

**ORISSA HIGH COURT
CUTTACK**

CIVIL REVISION NO.361 of 2001

From the judgment and order dated 12.04.2001 passed by Sri P.K. Hota,
Civil Judge (Sr. Division), Gunupur in M.J.C. No. 13 of 1999.

B. Yasabanta Narayan Deo
and another

..... Petitioners

-Versus-

Land Acquisition Officer,
Koraput and another

..... Opp. Parties

For Petitioners : M/s. C.A.Rao & A. Tripathy.

For Opp. Parties : Addl. Standing Counsel.

PRESENT :

THE HONOURABLE MR. JUSTICE PRADIP MOHANTY

Date of hearing & judgment : 12.11.2009

PRADIP MOHANTY, J. This Civil Revision is directed against the order dated
12.04.2001 passed by the learned Civil Judge (Sr. Division), Gunupur in
M.J.C. No.13 of 1999.

2. The case of the petitioners is that land of the recorded
Khatadar Smt. Laxmimani Devi situated at Marathiguda was acquired
vide Revenue Department notification No.LA422/80 KPT 81625/R and

81626/R dated 12.10.1980 respectively under Section 4 of the Land Acquisition Act (hereinafter referred as 'the Act'). The compensation fixed by the Collector for such acquisition was objected to by Bahubalendra Venkata Krishna Deo, the father of the present petitioners, as the attorney holder of Smt. Laxmimani Devi. The Land Acquisition Officer, Koraput made reference under Section 18 of the Act to the court of the Civil Judge (Senior Division), Gunupur which was registered as M.J.C. No.35 of 1983. The referral court, considering the evidence on record, by order dated 07.03.1986 fixed the market value of the acquired land at the rate of Rs.40,000/- per acre and granted 30% solatium and interest at the rate of 6% per annum since the date of dispossession till the payment is made. Against that order, the opposite parties preferred First Appeal No.111 of 1986 before this Court. By order dated 30.06.1989, this Court dismissed the said appeal, confirmed the order of the lower court and directed that the claimant (father of the present petitioners) would be entitled to get statutory benefits under the Land Acquisition Act as amended vide Act 68 of 1984. After disposal of First Appeal No.111 of 1989, the claimant B. Venkata Krishna Deo filed an execution petition registered as E.P. No.7 of 1987 for realization of the compensation amount awarded in M.J.C. No.35 of 1983. During the pendency of the execution petition, the claimant died and in his place the present petitioners were substituted. As the award in MJC No.35 of 1983 had not contained the statutory benefits as provided under the amended Act

68 of 1984, the petitioners filed M.J.C. No.13 of 1999 under Sections 151 and 152 of the CPC before the court below for amendment of the said award in terms of the direction of this Court contained in the judgment rendered in First Appeal No.111 of 1986. The court below after hearing the parties allowed the said petition by granting an amount at the rate of 12% per annum on the market value of the acquired land in terms of section 23(1-A) of the Act and enhanced the rate of interest from 6% per annum to 9% per annum on the excess amount of compensation awarded as provided in section 28 of the Act. However, the court below declined to award interest at the rate of 15% per annum, as per proviso to section 28 of the Act. Feeling aggrieved, the petitioner has filed this revision.

3. Mr. Rao, learned counsel for the petitioners submits that the petitioners are entitled to get interest at the rate of 9% per annum on the excess amount of compensation till expiry of one year from the date of dispossession and at the rate of 15% per annum after expiry of one year, as provided under the proviso to Section 28 of the Act. But the learned Civil Judge on erroneous appreciation of fact and contrary to law has refused to grant 15% interest per annum on the excess amount of compensation. In support of his contention, he relies on the decision in **Manipur Tea Co. Pvt. Ltd. V. Collector of Hailakandi**, AIR 1997 SC 1779 and **Sunder Vrs. Union of India**, (2001) 7 SCC 211.

4. Mr. Das, learned Additional Standing Counsel vehemently opposes the contention raised by the learned counsel for the petitioners and submits that this revision is not maintainable in view of amendment of the CPC.

5. Perused the record and the decisions cited. Land was acquired by virtue of the notification dated 10.12.1980. In the meantime 29 years have elapsed. Since this is an old case of the year 1980, without going into the maintainability of the civil revision, this Court directs the petitioners to file a fresh application with a prayer to grant interest under section 28 of the Land Acquisition Act within a month from the date of receipt of this order. In the event such an application is filed, the court below shall consider and pass appropriate order in the light of the ratio decided in ***Manipur Tea Co. Pvt. Ltd.*** (supra) and ***Sunder*** (supra) within a period of 45 days from the date of its filing by giving opportunity of hearing to the opposite parties.

The civil revision is accordingly disposed of.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
The 12th November, 2009/**Alok**.