A.P. HOUSING BOARD

v.

K. MANOHAR REDDY & ORS.

(Civil Appeal Nos. 4212-4223 of 2004)

SEPTEMBER 30, 2010

[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]

Land Acquisition Act, 1894 – ss. 4, 6, 18, 54 and 23(1)(A) – Acquisition of large tract of land – Compensation – Determination of – High Court enhanced rate of market value of the acquired land from Rs. 50 per square yard to Rs. 75 per square yard from which 1/3rd would be deducted – On appeal, held: Acquired land is agricultural land, thus, would require extensive development to be utilised as a residential site – Deduction of 1/3rd from the awarded amount would be an appropriate deduction towards development charges – Sale deeds were executed in proximity to the date of acquisition, thus, rate of market value enhanced by High Court without giving cogent reasons, not valid and legal – Thus, market value of land determined at the rate of Rs. 50/- per sq. yard as on date of notification and 1/3rd to be deducted towards development charges from the awarded amount.

A Notification was issued to acquire land measuring 84 acres 24 guntas. The Land Acquisition Officer passed an award determining the market value of the land at the rate of Rs. 36,000/- per acre. The civil court fixed the market value of the land acquired at the rate of Rs. 50/- per square yard; and also awarded 30% solatium on the market value and a sum of 12% additional value in terms of s. 23(1)(A) of the Land Acquisition Act, 1894. The High Court held that the claimants were entitled to compensation of Rs. 75/- per square yard for the acquired lands, and after deducting 1/3rd from the said amount, it

A would be at the rate of Rs. 50/- per square yard, alongwith other benefits awarded by the civil court. Therefore, the appellant filed the instant appeals.

Allowing the appeals, the Court

B HELD: 1.1 The land which is acquired is very ideal and suitably located, there being a court house and bus stand in proximity to the acquired land. There is also evidence on record indicating that the acquired land is abutting the main highway. Therefore, the acquired land C has potential value to be properly used and developed even for housing project or to exploit it for commercial purposes. The acquired land, although classified as agricultural land, could always be converted to land of good quality by making investments like filling up of the D land, providing road, sewage system and other civic amenities. Therefore, the land having such potential value could be converted to a land of good quality by investing money towards its development. [Para 9] [1114-C-E]

E 1.2 Whatever could be deducted towards development charges for developing a particular plot of land could range between 20 per cent to 75 per cent. This is a very wide bracket but an appropriate deduction befitting the situation, location and the nature of the land F justifying the deduction made could be arrived at upon estimation of all the said factors. If the land is already developed and could be used as a commercial/residential plot, what should be deducted would be in the lower side whereas if development is to be made, like filling up of G the land, providing of roads, sewage and other civic amenities, etc., the range of the deduction could be higher. [Para 17] [1121-E-F]

1.3 Considering the facts and circumstances of the H instant case, and the situation of the land, what could be

an appropriate deduction is 1/3rd from the awarded amount towards development charges. The evidence adduced in the instant case shows that the land is agricultural land and, therefore, would require extensive development to be utilised as a residential site. [Para 18] [1121-G-H; 1122-A]

1.4 The High Court interfered with the rate of market value fixed by the reference court and raised it to Rs. 75/- per square yard from Rs. 50/- per square yard as fixed by the reference court and thereafter, deducted 1/3rd from the said rate towards the development charges. However, the High Court did not given any reason, let alone cogent reasons, for increasing the said rate from Rs. 50/- to Rs. 75/-. Such a course was also not permissible in view of the clear evidence which was relied upon and exhibited by the claimants-respondents themselves, presented as Exhibits A1 to A9. Those were sale deeds which were executed in proximity to the date of acquisition and there is also evidence on record to indicate that the proposal for acquisition of the acquired land was initiated as on 12.10.1982. Such an increase without any supporting reasons could not be said to be valid and legal. Therefore, relying on the Exhibits which were produced by the claimants-respondents and which are found as a reliable yardstick for determining the valuation in the instant case, the market value of the land is determined at Rs. 50/- per square yard as on the date of the notification and it is directed that 1/3rd of the awarded amount would be deducted from the said valuation towards development charges. The respondents would also be entitled to the statutory benefits as provided for u/ss. 23(1), 28 and 34 of the Land Acquisition Act. [Paras 19, 20] [1122-A-F]

Sunder v. Union of India (2001) 7 SCC 211; *Gurpreet Singh vs. Union of India* (2006) 8 SCC 457 – relied on.

A *Cement Corporation of India Ltd. v. Purya & Ors.* **(2004) 8 SCC 270**; *Rishi Pal Singh and Ors. vs. Meerut Development Authority and Anr.* **(2006) 3 SCC 205**; *Administrator General of West Bengal vs. Collector, Varanasi* **(1988) 2 SCC 150**; *Ranvir Singh and Anr. vs.. Union of* B *Indian* **(2005) 12 SCC 59**; *Union of India and Anr. vs. Ram Phool and Anr.* **(2003) 10 SCC 167**; *Kasturi and Ors. vs. State of Haryana* **(2003) 1 SCC 354**; *Shaji Kuriakose and Anr. vs. Indian Oil Corpn. Ltd. and Ors.* **(2001) 7 SCC 650**; *Lal Chand vs. Union of India and Anr.* **(2009) 15 SCC 769 – referred** C **to.**

Case Law Reference:

(2004) 8 SCC 270	**Referred to.**	**Para 10**
(2006) 3 SCC 205	**Referred to.**	**Para 11**
D **(1988) 2 SCC 150**	**Referred to.**	**Para 11**
(2005) 12 SCC 59	**Referred to.**	**Para 12**
(2003) 10 SCC 167	**Referred to.**	**Para 13**
E **(2003) 1 SCC 354**	**Referred to.**	**Para 14**
(2001) 7 SCC 650	**Referred to.**	**Para 15**
(2009) 15 SCC 769	**Referred to.**	**Para 16**
F **(2001) 7 SCC 211**	**Relied on.**	**Para 20**
(2006) 8 SCC 457	**Relied on.**	**Para 20**

CIVIL APPELLATE JURISDICTION : CIVIL APPEAL NO. 4212-4223 OF 2004

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From the Judgment & Order 08.06.20110 of the High Court of Andhra Pradesh at Hyderabad in AN 1301,1261,1282,1302,1320,1361,1362,1932,2035,2323,of 1998 and 145 and 514 of 1999

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J. Prabhakar, Manoj Saxena, Shwetank Sabharwal and Dr. Kailash Chand for the Appellant. A

P.P Rao, K Maruthi Rao,K.Radha Anjani Aiyagari, Purushottam S.T.,Utsasv Sidhu, Filza Moonis, Apeksha Sharma, Brajesh Jha, Chandan Kumar and Pawan Kumar for the Respondent. B

The by judgment of the Court was delivered.

DR. MUKUNDAKAM SHARMA, J. 1. The present appeals are filed by the appellant and are directed against the judgment and order dated 08.06.2001 passed by the High Court holding that the respondents-claimants are entitled to compensation at the rate of Rs. 75/- per square yard for the acquired lands after deducting 1/3rd from the said amount, i.e., Rs. 25/- per square yard, along with other benefits as awarded by the Civil Court. C D

2. The State Government of Andhra Pradesh by issuing a notification under Section 4(1) of the Land Acquisition Act, 1894 [hereinafter referred to as "the Act"] on 16.01.1985, which was published in the Gazette on 17.04.1985, proposed to acquire an extent of land measuring 84 acres 24 guntas of land situated in Survey Nos. 4, 5, 6, 7, 8, 13, 14 and 108 of Pothireddipalli village, Sangareddy Mandal, Medak District. The aforesaid notification was followed by a notification under Section 6 of the Act. The Land Acquisition Officer thereafter, taking into consideration the sale transactions of adjoining lands for a period of three years prior to the publication of notification in question, passed an award determining the market value of the land in question at Rs. 36,000/- per acre. E F G

3. The respondent-claimants being dissatisfied with the aforesaid award passed by the Land Acquisition Officer, sought for a reference under Section 18 of the Act to the Civil Court claiming compensation at Rs. 100/- per square yard for the acquired land. Consequent to the said prayer, a reference H

A case was registered. The respondents-claimants examined eight witnesses and also produced some documents on record in the nature of sale deeds exhibited as A1 to A15. On behalf of the Land Acquisition Officer, documents were produced which were exhibited as B1 to B22.

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4. The District Judge, who heard the reference case, after considering the oral and documentary evidence produced before him, passed a common judgment and order dated 29.12.1997 fixing the market value of the land acquired at Rs. 50/- per square yard and also awarded 30 per cent solatium C on the market value and a further sum of 12 per cent additional market value in terms of the Section 23(1)(A) of the Land Acquisition Act. The Civil Court also awarded interest at 9 per cent per annum for the first year and 15 per cent per annum thereafter.

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5. The respondents-claimants, still aggrieved, filed appeals before the High Court under Section 54 of the Act. The Land Acquisition Department of the Government of Andhra Pradesh and the appellants herein also filed appeals before E the High Court contending *inter alia* that the reference court was not justified in determining compensation on the basis of square yards of land when a large extent of land measuring 84 acres 24 guntas had been acquired. Another contention that was raised on behalf of the State was that the reference court F should have at least made deduction towards development charges which could have been done in the range between 33 per cent to 65 per cent since the land acquired was a large tract of land whereas the exemplar is small plot of land.

6. Contention of the respondents on the other hand in G their appeals was that similarly situated lands were sold for Rs. 200/- per square yards to Rs. 300/- per square yards and, therefore, the valuation fixed by the reference court should be enhanced.

H 7. The aforesaid appeals were heard by the High Court

and by a common judgment and order dated 08.06.2001 the Court, taking into consideration the generality of the situation and the proximity of the land in question to industrial establishments and its potentiality, held that the claimants were entitled to compensation of Rs. 75/- per square yard for the acquired lands and then deducted 1/3rd from the said amount, which is Rs. 25/- per square yard, and consequently held that the respondents-claimants would be entitled for payment of compensation at the rate of Rs. 50/- per square yard with other benefits as awarded by the Civil Court. Being aggrieved by the aforesaid judgment and order, the Andhra Pradesh Housing Board has filed the present appeals on which we have heard the learned counsel appearing for the parties.

8. The evidence adduced by the witnesses and the documents relied upon and referred to by the courts below were also placed before us which we have carefully scrutinized. Out of the 15 exhibits, *viz.*, Exhibits A1 to A15, which are sale deeds produced and exhibited by the respondents-claimants before the reference court, what is really relevant for our purpose are Exhibits A1 to A9, as they pertain to lands situated at Survey No. 8 which are similar to the land which was sought to be acquired under the notification in question. The aforesaid sale deeds were executed *apriori* the date of the notification issued under Section 4(1) of the Act. Exhibits A1 to A5 relate to transactions of sales of land in Survey No. 8 at the rate of Rs. 50/- per square yard, Exhibits A6 & A7 relate to transaction of sales of land in Survey No. 13 at the rate of Rs. 60/- per square yard and Exhibit A9 relates to transaction of sale of land in Survey No. 4 at the rate of Rs. 48.30 per square yard. Another important aspect which is to be noted at this stage is that the proposal for acquisition of this land was initiated on 12.10.1982. In light of the said fact, one of the contentions of the appellants was that the aforesaid purchase of property under all the sale deeds were made in anticipation of acquisition of land thereby showing inflated rate of sale.

A 9. It is true that all the aforesaid Exhibits which are produced by the respondents-claimants were executed after 12.10.1982 when the aforesaid proposal for acquisition was initiated. It is also clear from the evidence on record that J. Subbiah [PW-3] who was examined in the reference case is B also the claimant No. 7 and was a signatory to Exhibit A9 and is also related to Deva Sahayam [PW-2] who was the vendor. Similarly, Narayana Goud [PW-5] purchased the land from PW-2 in respect of Exhibit A3 whereas PW-5 is signatory in sale deeds, *viz.*, Exhibits A1 and A2. But, the fact remains that the C land which is acquired is very ideal and suitably located, there being a court house and bus stand in proximity to the acquired land. There is also evidence on record indicating that the acquired land is abutting the main highway. Therefore, the acquired land has potential value to be properly used and D developed even for housing project or to exploit it for commercial purposes. The acquired land, although classified as agricultural land, could always be converted to land of good quality by making investments like filling up of the land, providing road, sewage system and other civic amenities. The land in question having such potential value could, therefore, E be converted to a land of good quality by investing money towards its development.

10. This Court while dealing with the admissibility of the sale deed in the case of *Cement Corporation of India Ltd. v.* F *Purya & Ors.* reported in (2004) 8 SCC 270 at paragraph 28 held that even the vendor or vendee to a sale deed are not required to be examined themselves for proving the contents thereof if the contents of the sale deed are held to be admissible by Court in accordance with law: -

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> "28. Section 51-A of the LA Act may be read literally and having regard to the ordinary meaning which can be attributed to the term 'acceptance of evidence' relating to transaction evidenced by a sale deed, its admissibility in evidence would be beyond any question. We are not

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oblivious of the fact that only by bringing a documentary evidence in the record it is not automatically brought on the record. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. The admissibility of a certified copy of sale deed by itself could not be held to be inadmissible as thereby secondary evidence has been brought on record without proving the absence of primary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word 'may'. A discretion, therefore, has been conferred upon a court to be exercised judicially, i.e. upon taking into consideration the relevant factors."

11. This Court in a catena of decisions has laid down that when a large tract of land is acquired and sale instances produced for small plots as exemplar, the best course for the court to arrive at a reasonable and fare valuation is to deduct a reasonable percentage from the valuation shown in the exemplar land and on the basis thereof to arrive at a just and fair valuation. In *Rishi Pal Singh and Others vs. Meerut Development Authority and Anr.* reported in (2006) 3 SCC 205, this Court while dealing with the issue relating to a large tract of land held as follows:-

5.....With respect to the first reason, that is, exemplars of small plots have been taken into consideration by the Reference Court, in the first instance our attention was invited to some judgments of this Court to urge that there is no absolute bar to exemplars of small plots being considered provided adequate discount is given in this

A behalf. Thus there is no bar in law to exemplars of small plots being considered. In an appropriate case, especially when other relevant or material evidence is not available, such exemplars can be considered after making adequate discount. This is a case in which appropriate exemplars B are not available. The Reference Court has made adequate discount for taking the exemplars of small plots into consideration.....

In *Administrator General of West Bengal v. Collector, Varanasi,* reported at (1988) 2 SCC 150, this Court held C (paragraph 12) that where large tracts of land are required to be valued, valuation in transactions with regard to small plots cannot directly be adopted for valuing the compensation of large tracts of land.

D "12. It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land E has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does not admit of and is ripe for use for building purposes; F that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of hypothetical lay out could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small G sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civil amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the H

period of deferment of the realisation of the price; the profits on the venture etc. are to be made. In Sahib Singh Kalha v. Amritsar Improvement Trust this Court indicated that deductions for land required for roads and other developmental expenses can, together, come up to as much as 53 per cent. But the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the "retail" price of land and the latter the "wholesale" price."

12. On the admissibility and relevance of sale deeds, this Court in *Ranvir Singh & Anr. V. Union of India* reported in (2005) 12 SCC 59 held as follows: -

"31. Furthermore, it is well settled that the sale deeds pertaining to the portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands."

"36. Furthermore, a judgment or award determining the amount of compensation is not conclusive. The same would merely be a piece of evidence. There cannot be any fixed criteria for determining the increase in the value of land at a fixed rate. ....."

13. It was held in the case of *Union of India & Anr. v. Ram Phool & Anr.* reported in (2003) 10 SCC 167 that : -

"6. ..... the sale price in respect of a small bit of transaction would not be the determinative factor for deciding the market value of a vast stretch of land. ....."

14. In the case of *Kasturi & Ors. v. State of Haryana* reported in (2003) 1 SCC 354 this Court held as follows: -

"7. ..... It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of

A compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial B purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; maybe the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may C be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is D such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a E developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities etc. However, in cases of F some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into G consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential

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value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose." A B

15. Further, in the case of *Shaji Kuriakose & Anr. v. Indian Oil Corpn. Ltd. and Ors.* reported in (2001) 7 SCC 650, this Court held that: -

"3. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why C D E F G H

A the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for
B acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. ....."

16. In *Lal Chand v. Union of India & Anr.*, reported at
C (2009) 15 SCC 769, this Court while determining the rate at which development charges may be deducted, held (paragraph 8):

..The percentage of 'deduction for development' to be made to arrive at the market value of large tracts of
D undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, *varies between 20% to 75% of the price of such developed plots,* the percentage depending upon the nature of development of the lay out in which the
E exemplar plots are situated. The 'deduction for development' consists of two components. The first is with reference to the area required to be utilised for developmental works and the second is the cost of the development works....

F ....9. Therefore the deduction for the 'development factor' to be made with reference to the price of a small plot in a developed lay out, to arrive at the cost of undeveloped land, will be for more than the deduction with reference to the price of a small plot in an unauthorized
G private lay out or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure. Even among the layouts formed by DDA, the

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percentage of land utilized for roads, civic amenities, parks and play grounds may vary with reference to the nature of layout - whether it is residential, residential- cum-commercial or industrial; and even among residential layouts, the percentage will differ having regard to the size of the plots, width of the roads, extent of community facilities, parks and play grounds provided. Some of the layouts formed by statutory Development Authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical sub-stations etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the 'deduction for development' factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%.

17. It is, therefore, implicit from the aforesaid discussion of case law and precedent that whatever could be deducted towards development charges for developing a particular plot of land could range between 20 per cent to 75 per cent. This is a very wide bracket, no doubt, but an appropriate deduction befitting the situation, location and the nature of the land justifying the deduction made could be arrived at upon estimation of all the aforesaid factors. If the land is already developed and could be used as a commercial/residential plot, what should be deducted would be in the lower side whereas if development is to be made, like filling up of the land, providing of roads, sewage and other civic amenities, etc., the range of the deduction could be higher.

18. Considering the facts and circumstances of the present case, and the situation of the land, what could be an appropriate deduction in our estimation is 1/3rd from the awarded amount towards development charges. We have referred to the evidence adduced in this case which shows that the land is agricultural land and therefore would require extensive

development to be utilised as a residential site.

19. The High Court interfered with the rate of market value fixed by the reference court and raised it to Rs. 75/- per square yard from Rs. 50/- per square yard as fixed by the reference court and thereafter deducted 1/3rd from the aforesaid rate towards the development charges. However, the High Court has not given any reason, let alone cogent reasons, for increasing the aforesaid rate from Rs. 50/- to Rs. 75/-. Such a course was also not permissible in view of the clear evidence which was relied upon and exhibited by the claimants-respondents themselves, presented as Exhibits A1 to A9. Those were sale deeds which were executed in proximity to the date of acquisition and there is also evidence on record to indicate that the proposal for acquisition of the acquired land was initiated as on 12.10.1982. Therefore, such an increase without any supporting reasons cannot be said to be valid and legal.

20. Therefore, relying on the Exhibits which were produced by the claimants-respondents and which are found as a reliable yardstick for determining the valuation in the present case, we determine the market value of the land at Rs. 50/- per square yard as on the date of the notification and direct that 1/3rd of the awarded amount shall be deducted from the aforesaid valuation towards development charges. It is needless to point out here that the respondents shall also be entitled to the statutory benefits as provided for under Section 23(1), 28 and 34 of the Act for which the decision rendered in the case of *Sunder v. Union of India* reported in (2001) 7 SCC 211 *which was later affirmed and elaborated in the case of Gurpreet Singh vs. Union of India* reported in (2006) 8 SCC 457 would be applicable.

21. We accordingly allow these appeals. However, we leave the parties to bear their own costs.

N.J. Appeal allowed.

PUNJAB AND SIND BANK

v.

M/S. ALLIED BEVERAGE COMPANY PVT. LTD. AND ORS.

(Civil Appeal No. 8443 of 2010)

OCTOBER 1, 2010

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Interest: Rate of interest – Cash credit facility granted by Bank to a Company – Company suffered losses – Its account with Bank declared as Non-performing Assets – Recovery suit – DRT directed Company to pay outstanding dues alongwith 18% p.a. thereon with monthly rests – High Court modified the order of the DRT by reducing the pendente lite and future interest to 14% p.a. with 12 monthly rests – Held: High Court fairly neutralized the claim of the Bank as well as the sufferings of the Company and passed a workable order by reducing the rate of interest to 14% p.a. which would be simple interest – The approach and the course adopted by the High Court acceptable – Recovery of Debts due to Banks and Financial Institutions Act, 1993 – s.19(20) – Banking Regulation Act, 1949 – s.21A – Code of Civil Procedure, 1908 – s.34.

The appellant-Bank granted to the respondent-Company the cash credit facility duly secured by way of hypothecation of company's assets. The Company suffered set back in its business and its account with the Bank was declared as Non-performing Assets.

The Bank sent a legal notice to the directors of the Company under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 calling them to pay the outstanding dues along with interest due thereon. The Company approached the bank for settlement of the accounts. However, the *lite* and

A future interest. The DRT allowed the application. The DRAT upheld the decision of the DRT. The Company filed the writ petition. The High Court modified the order of the DRT by reducing the *pendente lite* and future interest w.e.f. 04.07.2003 to 14% p.a. with monthly rests, against B the rate of interest @ 18% p.a. with monthly rests, awarded by the DRT. The Bank filed the instant appeal.

Dismissing the appeal, the court

HELD: The provisions of Section 19(20) of the C Recovery of Debts due to Banks and Financial Institutions Act, 1993, Section 21A of the Banking Regulation Act, 1949 and Section 34 CPC are relevant while considering the rate or quantum of interest payable *pendente lite* and future interest. In the instant case, the D Company had agreed for settlement but it was not successful due to financial difficulties and all other circumstances. The High Court fairly neutralized the claim of the Bank as well as the sufferings of the Company and passed a workable order by reducing the rate of interest E to 14% p.a., which would be simple interest, in respect of period *pendente lite* and future interest. The approach and the course adopted by the High Court is acceptable and no order is passed to either enhance the rate of interest as claimed by the Bank or further reduce as F requested by the Company. [Paras 9, 13, 14] [1129-G; 1137-F-G; 1138-A]

Central Bank of India v. Ravindra and Others (2002) 1 SCC 367 – relied on.

G *N.M. Veerappa v. Canara Bank* (1998) 2 SCC 317; *Syndicate Bank, Chennai v. Mohan Brothers and Ors.* (2004) 10 SCC 549 – referred to.

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Case Law Reference:

(2002) 1 SCC 367	**relied on**	**Para 11**
(1998) 2 SCC 317	**referred to**	**Para 10**
(2004) 10 SCC 549	**referred to**	**Para 13**

CIVIL APPELLATE JURISDICTION : From the Judgment & Order dated 24.08.2007 of the High Court of Delhi at New Delhi in Civil Writ Petition WP (C) No. 6069 of 2007.

WITH

C.A. No. 8444 of 2010.

Rajiv Dutta, Kumar Dushyant Singh, R. Nedumaran, Deepak Bhattacharya, Rajesh Kumar, Priyanka Kumari, Satish Aggarwal, Gurbir Singh Raikhy, Surya Kant for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. These appeals are directed against the judgment and order dated 24.08.2007 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No.6069 of 2007 wherein the Division Bench of the High Court disposed of the writ petition filed by M/s Allied Beverage Company Pvt. Ltd. (hereinafter referred to as "the Company") modifying the order dated 09.06.2005 passed by the Debts Recovery Tribunal-III, Delhi (hereinafter referred to as "the DRT") in Original Application No. 47 of 2003 preferred by the Punjab & Sind Bank (hereinafter referred to as "the Bank") to the extent by reducing the *pendente lite* and future interest w.e.f. 04.07.2003 to 14% p.a. with annual rests, which would be the simple interest, against the rate of interest @ 18% p.a. with monthly rests, awarded by the DRT, Delhi.

A 3. **Brief facts:**

(a) Vide application dated 28.04.1997, the Company approached the Bank and requested for grant of financial facilities in its name. After verifying the documents submitted by the Company, the Bank acceded to the request and granted B the Cash Credit (CC) (Hypothecation) limit to the tune of Rs. 60,00,000/-, Term Loan of Rs.20,00,000/-, FOBLC/FOBP facility to the tune of Rs.10,00,000/- and Import/Inland Letter of Credit facility to the tune of Rs.25,00,000/-. However, the Cash Credit and the Import/Inland Letter of Credit limit was not to C exceed Rs.60,00,000/-. The aforesaid credit facilities given by the Bank were duly secured by way of hypothecation over stock of raw materials, finished products, goods in transit and in process, finished goods, generator sets and tanks on which the first charge has been created by the Haryana Financial D Corporation (hereinafter referred to as "the Corporation") and the Bank had the second charge over all the above materials. Additionally, the said credit facilities were also secured by way of equitable mortgage by deposit of original Title Deeds in respect of immovable property bearing Plot No. 9, Road E No. W-8, DLF Qutab Enclave, Phase-III, village Nathurpur, Teh. and Dist. Gurgaon measuring about 450.78 sq.mts. belonging to Shri Surinder Kumar Sadhu - Director of the Company. On 16.07.1997, the Bank sanctioned and granted the abovementioned loan/credit facilities to the Company. The F Company submitted all the required documents with the Bank. Because of certain reasons, the business of the Company suffered a set back and its account with the Bank was declared as Non-performing Assets (NPA) on 31.03.1999. As on that date, an amount of Rs.60,99,482.77/- was due in Cash credit G account and Rs.15,05,470/- in respect of the Term loan account. The account of the Company was transferred to NPA Account on 01.04.1999.

(b) On 16.09.2002, the Bank sent a legal notice to the H Directors of the Company under the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Securitization Act') through its Manager, calling them to regularize the account by paying the outstanding dues payable to the Bank along with interest due thereon and that in failure of the same, the Bank would be constrained to take appropriate legal action under the Securitization Act against them. On receipt of the notice, the Company approached the Bank for settlement of accounts and gave a proposal in writing and also deposited a sum of Rs.2,50,000/- towards token money. However, the settlement could not be materialized as the same was on the lower side and as such the amount of token money was credited to the Company's account.

(c) On 04.07.2003, the Bank filed an application before the DRT being O.A. No. 47 of 2003 for recovery of Rs.1,47,42,616.77 along with *pendente lite* and future interest. During the pendency of the application, the Company further gave a proposal for settlement but the same could not be materialized. However, on 09.06.2005, the Presiding Officer allowed the application and directed the Company to pay the outstanding amount with *pendente lite* and future interest. The Presiding Officer further directed that a Recovery Certificate be prepared and the parties therein should appear before the Recovery Officer-I, DRT-III Delhi on 09.08.2005 for execution of the same. Being aggrieved by the order passed by the Presiding Officer, the Company preferred an appeal being Appeal No. 70 of 2006 before the Debts Recovery Appellate Tribunal (hereinafter referred to as 'the DRAT'), Delhi and the same was dismissed vide order dated 29.03.2007.

(d) Challenging the order dated 29.03.2007 passed by the DRAT, the Company preferred Writ Petition (C) No. 6069 of 2007 before the High Court on 10.07.2007. Vide order dated 24.08.2007, the High Court disposed of the writ petition modifying the order in respect of interest to the extent mentioned therein. Dissatisfied with the order passed by the

A High Court, the Bank filed appeal arising out of S.L.P.(C) No. 24745 of 2007 and the Company preferred appeal arising out of S.L.P.(C) No. 3373 of 2008 before this Court.

4. Heard learned senior counsel for the Bank as well as learned senior counsel for the Company.

B

5. The following questions arise for consideration:

(i) Whether the High Court is justified in reducing the interest @ 18% p.a. with monthly rests to 14% p.a. with 12 monthly rests without appreciating the C contractual rate of interest.

(ii) Whether the High Court has power and jurisdiction under Section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') to change the periodicity of the payment of interest as has D been done in the present case, wherein as per the original judgment and decree dated 09.06.2005 passed by the DRT, the interest was payable at 18% p.a. with monthly rests, whereas the Division Bench of the High Court has reduced the rate of E interest from 18% p.a. to 14% p.a. with 12 monthly rests.

(iii) Whether the claim of the Company for further reduction of the rate of interest to the extent of 12% F p.a. is feasible and acceptable.

6. Inasmuch as we are only concerned with the rate of interest in these appeals, there is no need to traverse all the factual details as placed before the High Court and the Tribunal except certain facts which we have adverted to in the earlier G paragraphs.

7. In order to appreciate the claim of the Bank as well as the Company with regard to interest, it is useful to refer the relevant provisions as applicable to the case on hand. Chapter H IV of the Recovery of Debts due to Banks and Financial

Institutions Act, 1993 deals with procedure of Tribunals. Among the various provisions, we are concerned about Section 19 (20) which reads as under:

> "**19. Application to the Tribunal:-**
>
> (20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due upto the date of realization or actual payment, on the application as it thinks fit to meet the ends of justice."

8. In order to regulate the banking companies, the Government of India brought legislation, namely, the Banking Regulation Act, 1949. Here again, we are concerned about the provision relating to rate of interest which is provided in Section 21A which reads thus:

> **"21A. Rates of interest charged by banking companies not to be subject to scrutiny by courts.-** Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be re-opened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive."

9. In addition to the above statutory provisions, Section 34 CPC is also relevant while considering the rate or quantum of interest payable *pendente lite* and after passing of the decree. It reads thus:

> **"34. Interest.-** (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be

A paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems B reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so C adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions. D

Explanation I.-In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970). E

Explanation II.-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

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(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie." G

10. In *N.M. Veerappa* vs. *Canara Bank*, (1998) 2 SCC 317 = AIR 1998 SC 1101, this Court while considering Section 21A of the Banking Regulation Act, 1949 which was introduced by Act 1 of 1984, w.e.f. 15.02.1984 has held, in para 23, as H follows:-

" ... . Firstly, it will be noticed that the effect of the "non-obstante clause" in Section 21-A is to override the Central Act, namely, the Usurious Loans Act, 1918 and any other "law relating to indebtedness in force in any State". Obviously it does not expressly intend to override the Code of Civil procedure among the Central statutes. It is now well settled that the scope and width of the non-obstante Clause is to be decided on the basis of what is contained in the enacting part of the provision. Aswini Kumar Ghosh vs. Arabind Bose. Further, by no stretch of imagination can the Code of Civil Procedure, 1908 be described as a 'law relating to indebtedness in force in any State'. As stated above, the provision in Section 21-A refers, so far as Central legislation is concerned, only to the Usurious Loans Act. 1918 and not to the Code of Civil Procedure, 1908 and it then refers to other laws relating to indebtedness in force in any State. *Therefore, the provision of Section 21-A of the Banking Regulation Act, 1984 cannot be held to have intended to override a Central legislation like the CPC or Order 34 Rule 11 CPC."*

(Emphasis supplied)

11. Learned senior counsel appearing for the Bank as well as the Company and even the High Court heavily relied on the ratio laid down in the Constitution Bench decision in *Central Bank of India* vs. *Ravindra and Others*, (2002) 1 SCC 367. The question before the Constitution Bench was as to the meaning to the phrases "the principal sum adjudged" and "such principal sum" as occurring in Section 34 CPC as amended by the Code of Civil Procedure (Amendment) Act (66 of 1956) w.e.f. 01.01.1957.

12. While considering the above issue, the Constitution Bench has also considered "interest", "penal interest", several "usury laws" and finally made certain observations which are binding on the banking institutions as well as all others dealing

A with money transactions with them.

"Interest and its classes

37. *Black's Law Dictionary* (7th Edn.) defines "interest" inter alia as the compensation fixed by agreement or
B allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. According to *Stroud's Judicial Dictionary of Words And Phrases* (5th Edn.) interest
C means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money. In *Secy., Irrigation Deptt., Govt. of Orissa* v. *G.C. Roy* the Constitution Bench opined that a person deprived of the use of money to which he is legitimately entitled has a right
D to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages ... this is the principle of Section 34 of the Civil Procedure Code. In *Sham Lal Narula (Dr)* v. *CIT* this Court held that interest is paid for the deprivation of the use of the money. The
E essence of interest in the opinion of Lord Wright, in *Riches* v. *Westminster Bank Ltd.* All ER at p. 472 is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had
F had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to the creditor was not paid, or, in other words, was withheld from him by the debtor after the time
G when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. A Division Bench of the High Court of Punjab speaking through Tek Chand, J. in *CIT* v. *Dr Sham Lal*
H *Narula* thus articulated the concept of interest: (AIR p. 414,

directions, having statutory force, in the interest of the public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. The Reserve Bank of India is one of the watchdogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/circulars from time to time which, inter alia, deal with the rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy.

(*6*) Agricultural borrowings are to be treated on a pedestal different from others. Charging and capitalisation of interest on agricultural loans cannot be permitted in India except on annual or six-monthly rests depending on the rotation of crops in the area to which the agriculturist borrowers belong.

(*7*) Any interest charged and/or capitalised in violation of RBI directives, as to rate of interest, or as to periods at which rests can be arrived at, shall be disallowed and/or excluded from capital sum and be treated only as interest and dealt with accordingly.

(*8*) Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the principal

A para 8)

> "8. The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money. ... In whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable."

E It is the appeal against this decision of the Punjab High Court which was dismissed by the Supreme Court in *Dr Sham Lal Narula case*.

38. However "penal interest" has to be distinguished from F "interest". Penal interest is an extraordinary liability incurred by a debtor on account of his being a wrongdoer by having committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the G damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action. Penal interest can be charged only once for one period of default and therefore cannot be permitted to be capitalised.

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39. *Mulla on the Code of Civil Procedure* (1995 Edn.) sets out three divisions of interest as dealt in Section 34 CPC. The division is according to the period for which interest is allowed by the court, namely,— (*1*) interest accrued due prior to the institution of the suit on the principal sum adjudged; (*2*) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree, at such rate as the court deems reasonable; (*3*) further interest on the principal sum adjudged, from the date of the decree to the date of the payment or to such earlier date as the court thinks fit, at a rate not exceeding 6 per cent per annum. Popularly the three interests are called pre-suit interest, interest pendente lite and interest post-decree or future interest. Interest for the period anterior to institution of suit is not a matter of procedure; interest pendente lite is not a matter of substantive law (see *Secy., Irrigation Deptt., Govt. of Orissa* v. *G.C. Roy* SCC para 44-iv).

In conclusion, the Constitution Bench formulated certain principles. They are:

"(*1*) Though interest can be capitalised on the analogy that the interest falling due on the accrued date and remaining unpaid, partakes the character of amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalised. Further interest i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal interest cannot be capitalised. It will be opposed to public policy.

(*2*) Novation, that is, a debtor entering into a fresh agreement with a creditor undertaking payment of previously borrowed principal amount coupled with interest by treating the sum total as principal, any contract express

A or implied and an express acknowledgement of accounts, are the best evidence of capitalisation. Acquiescence in the method of accounting adopted by the creditor and brought to the knowledge of the debtor may also enable interest being converted into principal. A mere failure to
B protest is not acquiescence.

(*3*) The prevalence of banking practice legitimatises stipulations as to interest on periodical rests and their capitalisation being incorporated in contracts. Such
C stipulations incorporated in contracts voluntarily entered into and binding on the parties shall govern the substantive rights and obligations of the parties as to recovery and payment of interest.

(*4*) Capitalisation method is founded on the principle that
D the borrower failed to make payment though he could have made and thereby rendered himself a defaulter. To hold an amount debited to the account of the borrower capitalised it should appear that the borrower had an opportunity of making the payment on the date of entry or
E within a reasonable time or period of grace from the date of debit entry or the amount falling due and thereby avoiding capitalisation. Any debit entry in the account of the borrower and claimed to have been capitalised so as to form an amalgam of the principal sum may be excluded
F on being shown to the satisfaction of the court that such debit entry was not brought to the notice of the borrower and/or he did not have the opportunity of making payment before capitalisation and thereby excluding its capitalisation.

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(*5*) The power conferred by Sections 21 and 35-A of the Banking Regulation Act, 1949 is coupled with duty to act. The Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding
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sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner."

13. By drawing our attention to the decision of this Court in *Syndicate Bank, Chennai* vs. *Mohan Brothers and Ors.*, (2004) 10 SCC 549, it is contended that in view of proviso to Section 34(1) CPC, if the liability in relation to the sum adjudged had arisen out of commercial transaction, the rate of such further interest may exceed 6% p.a. but shall not exceed the contractual rate of interest and the bank is entitled to claim interest as per the contract. It is true that in this decision, a three-Judge Bench, after finding that the decision in *Central Bank of India's case* (supra) shows that no reference has been made to the proviso which specifically deals with the awarding of interest arising out of commercial transaction, referred the issue to a larger bench. We were not informed about any decision by a larger Bench contrary to the decision in *Central Bank of India* (supra). Even otherwise, considering factual aspects, even the Company agreed for settlement but it was not successful due to financial difficulties and all other circumstances, we feel that the High Court has fairly neutralized the claim of the Bank as well as the sufferings of the Company and passed a workable order by reducing the rate of interest to 14% p.a., which would be simple interest, in respect of period *pendente lite* and future interest with effect from 04.07.2003, the day on which the Bank filed an application before the DRT. Though request was made by the Company for further reduction upto 12% p.a., since it was a commercial transaction and the Bank being a nationalized bank, we are not inclined to accede to their request.

A 14. The approach and the course adopted by the High Court is acceptable and we are not inclined to either enhance the rate of interest as claimed by the Bank or order further reduction as requested by the Company. Consequently, both the appeals are dismissed with no order as to costs.

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D.G. Appeals dismissed.