

(2003) 02 MAD CK 0118

In the Madras High Court

Case No : Appeal Suit No. 49 of 2002 and C.M.P. No. 10286 of 2002

Land Acquisition Officer-cum-Deputy Collector (Rev)

APPELLANT

Vs

Angeline Devadoss, Johan Demasthenes Britto, Pauline
Chinnaraj, rep. by Power Agent Durairasu and The
Pondicherry Housing Board

RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1
Land Acquisition Act, 1894 — Section 18, 23(1A), 28, 34, 4(1)

Citation : (2003) 2 LW 639 : (2003) 2 MLJ 7

Hon'ble Judges : A.S. Venkatachalamoorthy, J;A. Kulasekaran, J

Bench : Division Bench

Advocate : A.R. Suryaprakasam, Additional Govt. Pleader, for the Appellant; S.V. Jayaraman for R.T. Shyamala, for R1 and R2, K. Yamunan, for R3 and T.P. Manoharan, for R4, for the Respondent

Final Decision : Partly Allowed

Judgement

A.S. Venkatachalamoorthy, J.—An extent of 4 acres (1.58.19 Hectares), belonged to respondents 1 to 3, comprised in T.S. Nos.151,

152, 163/1 and 163/2 in Valatheru Village, was acquired by the Government of Pondicherry for the implementation of Housing Scheme.

Notification u/s 4(1) of the Land Acquisition Act came to be published on 13.4.1982. Declaration u/s 6 of the Act was issued by the Revenue

Department in G.O. No. 3 dated 6.1.1985. The Land Acquisition Officer conducted the award enquiry as contemplated under the Act and passed

the award dated 31.3.1986, wherein he has fixed the compensation payable at Rs.4,581/- per Are. Possession of the land was taken on the very

next day, that was on 01.04.1986.

2. The dissatisfied land owners/claimants sought for reference u/s 18 of the Land Acquisition Act before a Civil Court. The Additional District

Judge, Pondicherry at Kariakal, took the reference on file and the same was numbered as LAOP No. 5 of 1991. Before the Reference Court,

both the parties let in oral and documentary evidence. On the basis of the materials available on record, the Reference Court fixed the

compensation at Rs.15,120/- per Are.

3. The State of Pondicherry, being aggrieved by such fixation, filed an appeal before this Court in A.S. No. 1097 of 1993. During pendency of the

said Appeal, the Appellant/State of Pondicherry deposited a sum of Rs.35,00,000/- on 04.03.1994. The 3rd respondent herein thereafter filed a

petition in the said Appeal to implead him as a party and he was so impleaded (as third respondent) by order dated 20.12.1994.

4. A.S. No. 1097 of 1993 came up for final hearing before a Division Bench of this Court on 10.01.2001. The Division Bench set aside the

impugned award and remitted the matter back to the Reference Court for a fresh disposal as indicated in the said Judgment. The Reference Court

was also directed to dispose of the matter within three months from the date of receipt of copy of the said Judgment.

5. The Reference Court viz., the Additional District Judge, Pondicherry at Karaikal, disposed of LAOP No. 5 of 1992 by Judgment dated

28.8.2001. The Reference Court came to the conclusion that the market value of the property has to be fixed at Rs.15,500/- per Are. It further

held that the respondents/land owners would be entitled for solatium at 30% and additional amount u/s 23(1-A) of the Land Acquisition Act.

Questioning the correctness of the said Judgment, the above appeal has been filed.

6. Learned counsel appearing for the State of Pondicherry as well as the requisitioning body would contend that the Reference Court has

committed an error in fixing higher market value for the acquired land. In elaborating his arguments, he made two-fold submissions. Firstly, even

assuming that the most comparable sale transaction is Ex.A.24, wherein only an extent of 1540 sq. ft. was subject matter of the transaction, the

area acquired is vast in extent viz., four acres and that the Reference Court has failed in not making necessary deductions. Secondly, it is also

pointed out that the acquired land does not abut the road called Bharathiar Road and to enter the land, one has to travel a short distance through

Sennian Kulam Street and thereafter take a left turn to reach the acquired lands. That being so, certainly, the acquired lands cannot be said to be

equal to that of the lands that abut the road, in value.

7. On the other hand, learned counsel appearing for the respondents/land owners would contend that the acquired lands are fully developed and

that they are very close in the sense they virtually abut Bharathiar Road and hence no deduction need be made.

8. The respondents/land owners have placed before the Reference Court certified copies of a number of sale transactions. But however, except

Ex.A-16 and Ex.A-24 all other transactions are after Section 4(1) Notification. In fact, learned counsel for the respondents/land owners would

contend that this Court may consider Ex.A-24, the sale transaction that took place on 30.01.1982 and on that basis fix the market value of the

acquired lands.

9. Let us now proceed to consider the document Ex.A-24. Under the said document, an extent of 1540 sq. ft. was sold for a consideration of

Rs.21,560/-, which would work out to Rs.15,120/- per Are. Both the properties viz., the acquired property as well as the property that is the

subject matter of Ex.A-24 are very close-by, to say within 150 ft., as could be noted from the evidence of PW-1. Both the properties are within

the municipal limits of Karaikal and there are important land marks near-by. Hence, it can be safely said that the acquired property is similar to that

of Ex.A-24.

10. Now, the question is, whether the acquired property is similarly situated, when compared to Ex.A-24. While the property under Ex.A-24

abuts the street known as French Teacher Street, from the plan it could be seen that the acquired property does not abut any Road. On the north

of the property there are some existing buildings and beyond that is the street known as Valatheru Street. On the east, between the acquired

property and Bharathiar Road, there are buildings. The other two sides are lands and buildings, owned by third parties. Ex.A.12 is the plan

prepared by the claimants. The requisitioning body (i.e.,) the Housing Board has produced a plan after furnishing copies to all the parties. The

correctness of the plan has not been disputed. Hence the same is taken as a Court exhibit and marked as Court Exhibit No. 1. In fact, PW-1 in his evidence, has not deposed that the acquired property abuts either Bharathiar Road or Valatheru Street. The approach to the acquired property is not from Bharathiar Road, which is on the eastern side of the acquired property, and the approach is only from Valatheru Street. Even from Valatheru Street, one has to pass through a passage to reach the property in question. If one looks at the Court Exhibit No. 1, the same will give an idea about the location.

11. The above discussion would show that there are two minus points when the acquired property is compared with that of the property that is the subject matter of Ex.A-24. They are, (i) the total extent acquired is 4 acres (out of which respondents 1 and 2 are entitled for three acres and the 3rd respondent is entitled for one acre). Or in other words, the acquired property is larger in extent when compared to the property that is subject matter under Ex.A.24. (ii) The second minus point is that the acquired property does not abut either Bharathiar Road or Valatheru Street. It is common knowledge that if a property, particularly within the municipal limits, is plotted out as house sites, provision has to be made for roads and also other amenities as required under the laws. Ex.A.12 is the Plan filed by the respondents/land owners and it is claimed that this plan was filed before the municipal authorities and approval has been obtained. Of course, learned counsel appearing for the requisitioning body would contend that no approval has been granted by the Municipality. But whatever it is, we find from the plan that provision has been made for roads to reach all the plots and centrally an area is set apart and that has been indicated in the Plan as a Park. Certainly, the area set out for road and park would be 25% of the total extent. We have also pointed out that the property is not abutting any main Road and from Bharathiar Road, which is a Main Road, one has to take a left turn, that is to enter into Valatheru Street, and then again take a left turn and go through a passage to reach the acquired land.

12. What is the amount to be deducted for largeness of the area and development charges as well as for other reasons, it depends upon the facts and circumstances of each case and that no hard and fast rule can be laid down.

As already pointed out, the property is well within the limits of Karaikal Town and there are important landmarks nearby. Taking note of the two minus factors, this Court is of the view that 30% has to be

deducted out of Rs.15,120/-, which is the sale price reflected in Ex.A-24. On that basis, we fix the market value at Rs.10,600/- per Are.

13. The learned Counsel appearing for the respective parties submitted before this Court that pending Appeal, certain amounts, to an extent of

Rs.37,00,000/- (Rupees thirty seven lakhs only), have been deposited and out of which respondents 1 and 2 have already withdrawn

Rs.35,00,000/- (Rupees thirty five lakhs only) and that this Court may be pleased to clarify the legal position as to how the same has to be

adjusted as against the claims of the parties.

14. To consider the said issue, it is necessary that certain facts are set out.

The total extent acquired is 1.58.19 hectares, out of which respondents 1 and 2 are entitled for 1.18.64 hectares while the 3rd respondent is

entitled for 1/4th share. The award in the Land Acquisition proceedings was passed on 31.03.1986 and possession was taken thereafter. As

against the fixation by the Land Acquisition Officer, respondents 1 and 2 alone sought for reference before the civil court u/s 18 of the Land

Acquisition Act. The reference was taken on file as LAOP No. 5 of 1992 by the Additional District Judge, Pondicherry at Karaikal. By Judgment

dated 16.02.1993, the learned Additional District Judge fixed the market value at Rs.14/- per sq. ft. Being aggrieved by such fixation, the Land

Acquisition Officer-cum-Deputy Collector (Revenue), Karaikal, filed an appeal before this Court in A.S. No. 1097 of 1993. In C.M.P. No.

17714 of 1993, this Court, by the order dated 17.12.1993, directed the Pondicherry Housing Board to deposit Rs.35,00,000/- (Rupees thirty

five lakhs only). The said order was complied with on 04.03.1994. Out of the said sum of Rs.35,00,000/-, respondents-1 and 2 withdrew

Rs.17,50,000/- on 09.03.1994. Again, on 17.3.1994, respondents-1 and 2 withdrew the remaining sum of Rs.17,50,000/-, after furnishing

security. A sum of Rs.12,00,000/- (Rupees twelve lakhs only) was deposited by the Pondicherry Housing Board on 15.9.1995 as per the order of

this Court dated 19.4.1995 in LPA.Nos.33 and 34 of 1995, before the Reference Court and the same has been deposited in the bank. As per the

orders of this Court in C.M.P. No. 16919 of 1994, the 3rd respondent was impleaded as a party. A.S. No. 1097 of 1993 was finally disposed of

on 10.01.2001, remitting the matter back to the Reference Court for a fresh disposal within a period of three months. The Reference Court, as per

the directions of this Court, decided the matter and the judgment is dated 28.8.2001. Originally, the Reference Court fixed the market value at

Rs.15,120/- per Are. Subsequently, after remand, the Reference Court fixed the market value at Rs.15,500/- per Are. Questioning the

correctness of the same, the above appeal A.S. No. 49 of 2002 has been filed.

15. Before this Court, the Pondicherry Housing Board moved C.M.P. No. 7525 of 2002 to implead itself as a party and it was allowed on

10.07.2002

16. The contention of the learned counsel appearing for the Pondicherry Housing Board is that the amount withdrawn by respondents-1 and 2 has

to be adjusted first towards the market value, solatium and additional amount payable u/s 23(1-A) of the Land Acquisition Act and the balance

alone has to be adjusted towards interest. Secondly, he would contend that once the amount is deposited into Court, the interest will stop running.

17. On the other hand, the learned counsel appearing for respondents 1 and 2 would submit that the amount withdrawn by his clients has to be first

adjusted towards interest and the balance to be adjusted towards principal, as otherwise, it would cause a serious hardship moreso since the

acquisition proceedings started way back in 1982 and the delay is primarily due to the courts disposing of the matter and for which, the land

owners cannot be expected to bear the burden.

18. Before we refer to a few decisions, it is necessary to point out certain Sections under the Land Acquisition Act, 1894 so also the Civil

Procedure Code.

19. Section 28 of the Land Acquisition Act is to the effect that the Court can direct the interest payable at 9% for the first year after taking

possession and thereafter at the rate of 15%.

20. The Supreme Court has, in the decision reported in Priya Vart and another Vs. Union of India, , laid down that the interest contemplated u/s

28 is only simple interest and that long pendency of proceedings in a court of law is no ground to award compound interest. To quote the exact

wordings,

It is next contended that unamended section 28 prescribes interest only at 6 per cent and the Court is entitled to award compound interest in view

of the long delay in disposal of the matter. We find no force in this contention as well. When the statute prescribed interest @ 6% per annum, it

necessarily means only simple interest and not compound interest and pendency of proceedings is no ground to award compound interest. When

the Act prescribes payment of interest at a particular rate, it needs to be awarded at the rate prescribed and in no other way.

21. Order XX1 Rule-1 as amended by Act 104 of 1976 reads as under:-

Modes of paying money under decree:--

(1) All money, payable under a decree shall be paid as follows, namely:--

(a) by deposit into the Court whose duty it is to execute the decree, or sent to the Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs

(2) Where any payment is made under clause (a) or clause (c) of sub rule (1) the judgment-debtor shall give notice thereof to the decree-holder

either through the Court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment

through bank, as the case may be, shall accurately state the following particulars, namely:-

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first

two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or Clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub rule (2).

(5) On any amount paid under clause (b) of sub rule (1), interest, if any, shall cease to run from the date of such payment;

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the

date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall

cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the

bank, as the case may be.

22. The Supreme Court of India, in *Meghraj and Others Vs. Mst. Bayabai and Others*, : has laid down as follows:-

The normal rule in the case of a debt due with interest is that any payment made by the debtor is in the first instance to be applied towards

satisfaction of interest and thereafter to the principal.

In that case a Hindu undivided family mortgaged a house belonging to it to an "X" to secure repayment of Rs.40,000/-. Under a preliminary

decree, an amount of Rs.42,430/- was declared due upto June 23, 1941 towards principal and interest. The mortgagors made no payments under

the decree directly to the mortgagees. But from time to time, they claim to have made deposits in the Court under Order 21 Rule 1 of the CPC and

in depositing some of the amounts, they stated that the payments were towards the principal due. There was no evidence on record that the

mortgagees were informed that the amounts were deposited towards the principal due, nor was there evidence that the mortgagees accepted the

amounts towards the principal. The amount was lying in court deposit for quite some time. The Court ruled that unless the mortgagees were

informed that the mortgagors had deposited the amount only towards the principal and not towards the interest, and the mortgagees agreed to

withdraw the money from the Court accepting the conditional deposit, the normal rule that the amounts deposited in Court should first be applied

towards satisfaction of the interest and costs and thereafter towards the principal would apply.

In the said Judgment, the Supreme Court referred to the ruling reported in AIR 1922 PC 233 (Venkatadri Appa Row V. Parthasarathi Appa

Row) and quoted a passage from the said ruling, which runs as under:-

There is a debt due that carries interest. There are moneys that are received without a definite appropriation on the one side or on the other, and

the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that

is satisfied in payment of the capital. That rule is referred to by Rigby, L.J., in the case of Parr's Banking Co. v. Yates 1898 (2) QB 460 in these

words: " The defendant's counsel relied on the old rule that does, no doubt, apply to many cases, namely, that, where both principal and interest

are due, the sums paid on account must be applied first to interest. That rule, where it is applicable, is only common justice. To apply the sums paid

to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under

his contract."

23. The Supreme Court had an occasion to consider a case arising under the Land Acquisition Act and the same is reported in Mathunni Mathai

Vs. Hindustan Organic Chemicals Limited and another, . In that case, a two Judges' Bench of the Supreme Court had considered the question as

to whether the decretal amount deposited by the judgment-debtor in pursuance of an order passed by the Court is to be adjusted towards the

principal amount due first or against interest and other charges. In that case, the Reference Court enhanced the market value and also granted

solatium at 15% and interest at the rate of 4% on the additional amount. The State filed an appeal before the High Court and the land owner filed a

cross appeal. The High Court allowed the Cross Appeal and granted solatium at 30% of the entire market value, additional compensation u/s

23(1-A) of the Land Acquisition Act and interest at 9% for the first year and 15% for the subsequent years. The Company/Requisitioning Body

challenged the said order. The Supreme Court issued notice confining only with regard to the admissibility of the enhanced compensation with

reference to the provisions of the Amended Act, 1984. The Court granted stay, which reads as under:-

The collections of the enhanced compensation, solatium and interest payable by

the petitioner herein pursuant to the judgment and order dated the 1st August 1986 of the High Court of Kerala at Ernakulam in L.A.A. Nos. referred to above be and is hereby stayed.

In view of the said order, the Company did not deposit any amount. This prompted the land owner to file an application for clarification of the order. The Supreme Court, by an order dated 07.12.1987 clarified to the effect that there was no stay of claims of compensation as awarded by the Land Acquisition Officer and as enhanced by the reference court and that what has been actually stayed is disbursement of the compensation to the extent it has been escalated by referring to the Amending Act, 1984 by the High Court and that the entire compensation not covered by the said clarification shall be paid within six weeks without demanding any security. After the said order, the company deposited the amount on 09.01.1988. Subsequently the Appeal was dismissed. Thereafter, the land owner put the decree in execution in October 1989 and claimed that after deducting the amount deposited by the respondent towards amount due, they were liable to be paid the balance with interest as directed by the Court. The Company inter alia contended that it was liable to pay only the amount which was stayed by the Supreme Court viz., the escalations by the amending Act of 1984 and the interest thereon. The executing court allowed the application on the ratio laid down by the Supreme Court in *Meghraj & others v. Mst. Bayabai and others (supra)*. The company filed a revision before the High Court, which held that even though Order XXI Rule 1 of the CPC was amended in 1976, yet, the principle laid down by the Supreme Court on the unamended provisions still applied where the judgment-debtor did not specify as to how the amount deposited was to be appropriated. The Court further held that where deposit is made in pursuance of an order passed by the Court, it was not necessary for the judgment-debtor to specify the manner in which the amount should be appropriated. For so holding, the Court placed reliance on the decisions reported in *The Central Warehousing Corporation, Berhampur Vs. Govinda Choudhury and Sons, and Improvement Trust, Jind Vs. Narinder Kumar, .*

We are of the view that relevant portions from the said Judgment have to be extracted for the purpose of better understanding and the same reads as under:-

The right of the decree-holder to appropriate the amount deposited by the judgment-debtor, either in court or paid outside, towards interest and

other expenses is founded both on fairness and necessity. The Courts and the law have not looked upon favourably where the judgment-debtor

does not pay or deposit the decretal amount within the time granted as one cannot be permitted to take advantage of his own default. Therefore,

the normal rule that is followed is to allow the deposit or payment if it is in part to be adjusted towards the interest due etc. In Meka Venkatadri

Appa Rao Bahadur Zamindar Garu & ors. v. Raja Parthasarathy Appa Rao Bahadur Zamindar Garu AIR 1922 PC 233 the rationale was

explained thus:-

There are moneys that are received without a definite appropriation on the one side or on the other, and the rule which is well-established in

ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the

capital." ""

The Court held that even though the judgment-debtor while depositing the decretal amount from time to time stated that payments were being

made towards the principal due but in absence of any evidence that the decree-holder was informed about the nature of deposit or the decree

holder appropriated it towards the principal, the ordinary rule applied and the payments made by the judgment-debtor could be appropriated

towards interest and cost as held in Meka Venkatadri case (supra). It may now be seen if the principle laid down in this decision stands diluted by

amendment of Rule 1.

The amended sub-rule (2) removes the doubt if there was any that the judgment-debtor is not absolved of the obligation of informing the decree-

holder by written notice even in respect of deposit in court either directly or by registered post. The purpose of addition of the expression, "either

through court directly or by registered post acknowledgment due" is that the judgment-debtor should not only give notice of payment but he must

ensure that the decree holder has been served with the notice. The ratio laid down in Meghraj case (supra) applies now with greater rigour. The

reason for the rule both in the unamended and amended provision appears to be that if the judgment debtor intends that the running of interest

should cease then he must intimate in writing and ensure that it is served on the decree-holder. Sub-rules (4) and (5) added in 1976 to protect the judgment-debtor provide for ceasure of interest from the date of deposit of payment. But the cessation of interest under sub-rule (4) takes place not by payment alone but from the date of service of the notice referred to in sub rule (2). It is not necessary for purposes of this case to decide whether the creditor was bound to appropriate the amount towards principal once it was deposited in court and intimation of the deposit was served on the decree-holder as it does not appear that the respondent ever served any notice on the appellant about the deposit. It is true that the amount was deposited in January, 1988. But in absence of any intimation as required by sub-rule (2) and indication of manner of appropriation, the payment could not be deemed to have been appropriated towards principal unless the decree-holder admits it to be so. The reasoning of the High Court that since the deposit was made in pursuance of order of this Court it would be deemed that the deposit was towards principal does not appear to be correct. Factually, there was no direction to deposit. The Court only granted an interim order in respect of escalation. Therefore, the judgment-debtor was bound to deposit the decretal amount in accordance with law. And that is provided for by Order XXI, Rule 1 of the Civil Procedure Code. But mere deposit in absence of any notice and intimation that it was being deposited towards principal it was for the decree-holder to appropriate it towards the dues. That is what was laid down in Meghraj case(supra).

24. In Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, : a three Judges" Bench of the Supreme Court

framed for consideration, the following questions:-

The question, therefore, is when does the liability of the State to pay interest ceases? Whether the owner of the land is entitled to appropriate from the amount deposited towards costs and then towards interest and then principal amount and again interest on total amount?

The Supreme Court, after considering the matter in detail, came to the conclusion that the ratio in Meghraj case (supra) is equally inapplicable to the appropriation of debt under the Act and that in view of the fact section 53 of the Act lays down that if a provision is inconsistent with the

express provisions of the Code of Civil Procedure, then that provision of C.P.C. shall stand excluded. The Court further held that the ratio laid

therein is applicable only to a debtor and creditor in an ordinary civil suit governed by the provisions of the CPC. The Court ruled that Order 21

Rule 1 is inconsistent with the express provisions contained in Section 34 and 28 of the Land Acquisition Act, and hence, it cannot stand extended

to the cases covered by the Act. The Court clearly laid down that Muthunni Mathai case (supra) cannot be taken to have laid down the correct

law. It would be only proper for us to quote hereunder the relevant portions from the said Judgment.

It is clear from the scheme of the Act and the express language used in Sections 23(1) & (2) 34 and 28 and now Section 23(1-A) of the Act that

each component is a distinct and separate one. When compensation is determined u/s 23(1), its quantification, though made at different levels, the

liability to pay interest thereon arises from the date on which the quantification was so made but, as stated earlier, it relates back to the date of

taking possession of the land till the date of deposit of interest on such excess compensation into the court. Equally, when the appellate court u/s 54

further enhances the compensation, interest is payable on such excess amount determined u/s 23(1). In other words, the liability to pay interest

arises as and when the compensation is further enhanced and liability to pay interest would be co-terminus with the payment of the amount u/s 34

from the date of taking possession till date of payment or deposit or u/s 28 or Section 54 from the date of taking possession till the date of deposit

of such excess amount into the court. The liability to pay interest is only on the excess amount of compensation determined u/s 23(1) and not on

the amount already determined by the Land Acquisition Officer u/s 11 and paid to the party or deposited into the court or determined u/s 26 or

Section 54 and deposited into the court or on solatium u/s 23(2) and additional amount u/s 23(1-A).

Thus, we hold that the liability to pay interest on the amount of compensation determined u/s 23(1) continues to subsist until it is paid to the owner

or interested person or deposited into court u/s 34 read with Section 31. Equally, the liability to pay interest on the excess amount of compensation

determined by the Civil Court u/s 26 over and above the compensation determined by the Collector/Land Acquisition Officer u/s 11 subsists until it

is deposited into Court. Proprio vigore in case of further enhancement of the compensation on appeal u/s 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. As held earlier, the computation of the interest should be calculated from

the date of taking possession till date of payment or deposit in terms of Section 34 or deposit into court in terms of Section 28, as the case may be.

Equally, the right to make appropriation is indicated by necessary implication, by the award itself as the award or decree clearly mentions each of

the items. When the deposit is made towards the specified amounts, the claimant/owner is not entitled to deduct from the amount of compensation

towards costs, interest, additional amount u/s 23(1-A) with interest and then to claim the total balance amount with further interest. The ratio of

Joginder Singh and Others Vs. State of Punjab and Another, : has no application to the facts of this case. Right to compensation and the

quantification thereof are two distinct concepts. The right to compensation arises when the land vests in the state while its quantification may be

concluded at a later stage through several hierarchical stages referred to hereinbefore. ...

The ratio in Megharaj case [supra] is equally inapplicable to the appropriation of debt under the Act. It is seen that by operation of Section 53 of

the Act, Order 21, Rule 1 being inconsistent with the express provisions contained in Sections 34 and 28, stands excluded. The ratio therein,

therefore, is applicable only to a debtor and creditor in an ordinary civil suit governed by the provisions of the CPC. Order 21 Rule 1 being

inconsistent with the express provisions contained in Section 34 and 28 of the Act, it cannot stand extended to the cases covered by the Act. It is

unfortunate that these provisions were not brought to the attention of this Court when it decided Mathunni Mathai case [supra], which make all the

difference. With due respect to our learned brethren who decided that case, we are, therefore, constrained to observe that Mathunni Mathai case

cannot be taken to have laid down the correct law.

25. Hence, the latest ruling of the Supreme Court (the Bench consisting of three Judges) is to the effect that the amount deposited is to be first

adjusted towards the amount due towards the market value, solatium and then towards the amount payable u/s 23(1-A) of the Land Acquisition

Act and thereafter, the interest payable u/s 28 of the Land Acquisition Act. The further principle laid down is, once the amount is paid or deposited

in court, the interest will stop running.

26. The above is the principle, which has to be applied while calculating if any amount is due by the Pondicherry Housing Board to the land owners

in this case. As already pointed out, on 09.3.1994 and again on 17.3.1994, on each of the said occasions, respondents 1 and 2 withdrew

Rs.17,50,000/-. This has to be adjusted first towards principal and then towards the interest as on that date. Even according to the judgment of the

reference court, the principal amount would not exceed Rs.35,00,000/-, more so when this Court has reduced the market value. If respondents 1

and 2 have with them any excess amount, the same shall be returned to the Pondicherry Housing Board within a period of thirty days, failing which

the same shall carry interest at the rate of 15% per annum for the defaulting period (i.e.) for the period after thirty days from to-day.

27. As far as the 3rd respondent is concerned, it has to be calculated as to what is the principal amount and the interest due to her as on

15.09.1995, on which date a sum of Rs.12 Lakhs was deposited. First, that amount will have to be adjusted towards principal and the remaining

amount towards interest. It is stated that the amount of Rs.12,00,000/- has already been invested with the bank and it is fetching interest. If, for

example, what is due to the 3rd respondent is Rs.11,00,000/- (amount due u/s 23 and interest), then, out of the amount in deposit, the 3rd

respondent shall be entitled for Rs.11,00,000/- with proportionate interest. The remaining sum of Rs.1,00,000/- with proportionate interest shall

go to the Pondicherry Housing Board. But, on the other hand, if what the 3rd respondent is entitled to is Rs.13,00,000/- (amount due u/s 23 and

interest), then the entire amount in the bank deposit (along with the interest it has fetched) shall go to the 3rd respondent and the Pondicherry

Housing Board will pay the remaining sum of Rs.1,00,000/-, which is nothing but interest on the principal amount and that will not carry any

interest.

28. Parties to work out on the above basis and approach the Executing Court, if

necessary.

29. In the result, the appeal is allowed in part. The market value of the property is fixed at Rs.10,600/- per Are. The respondents/Land owners

shall be entitled for 30% solatium so also additional amount u/s 23(1-A) of the Land Acquisition Act. It is made clear that interest is payable on

solatium also. No costs. C.M.P. No. 10286 of 2002 is closed.