

[2022 LiveLaw \(SC\) 485](#)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
L. NAGESWARA RAO; B. R. GAVAI, JJ.

May 13, 2022

MA No. 1808-1809 of 2019 in Civil Appeal Nos. 4784-85, 4786-89, 4790-93 of 2019

The Kerala State Coastal Zone Management Authority Member Secretary
Versus
Maradu Municipality & Ors.

Summary: Maradu Flats Demolition - The owners of the flats in the four buildings in Maradu, Kochi, which were demolished in 2020 for CRZ violations, are not entitled to interest on the refund payable to them by the builders.

Words and Phrases - Interest - The compensation fixed by agreement or 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. (Para 10-12)

For Petitioner(s) By Courts Motion, AOR; For Respondent(s) Mr. Rana Mukherjee, Sr. Adv. Mr. K. Rajeev, AOR Ms. Surabhi Guleria, Adv. Ms. Oindrila Sen, Adv. Mr. A. Karthik, AOR Mr. Haris Beeran, Adv. Mr. Mushtaq Salim, Adv. Mr. Usman Ghani Khan, Adv. Mr. Azhar Assees, Adv. Mr. Radha Shyam Jena, AOR Mr. Sachin Patil, AOR. Mr. Geo Joseph, Adv. Mr. Risvi Muhammed, Adv. Mr. Jaideep Gupta, Sr. Adv. Mr. Nishe Rajen Shonker, AOR Ms. Anu K. Joy, Adv. Mr. Alim Anvar, Adv. Mr. Prashant Padmanabhan, AOR Mr. Lakshmeesh S. Kamath, AOR Ms. Samriti Ahuja, Adv. Ms. Prachi Bajpai, AOR Mr. Geo Joseph, Adv. Mr. Risvi Muhammed, Adv. Mr. Kailas Bajirao Autade, AOR Mr. Rahul Jain, AOR Mr. Rohit Kumar Singh, AOR Mr. Abdul Azeem Kalebudde, AOR Mr. Ranjith K. C., AOR Ms. Liz Mathew, AOR Ms. Pallavi Pratap, AOR Mr. Ram Niwas Buri, Adv. Mr. Aditya Dahiya, Adv. Dr. L.D. Kiradoo, Adv. Ms. Preeti Singh, AOR Mr. Shishir Pinaki, AOR Mr. Vanshdeep Dalmia, AOR Mr. Seshatalpa Sai Bandaru, AOR

ORDER

Issue No. 3: Claim of interest by the flat-owners

1. One of the issues that was brought to the notice of this Court by the learned Amicus Curiae pertains to the interest claimed by the flat-owners on the amount they paid to the Builders. After the demolition of four building complexes situated in Ernakulam, Kerala, Miscellaneous Application Nos.1808-1809 of 2019 was initiated Suo Motu by this Court for monitoring the compliance of the directions issued by this Court in its judgment dated 08.05.2019 in Civil Appeal Nos.4784-4785 of 2019 and 4790-93 of 2019 in **The Kerala State Coastal Zone Management Authority v. The State of Kerala Maradu Municipality & Ors.**¹

2. On 27.09.2019, this Court directed the State Government to pay an amount of Rs.25 lakhs as interim compensation to each of the flat-owners who were evicted at the time of demotion, within a period of four weeks. The said amount was to be recovered from the builders/promoters/persons /officers responsible for raising the illegal constructions. A

¹ (2019) 7 SCC 248

Committee headed by Justice K. Balakrishnan Nair, Retired Judge of the Kerala High Court was constituted to look after the payment of the amounts to each flat-owners. The Committee has determined only the amount to which the flat-owners are entitled for the building portion of each apartment, as the undivided share in the land has been retained by the respective flat-owners. Based on the amount that was determined by the Committee, while 25 lakhs have already been paid by the State Government as interim compensation, the balance amount was to be paid by the builder to the flat-owners. The flat-owners of three out of four building complexes have received the amount paid by them for the flat, as determined by the Committee. Flat-owners of the building Holy Faith H2O have received only Rs. 25 lakhs/- that the State Government was directed to pay as interim compensation. No monies have been paid by Holy Faith to the flat-owners, as determined by the Committee.

3. Apart from the refund of the principal amount that was paid by the flat-owners to the builders which has already been paid except to the residents of Holy Faith H2O, the flat-owners are also seeking interest on such principal amount. On behalf of the flat-owners, it was submitted that they have invested their life earnings in the flats which have now been demolished. Resultantly, they have lost their place of residence and in view of the price escalation, they are not in a position to purchase a similar accommodation for the amounts they have invested in these building complexes. In addition, after vacating the flats which were demolished later, the flatowners have to bear the expenditure towards rent to stay in an alternate accommodation.

4. On behalf of Jain Coral Cove Allottee's Association, it was submitted that the flat-owners had made payment in instalments between 2007-2013. They were given possession in the year 2013 and the demolition took place in the year 2019. It was argued on their behalf that the amount that was directed to be paid to them by the Committee is not the actual market value but only the amount that was paid by them for purchasing the flats. The Association has brought to our notice that for the loans that were taken for purchasing the flats, banks are charging a higher rate of interest at 17 per cent for its repayment as the collateral does not exist anymore.

5. Further, the Alfa Serene Flat Owners Association contended that the amount that was paid to them on determination of the committee should be treated as a rehabilitation compensation or solatium against their displacement from their flats. According to the flatowners, no development or construction activity can take place on the underlying land and therefore it has no worth and does not carry any market value. It was submitted that they are open to giving up the undivided share in the land in question to the builder or the government against just and proper compensation. They have sought for compound interest at the rate of 15 per cent on the land price paid by them to the Builder at the time of purchase of flat.

6. The Golden Kayaloram Residents Association and H2O Apartment Owners Association have also sought interest on the amounts that were disbursed by them to the builder as they have been deprived of enjoying the flats which they had purchased more than a decade back. On behalf of the flat-owners, it was submitted that most of them are senior citizens and are not in a position to construct any structure on the undivided portion of the land.

7. On the other hand, the builders submitted that all the flat-owners are not similarly situated. Some of the flat-owners have paid the amount towards the cost of the flats in full and the others would have been paying the amounts till the date of demolition. Therefore, a blanket rate of interest cannot be determined by this Court to be paid to all the flat-owners. It was argued on behalf of the builders that there is no dispute that possession has been given to the flat-owners of the four building complexes between 2009 to 2013 and they have enjoyed the fruits of their investment from thereon till 2019. The builders contended that the flat-owners have the undivided interest in the said land till date and that the market value of the land has increased exponentially. As the flat-owners have resided in their apartment for 6 to 10 years, the depreciation cost of the flats also has to be taken into consideration. It was contended on behalf of one of the builders that the flatowners were well aware of the show cause notices issued by the authorities, and even then, they proceeded to invest in the property and reside therein. It was further contended on behalf of the builders that while the four building complexes might have been demolished in 2020, construction is permitted on the land as it now falls under the CRZ-II category. It is open to the flat-owners to get a new structure constructed on the land that is owned by them. Therefore, according to the builders they cannot be mulcted with any further liability of payment of interest to the flat-owners when the amount that was paid by each flat-owner for the purchase of flats has already been disbursed and the ownership in the undivided portion of the land still rests with the flat-owners.

8. The report that has been submitted in this Court by Justice K. Balakrishnan Nair Committee, observed that it would be difficult to determine the market value of the flats since the furnishing and interior of each flat is different. Therefore, assessment of the market value after their demolition in 2019 is not possible as it would have varied substantially. The Committee further observed that the particulars of the payment made in instalments by the flat-owner was not available and, therefore, it is difficult to determine the calculation of interest in respect of at least 1/3rd of the flat-owners. In so far as the remaining flat-owners are concerned, the Committee held that it is not easy to calculate the interest that has to be paid. The committee pointed out the procedural difficulties and also mentioned that if it was to do this exercise, all the cases will have to be reopened with notices to the Builders and the flat-owners of each flat and the entire exercise would take at least 6 months to materialize, not to mention the further unforeseen complications that might arise due to lack of material data on record.

9. In the opinion of the learned Amicus Curiae, the flat-owners are not entitled to interest at the rate of 12 per cent per annum on the amount which they paid to the builder for the purchase of flat, as was granted by this Court in **Supertech Limited v. Emerald Court Owner Resident Welfare Association**². The learned Amicus Curiae submitted that in the case of **Supertech Limited** (supra) neither the possession of the flats was handed over by the builder to the flat-owners nor the ownership of the undivided interest in the land was transferred. While in this case, the flat-owners have been given the possession of the flats which they have enjoyed for a period of approximately 6 to 10 years. The learned Amicus Curie was also of the opinion that the value of the land which belongs to the flat-owners have increased substantially.

² (2021) 10 SCC 1

10. “Interest” as defined in Black’s Law Dictionary is the compensation fixed by agreement or 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. A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name³.

11. In **Central Bank of India v. Ravindra**⁴, this Court observed that a person is entitled for compensation for the deprivation of the money due to the creditor which was not paid, or, in other words, was withheld from him by the debtor after the time 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.

12. While rejecting the claim of payment of interest by the Applicants who have been handed over possession of the assets, this Court in **Allahabad Bank v. Bengal Paper Mills Company Limited & Ors.**⁵, held that the Applicants were not entitled for any interest as compensation in view of their enjoyment of assets for 10 years on deposit of the purchase price. While relying on the observations of this Court in **Central Bank of India v. Ravindra**, it was held that interest was really compensation for the use of the money which the purchaser was deprived of, and that the fact that the obtaining of possession by the purchaser on deposit of the purchase price was a consideration relevant in deciding whether or not the purchaser would be entitled to interest on the purchaser price as claimed.

13. In the present case, the facts that are not in dispute are that flat-owners have purchased their apartments by paying instalments somewhere between 2007 to 2013 depending on the construction of the particular building complex. Possession of the flats was handed over to the flat-owners between 2009-2013 and admittedly, the flatowners were in possession of the flats since 2009-2013 till 2019 when they were asked to vacate the flats for the demolition of the buildings. There is no dispute that the amount of Rs.25 lakhs has been paid as interim compensation by the State Government in 2019 itself. It is also admitted that except Holy Faith builder, the other builders have also paid the balance amount to which the flat-owners were entitled. It is no doubt true that the flat-owners were paid only the amount that was invested by them at the time of purchase of flats. However, it is relevant to take into account the fact that the flatowners had the benefit of staying in the flats for a period of 8-9 years on an average and also that the land belongs to the flat-owners as joint owners the market value of which has increased substantially. It is also to be noted that flats that were taken possession of in the years between 2009-2013 would have depreciated in value.

14. Therefore, in view of the position as stated above, we are of the considered view that the flat-owners are not entitled for any interest on the amounts paid by them to the builders.

15. For the aforementioned reasons, the third issue pertaining to claim of interest by the flat-owners is answered accordingly.

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³ Secretary, Irrigation Department, Government of Orissa & Ors. v. G.C. Roy (1992) 1 SCC 508

⁴ (2002) 1 SCC 367

⁵ (2004) 8 SCC 236