



WP No. 10625 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27<sup>TH</sup> DAY OF JUNE, 2022



BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 10625 OF 2022 (LA-RES)

**BETWEEN:**

GAS TURBINE RESEARCH ESTABLISHMENT DEFENSE UNIT  
THE DEFENCE ESTATE OFFICER  
KARNATAKA AND GOA CIRCLE  
K. KAMARAJ ROAD  
BANGALORE-560042

...PETITIONER

(BY SRI. H. SHANTHI BHUSHAN, ASG)

**AND:**

1. NAZIMA SALIQ  
D/O LATE M.K.RAFIQ SAHEB  
AGED ABOUT 53 YEARS
2. ZAHID FAKIR. R  
S/O LATE M.K. RAFIQ SAHEB  
AGED ABOUT 51 YEARS
3. REHNUMA THAUHEED. R  
S/O LATE M K RAFIQ SAHEB  
AGED ABOUT 49 YEARS

ALL ABOVE ARE RESIDING AT  
NO.40/4-1, 'BLESSINGS', VIVIANI ROAD  
RICHARDS TOWN, BENGALURU -560 005

4. THE SPECIAL LAND ACQUISITION OFFICER  
V.V.TOWER, BENGALURU - 01

...RESPONDENTS

(BY SRI. NITHYANANDA.K.R, AGA FOR R4;  
SRI. SIDDHANT S. DARIRA, ADVOCATE FOR  
SRI. ARUN GOVINDRAJ, ADVOCATE FOR R1 TO R3)

Digitally signed by  
POORNIMA  
SHIVANNA  
Location: HIGH  
COURT OF  
KARNATAKA



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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE ENTIRE RECORDS PERTAINING TO EX.NO.2091/2011 ON THE FILE OF II ADDL. CITY CIVIL & SESSIONS JUDGE & SPL. JUDGE, CITY CIVIL COURT, BANGALORE AND ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT TO SET-ASIDE THE IMPUGNED ORDER DATED 09/11/2021 VIDE ANNEXURE-L REJECTING THE CALCULATION MADE BY THE PETITIONER PASSED BY THE II ADDL. CITY CIVIL & SESSIONS JUDGE & SPL.JUDGE, CITY CIVIL COURT AT BANGALORE, IN EX.PTN. NO.2091/2011 IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY THE COURT MADE THE FOLLOWING:

**ORDER**

1. The petitioner is before this Court seeking for the following reliefs:

- i) *To call for the entire records pertaining to Ex.No.2091/2011 on the file of II Addl. City Civil & Sessions Judge & Spl. Judge, City Civil Court, Bangalore;*
- ii) *Issue a writ of certiorari or any other writ to set-aside the impugned order dated 09/11/2021 vide ANNEXURE-L rejecting the calculation made by the petitioner passed by the II Addl. City Civil & Sessions Judge & Spl.Judge, City Civil Court at Bangalore, in Ex.Ptn. No.2091/2011 in the interest of justice and equity;*
- iii) *Set aside the Arrest Notice issued to JDR-2 vide Order dated 21.02.2022 in Ex. No.2091/2011 passed by the II Addl. City Civil & Sessions Judge & Spl.Judge, City Civil Court at Bangalore vide Annexure-M;*
- iv) *Issue appropriate writ or direction directing the Executing Court- II Addl. City Civil & Sessions Judge & Spl. Judge, City Civil Court at Bangalore,*



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*in Ex.Ptn. No.2091/2011 in Ex.Ptn. No.2091/2011 in terms of the dictum in *sunder versus Union of India*, 2001 AIR SCW 3692 and *Gurupreet Singh versus UOI*, 2006(8) SCC 457, on the file of the City Civil Judge at Bangalore;*

- v) *Allow this Petition with costs and issue such other writ or order or direction as this Hon'ble Court may deem fit and necessary in the circumstances of the case.*

2. The facts in brief are:

2.1. The land of one M.K.Rafiq Saheb measuring 34 guntas in Sy.No.6/2 of Binnimangala Mahavartha kaval, K.R.Puram, Bangalore had been acquired by issuance of a notification under Section 4(1) on 12.08.1993, final notification having been issued on 17.07.1994, the Special Land Acquisition Officer passed an award on 26.09.1995 determining the compensation at Rs.1,30,000/- per acre treating the land as agricultural land.

2.2. Aggrieved by the same, M.K.Rafiq Saheb sought for reference under Section 18 of the Land Acquisition Act, 1894 for enhancement of



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compensation as that awarded in pursuance of which LAC No.253/1996 was registered and vide Judgment dated 28.05.1999 the compensation was enhanced to Rs.4,00,000/- per acre along with other statutory benefits.

2.3. The said M.K.Rafiq Saheb not being satisfied with the said amount being awarded filed MFA No.3832/1999 in which the petitioners filed cross objections which came to be numbered as MFA CROB No.81/2000 and this Court vide order dated 17.06.2004 enhanced the compensation to Rs.35,17,470/- for 34 guntas of land acquired along with other statutory benefits.

2.4. Being aggrieved by the same, the petitioner approached the Hon'ble Apex Court in SLP (C) No.23521/2004 when the Apex Court admitted the petition subject to depositing of 1/3<sup>rd</sup> of the enhanced compensation. The Apex Court



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dismissed the Civil Appeal registered pursuant to the admission of SLP No.23521/2004, however, modified the order increasing the deduction of development charges from 50 to 60%. It is stated that in compliance with the said Judgment, the petitioner has deposited a sum of Rs.47,37,097/- with the Registrar, City Civil Court, Bangalore, on 19.10.2012.

2.5. In the meanwhile, respondents No.1 to 3 who are the legal heirs of late M.K.Rafeq Saheb filed execution proceedings in Execution No.2091/2011 claiming that an amount of Rs.79,65,500/- was due and payable. The petitioner who was respondent No.4 therein filed its objections. The respondents herein had filed memo of calculation detailing out the dues as on 28.02.2020 along with interest of Rs.99,44,085/-.



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2.6. The petitioner filed statement of objections contending that in terms of the decision of the Apex Court in **Gurupreeth Singh -v- Union of India** [(2006) 8 SCC 457], the petitioner has made payment of all amounts that are due and there are no further amounts that are due and liable to be paid. In view thereof, the Registrar, City Civil Court directed the office to calculate the amounts due and payable by the petitioners in terms of the decision in **Gurupreeth Singh's** case. The office of the Court filed a memo of calculation on 6.01.2021 indicating that an amount of Rs.96,91,024/- was due and payable. Objections were filed to the said memo of calculation by the petitioner. The trial Court accepted the memo of calculation prepared by the office and directed the petitioners to make payment of the monies. The petitioners not having made payment of



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the monies, arrest notice came to be issued. It is the said arrest notice which is under challenge in the present petition and the aforesaid reliefs have been sought for.

3. Sri.Shanthi Bhushan, learned Assistant Solicitor General would submit that calculation made by the office is in accordance with the decision in **Gurupreeth Singh's** case, therefore, the order passed by the executing court directing arrest of an officer of the petitioner is *nonest* and is required to be set-aside.
4. Per contra, Sri.Siddhanth, learned counsel appearing for the respondents would submit that the calculation made by the office is proper and correct. It was for the petitioners to have made payment of the said amounts, if not the petitioner would have had to challenge the said order which has not been done. Payment not having been made by the petitioner, the execution court has rightly issued an arrest warrant



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and as such, this Court ought not to interfere with the matter and the petition is liable to be dismissed.

5. Heard Sri.Shanthi Bhushan, learned Assistant Solicitor General for the petitioner and Sri.Siddhanth S.Darira for Sri.Arun Govindaraj, learned counsel for the respondents No.1 to 3 and Sri.Nithyananda.K.R., Addl. Government Advocate for respondent No.4. Perused papers.
6. The aspect of acquisition of land, the orders passed by the Apex Court are not in dispute and are not required to be adverted to. The only issue in question is, whether the memo of calculation filed by the petitioner and/or that prepared by the office of the execution court is in accordance with the decision of the Apex Court in **Gurupreeth Singh's** case or not.
7. The objections filed by the petitioner gives raise to an interesting reading. The petitioner has sought to





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contend that the amount which has been deposited under two different stages in the Apex Court has been made in compliance with the decision in **Gurupreeth Singh's** case, therefore, there is no amount which is liable to be paid by the petitioners. By relying on paragraph 40 to 43 of **Gurupreeth Singh's** case, it is contended that there is no balance which is required to be paid.

8. A perusal of the entire objections does not indicate the methodology of calculation made by the petitioner. The amounts which are due in terms of the decision of the Apex Court in **Gurupreeth Singh's** case and how the petitioners' deposit would be in compliance with the decision of the Apex Court in the SLP (Civil) Appeal between the parties as also the decision of the Apex Court in **Gurupreeth Singh's** case relating to the aspect of payment of interest which is liable to be paid by the petitioner calculated from \*19.9.2001 i.e. the date of decision

*\*Corrected vide Court order dt.22/07/2022*



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in **Gurupreeth Singh's** case. The petitioner has only stated that at the time of execution petition, the decree holder deposited Rs.79,65,500/- and therefore, the petitioners having deposited Rs.38,44,096/- on 10.01.2005 and a sum of Rs.47,37,095/- on 17.10.2012, the total deposited amount being Rs.85,81,091/-, there is an excess amount which has been deposited and or received by the decree holders.

9. While doing so, there is no reference made by the petitioners to the interest payable in terms of the decision of the Apex Court in **Gurupreeth Singh's** case on the solatium. Reference of monies which have been deposited is only as regards that order in C.A. No.1086/2006 without reference to the interest which is liable to be paid on solatium.
10. In the above circumstances, I am of the considered opinion that the manner in which the objections to



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memo of calculation is filed is very convoluted and not expected of an authority like the petitioner, who is represented by an Estate officer.

11. The manner in which acquisition was made, compensation was fixed at a meagre amount which was enhanced by the reference court and further enhanced by this Court would indicate that the very compensation which has been fixed by the acquiring authority is on a very low end.
12. When the compensation was enhanced by the reference court and this court, it was for the petitioner to have made payment of the compensation amount which also the petitioner failed to do and even after the execution proceedings were filed, the manner in which the objections have been filed to memo of calculation without taking into consideration the interest liable to be paid on the solatium in terms of the decision of the Apex Court in



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**Gurupreeth Singh's** case to be calculated from \*19.09.2001 does not behold the petitioner and leaves much to be desired on the conduct of the petitioner.

13. Faced with the above, at this stage, Sri.Shanthi Bhushan, learned ASG submits that there is a mistake which has occurred in the trial Court in the calculation which has been filed and he submits that the petitioner would comply with the directions issued by the Apex Court in **Gurupreeth Singh's** case and make payment of the interest on the solatium calculated at 9% from \*19.09.2001 which unfortunately has not been done.

14. I am of the considered opinion that in cases of acquisition interest for the first year is 9% p.a. and subsequent thereto it is 15%. The same principle would also apply to solatium and it is only for the first year, interest at 9% as stated in the decision in **Gurupreeth Singh's** case would apply and

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thereafter interest would have to be calculated at 15% p.a.

15. In view of the above, accepting the submission of Sri.Shanthi Bhushan, learned ASG that there was a genuine and bonafide mistake in not taking into calculation of interest on solatium while filing the statement of objections, the arrest notice issued to JDR-2 would be required to be set-aside.

16. In view of the above, I pass the following

**ORDER**

- i) The writ petition stands disposed of.
- ii) A certiorari is issued, Order dated 9.11.2021 in Execution Petition No.2091/2011 passed by the II Addl. City Civil and Sessions Judge, City Civil Court, Bangalore, is quashed. Consequently, the arrest notice issued to JDR-2 vide order dated 21.02.2022 is also quashed.
- iii) The execution court is directed to consider the amounts payable by the petitioner who is the



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Judgment debtor there in in accordance with the decision of the Apex Court in **Gurupreeth Singh's** case calculating the interest on solatium at 9% for one year from \*19.09.2001 and post the said one year calculate interest at the rate of 15% p.a. Apart therefrom, the Execution Court is directed to verify the amounts paid on account of compensation and interest paid thereon in a similar manner and pass necessary orders.

- iv) Once the calculation is made known by the Execution Court, the petitioner would be required to make payment of those monies within a period of four weeks from the date on which the petitioner informs of the same.

**Sd/-  
JUDGE**

In

*\*Corrected vide Court order dt.22/07/2022*