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GODAVARI SUGAR MILLS LTD.

v.

THE STATE OF MAHARASHTRA & ORS.

(Civil Appeal No.819 of 2011)

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JANUARY 20, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

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*Constitution of India, 1950: Article 226 – Scope of – Acquisition of land – Writ petition seeking declaration that total compensation including interest for acquisition @ 3% per annum was unjust and unreasonable and seeking mandamus to pay the compensation with interest at 9% per annum from the date of surrender of possession to date of actual payment – Maintainability of – Held: Writ petition is of a public law character as it related to the public law functions on the part of the state government and its officers, and therefore maintainable.*

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*Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961: s.26 – Award of interest @ 3% per annum on the compensation – Held: s.26 contemplates the payment of compensation with interest at 3% per annum in annual instalments spread over a period of 20 years or at the end of 20 years – Rate of interest can be only at 3% per annum for a period of 20 years from the date of taking possession – s.26 is silent about the rate of interest payable, if the compensation is not paid within 20 years – For the period beyond 20 years, the said provision regarding interest will cease to apply and the general equitable principles relating to interest will apply; and interest can be awarded at any reasonable rate, i., the discretion of the court – In the instant case, interest @ 6% per annum, beyond 20 years found to be appropriate.*

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**The appellant was the owner of large extent of sugarcane land. A Notification was issued on 15.6.1961**

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under Section 21 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 declaring that the appellant held surplus agricultural land. The possession of surplus land was thereafter taken. On 13.11.1978, the appellant submitted its claim in regard to the said land with interest @ 9% per annum. On 13.12.2001, proceedings for determination of compensation were commenced and award was made on 30.3.2005 with interest @ 3% per annum. Aggrieved by the interest rate, the appellant filed writ petition. The High Court dismissed the writ petition on the ground that since the prayer was made only for payment of money by way of interest, the writ petition was not entertainable.

The questions which arose for consideration in the instant appeal was whether the writ petition was for "recovery of money" and therefore not maintainable; and whether the authority was justified in awarding interest @ 3% per annum only on the compensation payable under Section 25 of the Act.

Partly allowing the appeal, the Court

HELD: 1.1. The writ petition was for a declaration that the Notice dated 30.3.2005 informing the appellant that total compensation including interest for acquisition of 12127.4 acres of land as Rs.88,77,538/- was unjust and arbitrary and discriminatory insofar as it offered interest only at the rate of 3% per annum on the compensation amount and for a mandamus to pay the compensation with interest at 9% per annum from the date of surrender of possession to date of actual payment. The writ petition was of a public law character as it related to the public law functions on the part of the state government and its officers, and, therefore, maintainable. [Para 6] [187-G-H; 188-A-B, E]

*Suganmal v. State of MP - AIR 1965 SC 1740; UP*

- A *Pollution Control Board v. Kanoria Industrial Ltd.* 2001 (2) SCC 549; *ABL International Ltd v. Export Credit Guarantee Corporation of India Ltd.* 2004 (3) SCC 553 – referred to.

B 1.2. Normally a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. But an order for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the State or its officers. [Para 7(i)] [189-B-C]

C *Burmah Construction Co.v. State of Orissa* (1962) Supp 1 SCR 242 – relied on.

D 1.3. If a right has been infringed – whether a fundamental right or a statutory right – and the aggrieved party comes to the court for enforcement of the right, it will not be giving complete relief if the court merely declares the existence of such right or the fact that existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realized by the government without the authority of law. [Para 7(ii)] [189-C-D]

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F *State of Madhya Pradesh v. Bhailal Bhai* AIR 1964 SC 1006 – relied on.

G 1.4. A petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right. The aggrieved party seeking refund has to approach the civil court for claiming the amount, though the High Courts have the power to pass appropriate orders in the exercise of the power conferred under Article 226 for payment of money. [Para 7(iii)] [189-H E-F]

*Suganmal v. State of Madhya Pradesh* AIR 1965 SC 1740 – relied on. A

1.5. There is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment etc. While a petition praying for mere issue of a writ of mandamus to the state to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the taxes collected was without authority of law and, therefore, the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct refund in a writ petition. [Para 7(iv)] [189-G-H; 190-A-B] B C D

*Salonah Tea Co.Ltd. v. Superintendent of Taxes, Nangaon* (1988) 1 SCC 401 – relied on.

1.6. It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, where the facts are not in dispute, where the collection of money was without the authority of law and there was no case of undue enrichment, there is no good reason to deny a relief of refund to the citizens. But even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case. [Para 7(v)] [190-C-E] E F G

*U.P. Pollution Control Board v. Kanoria Industrial Ltd* 2001 (2) SCC 549 – relied on. H

A 1.7. Where the *lis* has a public law character, or involves a question arising out of public law functions on the part of the State or its authorities, access to justice by way of a public law remedy under Article 226 of the Constitution will not be denied. [Para 7(vi)] [190-F]

B *Sanjana M.Wig v. Hindustan Petroleum Corporation Ltd.* (2005) 8 SCC 242 – relied on.

2.1. Section 24 of the Act requires the Collector, after possession of surplus land was taken over under Section 21(4) of the Act, to cause public notice requiring persons interested to lodge their claims. Section 25 of the Act provides for determination of compensation and apportionment thereof. Section 26 deals with mode of payment of amount of compensation. The said section D contemplates the payment of compensation with interest at 3% per annum in annual instalments spread over a period of 20 years or at the end of 20 years. It also contemplates payment being made either by transferable bonds or in cash. Sub-section (3) of Section 26 enabling E payment of compensation by cash, in cases where it could not be paid by such bonds, does not disturb the rate of interest, which is 3% per annum for 20 years, provided in sub-section (1) thereof. Whether the payment is made by transferable bonds or by cash, the rate of F interest can be only at 3% per annum for a period of 20 years from the date of taking possession. [Para 11] [192-G-H; 193-F-H]

2.2. Section 26 is silent about the rate of interest payable, if the compensation is not paid within 20 years. G Section 26 contemplates payment of the compensation within 20 years from the date of taking possession with interest at 3% per annum; and for the period beyond 20 years, the said provision regarding interest will cease to apply and the general equitable principles relating to

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interest will apply; and interest can be awarded at any reasonable rate, in the discretion of the court. Interest at the rate of 6% per annum, beyond 20 years would be appropriate and payable, on equitable principles. [Para 12] [194-A-C]

*Union of India v. Parmal Singh* (2009) 1 SCC 618 – relied on.

2.3. The respondents are directed to pay interest on the compensation amount from the date of taking possession to date of payment, at the rate of 3% per annum for the first twenty years and thereafter (that is from the date of expiry of the period of 20 years) to 31.3.2005 (date of payment) at the rate of 6% per annum. Out of the interest so calculated, the sum of Rs.45,54,881/84 already paid towards interest on 31.3.2005 shall be deducted and the balance shall be paid by the respondents to the appellants within three months from today. [Para 13] [194-D-H; 195-A-B]

Case Law Reference:

AIR 1965 SC 1740	referred to	Para 7
2001 (2) SCC 549	referred to	Para 7
2004 (3) SCC 553	referred to	Para 7
(1962) Supp 1 SCR 242	relied on	Para 7(i)
AIR 1964 SC 1006	relied on	Para7(ii)
AIR 1965 SC 1740	relied on	Para 7(iii)
(1988) 1 SCC 401	relied on	Para 7(iv)
2001 (2) SCC 549	relied on	Para 7(v)
(2005) 8 SCC 242	relied on	Para 7(vi)
(2009) 1 SCC 618	relied on	Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 819 of 2011.

A From the Judgment & Order dated 04.10.2005 of the High Court of Judicature at Bombay in Writ Petition No. 6375 of 2005.

P.H. Parekh, Sumit Goel, Anand Jha, Shivani B. (for Parekh & Co.) for the Appellant.

B Madhavi Divan, Sanjay V. Kharde, Asha Gopalan Nair for the Respondents.

The Judgment of the Court was delivered by

C **R.V.RAVEENDRAN, J.** 1. Leave granted.

2. The appellant was the owner of a large extent of sugarcane land. The Special Deputy Collector, Ahmednagar issued a notification dated 15.6.1961 under section 21 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 ('Act' for short) declaring that the appellant held 12127.4 acres as surplus agricultural land. In pursuance of it, possession of 7407 acres and 33 ½ guntas of land at Sakarwadi and 2910 acres and 4 guntas in Lakshmiwadi was taken over on 25.5.1968. Possession of another 608 acres and 38 ½ guntas in Sakarwadi and 525 acres 1½ gunta in Lakshmiwadi was taken on 23.1.1976. Ultimately possession of the remaining 99 acres 13 guntas at Lakshmiwadi was taken on 6.4.1990.

3. On 13.11.1978 the appellant submitted its claim in regard to the entire lands (except the 99 acres 13 guntas which was taken subsequently) under Section 24(1) of the Act. Several reminders were sent by the appellant wherein the delay was highlighted and demand was made for payment of interest at 9% per annum. Ultimately on 13.12.2001 proceedings for determination of compensation were commenced by issue of notices for enquiry under Section 24(1) and (2) of the Act. The second respondent made an award dated 30.3.2005 determining the amount due as Rs.88,77,538.49 comprising Rs.43,22,656.65 as compensation and Rs.45,54,881.84 as interest thereon at 3% per annum from the date of possession

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to 31.3.2004. The said payment was accepted under protest by the appellants on 31.3.2005. A

4. Aggrieved by the interest awarded only at the rate of 3% per annum, the appellants filed a writ petition (WP No.6375/2005). The appellants sought quashing the award insofar as it awarded interest at 3% per annum and prayed for award of interest at 9% from the date of delivery of possession till date of actual payment. According to the appellants, a sum of Rs.97,66,189.16 was due as on the date of writ petition (WP No.6375/2005) being the difference in interest on calculating interest at 9% per annum on the principal amount instead of 3% awarded. The High Court dismissed the said petition at admission stage by the impugned order dated 4.10.2005 on the ground that the prayer being only for payment of money (by way of interest), the writ petition was not entertainable and it was open to the appellants to pursue any other remedy that may be available. The said order is challenged in this appeal by special leave. B C D

5. The following two questions arise for our consideration in this appeal: E

- (i) Whether the writ petition was for "recovery of money" and therefore not maintainable?
- (ii) Whether the second respondent was justified in awarding interest only at the rate of 3% per annum on the compensation payable under Section 25 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961? F

Re: Question No.(i) G

6. The writ petition was for a declaration that the Notice dated 30.3.2005 informing the appellants that total compensation including interest for acquisition of 12127.4 H

A acres of land as Rs.88,77,538/- was unjust and arbitrary and discriminatory insofar as it offered interest only at the rate of 3% per annum on the compensation amount and for a mandamus to pay the compensation with interest at 9% per annum from the date of surrender of possession to date of actual payment. The appellant contended in the writ petition that having regard to decisions of the Bombay High Court in *Krishnakumar Vithalrao Jamdar vs. State of Maharashtra* (WP No.83 of 1986 decided on 29.6.1991) and *Shree Changdeo Sugar Mills vs. State of Maharashtra* (WP No.3805/2000 decided on 7.7.2000) wherein interest was awarded at the rate of 9% per annum in regard to compensation payable under the said Act, the second respondent acted illegally in awarding interest at a lesser rate of 3% per annum. Therefore, the writ petition filed by appellant did not relate to a simple money claim. It required adjudication in regard to the allegations of arbitrariness and discrimination on the part of the state government and its officers in the exercise of their statutory functions, before the issue of rate of interest could be examined or determined. Primarily, therefore the writ petition was of a public law character as it related to the public law functions on the part of the state government and its officers, and therefore maintainable.

7. The High Court relying upon the decision of this court in *Suganmal v. State of MP* - AIR 1965 SC 1740 has held that the prayer in the writ petition being one for payment of interest, it should be considered to be a writ petition filed to enforce a money claim and therefore, not maintainable. The observations in *Suganmal* related to a claim for refund of tax and have to be understood with reference to the nature of claim made therein. The decision in *Suganmal* has been explained and distinguished in several subsequent cases, including in *UP Pollution Control Board vs. Kanoria Industrial Ltd* - 2001 (2) SCC 549 and *ABL International Ltd vs. Export Credit Guarantee Corporation of India Ltd.* - 2004 (3) SCC 553. The legal position becomes clear when the decision in *Suganmal*

read with the other decisions of this Court on the issue, referred to below : A

(i) Normally a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. *But an order for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the State or its officers.* [vide *Burmah Construction Co. v. State of Orissa* - (1962) Supp 1 SCR 242]. B C

(ii) If a right has been infringed – whether a fundamental right or a statutory right – and the aggrieved party comes to the court for enforcement of the right, it will not be giving complete relief if the court merely declares the existence of such right or the fact that existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realized by the government without the authority of law (vide *State of Madhya Pradesh v. Bhailal Bhai* - AIR 1964 SC 1006). D E

(iii) A petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right. The aggrieved party seeking refund has to approach the civil court for claiming the amount, *though the High Courts have the power to pass appropriate orders in the exercise of the power conferred under Article 226 for payment of money.* (vide *Suganmal v. State of Madhya Pradesh* - AIR 1965 SC 1740). F G

(iv) *There is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment etc.* While a petition praying for mere issue of a H

- A writ of mandamus to the state to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the taxes collected was without authority of law and therefore the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct refund in a writ petition [vide *Salonah Tea Co.Ltd. v. Superintendent of Taxes, Nangaon* (1988) 1 SCC 401].

- (v) It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, where the facts are not in dispute, where the collection of money was without the authority of law and there was no case of undue enrichment, there is no good reason to deny a relief of refund to the citizens. But even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case. (Vide *U.P. Pollution Control Board vs. Kanoria Industrial Ltd* – 2001 (2) SCC 549).

- (vi) Where the lis has a public law character, or involves a question arising out of public law functions on the part of the State or its authorities, access to justice by way of a public law remedy under Article 226 of the Constitution will not be denied. [Vide *Sanjana M.Wig v. Hindustan Petroleum Corporation Ltd.* (2005) 8 SCC 242.]

- We are therefore of the view that reliance upon *Suganmal* was misplaced, to hold that the writ petition filed by the appellants was not maintainable.

Re : Question (ii)

8. The appellants contended that the compensation amount

became due when possession of the lands was taken and as it was unjustly withheld, the appellant was entitled to interest on the compensation amount at a reasonable rate of 9% per annum; upto the date of payment. In support of their claim, they relied upon two decisions of the Bombay High Court in *Krishna Kumar* and *Shree Changdeo Sugar Mills* where interest was awarded at 9% per annum in similar matters. The respondents on the other hand submitted that there was sufficient indication in section 26 of the Act to indicate that the rate of interest should be only 3% per annum, and therefore interest can be awarded only at 3% per annum. The respondents submitted that the two decisions of the Bombay High Court were distinguishable as they related to cases where compensation had not been paid at all whereas in this case compensation with interest at 3% per annum had already been paid on 31.3.2005 and therefore the said decisions would not apply. It was pointed out that in *Krishnakumar* possession of surplus land were taken in the year 1973 but till the date of disposal of the writ petition, no compensation had been paid; in *Shree Changdeo Sugar Mills* possession of surplus land had been taken by the State Government and though compensation payable was determined on 29.12.1966, 23.2.1967 and 13.12.1968, it was not paid; and that in those circumstances, the High Court had directed payment of compensation with interest at the rate of 9% per annum from the date of taking possession of lands till date of actual payment. Alternatively it was submitted that the said decisions not having considered section 26 of the Act, they were not rightly decided.

9. There is considerable force in the submissions of Mrs. Madhavi Divan, the learned counsel for the respondents that the decisions of Bombay High Court in *Krishna Kumar* and *Changdeo* are not sound, as they completely ignore section 26 of the Act, while awarding interest at 9% per annum on the belated payment of compensation.

10. The question as to when and what circumstances,

A interest could be awarded on belated payment of compensation, was considered by this Court in *Union of India vs. Parmal Singh* - (2009) 1 SCC 618. This Court first referred to the general principle and then the exceptions thereto, as under :

B “When a property is acquired, and law provides for payment of compensation to be determined in the manner specified, ordinarily compensation shall have to be paid at the time of taking possession in pursuance of acquisition. By applying equitable principles, the courts have always awarded interest on the delayed payment of compensation in regard to acquisition of any property.....

C The said general principle will not apply in two circumstances. One is where a statute specifies or regulates the interest. In that event, interest will be payable

D only in terms of the provisions of the statute. The second is where a statute or contract dealing with the acquisition specifically bars or prohibits payment of interest on the compensation amount. In that event, interest will not be awarded. Where the statute is silent about interest, and

E there is no express bar about payment of interest, any delay in paying compensation or enhanced compensation for acquisition would require award of interest at reasonable rates on equitable grounds.”

F This Court, dealing with an acquisition under the Defence of India Act, 1962 (which did not contain any provision either requiring or prohibiting payment of interest), upheld the award of interest at 6% per annum.

G 11. Section 24 of the Act requires the Collector, after possession of surplus land was taken over under Section 21(4) of the Act, to cause public notice requiring persons interested to lodge their claims. Section 25 of the Act provides for determination of compensation and apportionment thereof. Section 26 deals with mode of payment of amount of

H compensation and the same is extracted below :

"26. (1) The amount of compensation may, subject to the provisions of sub-section (3), be payable in transferable bonds carrying interest at three per cent per annum.

(2) The bonds shall be —

(a) of the following denominations, namely:— Rs.50; Rs.100;Rs.200; Rs.500; Rs. 1,000; Rs. 5,000 and Rs. 10,000; and

(b) of two classes – one being repayable during a period of twenty years from the date of issue by equated annual instalment of principle and interest, and the other being redeemable at par at the end of twenty years from the date of issue. It shall be at the option of the person receiving compensation to choose payment in one or other class of bonds, or partly in one class and partly in another.

(3) Where the amount of compensation or any part thereof, cannot be paid in the aforesaid denomination, it may be paid in cash."

(emphasis supplied)

The said section contemplates the payment of compensation with interest at 3% per annum in annual instalments spread over a period of 20 years or at the end of 20 years. It also contemplates payment being made either by transferable bonds or in cash. Sub-section (3) of Section 26 enabling payment of compensation by cash, in cases where it could not be paid by such bonds, does not disturb the rate of interest, which is 3% per annum for 20 years, provided in sub-section (1) thereof. We are therefore of the view that whether the payment is made by transferable bonds or by cash, the rate of interest can be only at 3% per annum for a period of 20 years from the date of taking possession.

A 12. The next question that requires consideration is about  
 the rate of interest if the payment is not made even after 20  
 years, and whether it should be only at the rate of 3% per annum,  
 even after 20 years. Section 26 is silent about the rate of  
 interest payable, if the compensation is not paid within 20  
 B years. We are therefore of the view that section 26  
 contemplates payment of the compensation within 20 years  
 from the date of taking possession with interest at 3% per  
 annum; and for the period beyond 20 years, the said provision  
 regarding interest will cease to apply and the general equitable  
 C principles relating to interest will apply; and interest can be  
 awarded at any reasonable rate, in the discretion of the court.  
 Interest at the rate of 6% per annum, beyond 20 years would  
 be appropriate and payable, on equitable principles.

D 13. We therefore allow this appeal in part and direct the  
 respondents to pay interest on the compensation amount from  
 the date of taking possession to date of payment, at the rate  
 of 3% per annum for the first twenty years and thereafter (that  
 is from the date of expiry of the period of 20 years) to 31.3.2005  
 (date of payment) at the rate of 6% per annum.

E	Date of taking possession	Principal Amount	Period	Rate of Interest
F	20.5.1968	Rs.41,31,821.59	20.5.1968 to 19.5.1988 20.5.1988 to 31.3.2005	3% per annum 6% per annum
G	23.1.1996	Rs. 1,77,478.61	23.1.1976 to 22.1.1996 23.1.1996 to 31.3.2005	3% per annum 6% per annum
H	6.4.1990	Rs. 13,365.45	6.4.1990 to 31.3.2005	3% per annum

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Out of the interest so calculated, the sum of Rs.45,54,881/84 A  
already paid towards interest on 31.3.2005 shall be deducted  
and the balance shall be paid by the respondents to the  
appellants within three months from today.

D.G. Appeal partly allowed. B