Learned counsel for the appellants relied on, inter alia, on the decision of this Court in the case of Prem Nath Kapur (supra).

13. The High Court opined that acceptance of such an argument may lead to absurdity in the sense that the claimant could very well collect the excess amount directly from the State and after a few years may turn around and say that the amount was not deposited in the Reference Court and claim interest thereon. Further, with respect to the contention of the appellants regarding prohibition in Section 53 of the Act in invoking Order XXI Rule 1 of CPC, it was rejected on the ground that there was no inconsistency between the proviso to Order XXI Rule 1 of CPC and Sections 28 and 34 of the Act. Accordingly, the High Court held that the amount was duly paid to the appellants but they did not come to collect the same. Therefore, in the aforesaid facts and circumstances, the judgment of the District Court dated 18.8.2000 could not be sustained and was set aside by way of impugned judgment of the High Court dated 16.8.2002.

14. Aggrieved by the said order of the High Court, the appellants filed the present appeal.

15. During the pendency of the appeal, the wife of Ivo Agnelo Santimano Fernandes by the name of Celina de Conceicao Socorro Josefina Barbosa Fernandes alias Celina Barbosa Fernandes (appellant 5) passed away on 6.11.2003. An application was filed for substitution for bringing on record the legal representatives of appellant 5 and the same was allowed by an order dated 12.7.2004. Accordingly, the legal heirs of appellant 5 were brought on record.

16. We have heard the parties and perused the materials on record as well as the relevant provisions of the Act.

17. In the case of Prem Nath Kapur (supra), a three- Judge Bench of this Court considered the question as to when the liability of the State to pay interest ceases. The relevant portion of the judgment reads as follows:

"13. 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 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." (Emphasis added)

18. This Court also held that by operation of Section 53 of the Act, Order XXI Rule 1 of CPC, being inconsistent with the express provisions contained in Sections 34 and 28 of the Act, stood excluded.

19. In the light of the abovesaid principle, we are of the view that the contentions of the respondents cannot be accepted. The Act requires that the interest be deposited in court, and the same has been upheld in the case of Prem Nath Kapur (supra). In the present case, the respondents did not deposit the amount in court, but in their Revenue account and utilized the same. Even if the respondent State does pay the compensation to the claimants directly, and the same is not collected, the respondent State cannot then keep the said money with itself and utilize it. In such cases, after a reasonable period, if the claimants do not come forward to collect compensation, then it should be deposited in court by the State. Allowing the State to keep the compensation with itself and utilizing it cannot possibly be permitted being contrary to the provisions of the Act and the law laid down in Prem Nath Kapur (supra). Hence, the judgment of the High Court is clearly erroneous and deserves to be set aside.

20. Accordingly, the appeal is allowed and interest will be payable to the parties as per the order of the District Judge dated 18.8.2000. Such payment be released within a period of six weeks from date.

21. No order as to costs.

<sup>1</sup>(1996) 2 SCC 0071