

**(2012) 04 BOM CK 0136**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 19 of 2012**

Ashok Aagle

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

**Date of Decision :** 18-04-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Land Acquisition Act, 1894 — Section 11, 17, 23, 23(1A), 34

**Citation :** (2012) 5 BomCR 107

**Hon'ble Judges :** Sunil P. Deshmukh, J; A.S. Oka, J

**Bench :** Division Bench

**Advocate :** G.S. Patil, Smt. Bhagyashree S. Karhale, Smt. B.S. Karhale and Mr. Suresh N. Rodge, for the Appellant; A.V. Gondhalekar, Shri S.B. Pulkundwar, Shri V.H. Dighe and Shri S.K. Kadam, AGP and Shri S.G. Sangle, for the Respondent

## Judgement

Oka, J.—Rule. Rule made returnable forthwith. Learned Assistant Government Pleaders waive notice for the State of Maharashtra and Special Land Acquisition Officers in the respective writ petitions. Considering the nature of the order which we propose to pass, service of notice of rule on Respondent No. 3 is dispensed with.

2. We have come across a large number of petitions filed in this Court, wherein the grievance of the petitioners is that rental compensation as contemplated by the Government Resolution dated 1st December, 1972, as amended by Government Resolution dated 2nd April, 1979, has not been paid. Several litigants, who have made representations before the Collector and the Special Land Acquisition Officer regarding grant of rental compensation, have approached this Court with a grievance that even their representations have not been decided and, therefore, in large number of petitions, this Court has issued directions to the concerned authorities to decide the representations.

3. In number of cases, considering the exigencies, various departments of the State Government, and in particular the Irrigation Department, have taken over

possession of the lands which are required for public purpose, even before the notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as "the said Act") is issued. The possession has been taken over by private negotiations with the owners/holders. The said Act is a complete code in itself. The said Act does not provide for taking possession of a land which is required to be acquired for public purpose, even before the initiation of the acquisition proceedings by issuing the notification u/s 4(1) of the said Act. On this aspect, it will be necessary to refer to a decision of the Apex Court in the case of R.L. Jain (D) by Lrs. Vs. DDA and Others, . It will be useful to advert to paragraph 18 of the said decision which reads thus;

18. In a case where the land-owner is dispossessed prior to the issuance of preliminary notification u/s 4(1) of the Act the government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.

(underlines added )

What is observed by the Apex Court is that in such a situation, even after possession is taken over by a department of the government, the title of the land proposed to be acquired continues to vest with the land owner and, therefore, in a given case it may be open to the land owner to seek recovery of possession, by taking out appropriate proceedings. It is, therefore, observed that when possession is taken over prior to the date on which preliminary notification u/s 4(1) of the said Act is issued, it will be equitable that the Collector may also determine rent or damages in respect of the use of the property to which the land owner is entitled, while determining the compensation amount payable to the land owner for the acquisition of the property.

4. As far as the State of Maharashtra is concerned, the Government Resolution dated 1st December, 1972 deals with a situation where possession is taken over of the land proposed to be acquired before a notification u/s 4 (1) of the said Act is issued. The said Government Resolution makes a reference to the earlier Government Resolution issued on 2nd May, 1961 on this aspect. In fact, the said Government Resolution dated 2nd May, 1961 lays down a detailed procedure for taking over possession of the land by private negotiations, by Irrigation and Power Department/Building and Communications Department Officers. The

Government Resolution dated 1st December, 1972 itself notes that there used to be inordinate delay in deciding rentals and, therefore, by the said Government Resolution dated 1st December, 1972, the procedure laid down regarding taking over possession of the land, as also for payment of compensation was revised. It will be necessary to make a reference to material portion of clause (3) of the Government Resolution dated 1st December, 1972.

3.Procedure for taking possession of land by private negotiations:-...

Irrigation and Power Department/Buildings and Communications Department Officers should initiate action to take over the possession of land by private negotiations on payment of rental till the Award amount is paid after declaration of Award by Land Acquisition Officer. In no case direct purchase of the land from the land owner should be made. In cases where the Irrigation and Power Department/Buildings and Communications Department Officers fail to take over the land by private negotiations, they may approach the Collector and seek his assistance in securing immediate possession by negotiations. The Collectors when contacted by Irrigation and Power Department/Buildings and Communication Department Officers should assist them to secure such possession.

5. If the clauses 4 and 5 of the said Government Resolutions are read together, it is apparent that the policy of the Government is that the possession of the land which is the subject matter of a litigation should not be taken over by private negotiations and that the exercise of taking over possession of a land by private negotiations should be undertaken only after verification of the title to the property. Therefore, it is provided that it is proper that only after verifying the title, a written consent should be obtained from the title holder regarding its handing over. The amount of rent to be paid for its occupation is to be decided according to paragraph 6 of the Government Resolution.

6. In fact, according to paragraph 6 of the said Government Resolution dated 1st November, 1972, a format of an agreement has been prescribed which is to be entered into while taking over possession by private negotiations. Therefore, in the format of the Agreement, a stipulation is incorporated regarding payment of rental compensation to the person whose land is taken over. Thus, as per the policy of the State Government, the agreement which is required to be executed at the time of taking over possession must provide for payment of rental compensation in terms of the policy of the State Government as reflected from the said Government Resolution. Clause 5 of the said Government Resolution provides for several safeguards. It requires preparation of a detailed inventory of structures, trees, wells, crops etc. in the presence of owners so that no dispute arises in future. It is true that under clause 6 of the said Government Resolution, the responsibility of payment of rental compensation to the title holder of the land taken over by the Irrigation and Power Department/Building and Communications Department Officer, is of the officers of the said departments. The rental compensation is to be paid for the period from the date on which

possession of the land is taken over till the date on which full amount of final award is paid. Though the word "rental compensation" is used in the Government Resolution, it is really a compensation payable to the owner by the State for use of the land till final award is made u/s 11 of the said Act. Under the said Act, the compensation becomes payable only after an award u/s 11 is made and only after the compensation is offered that the possession of the land can be taken over. Only exception under the said Act is when possession is taken over u/s 17 of the said Act by applying urgency clause. But in such event, possession can be taken over only by tendering 80% of the estimated compensation.

7. It must be noted here that what is incorporated in the aforesaid Government Resolution is the policy of the State Government. The Government Resolution covers the cases where the possession is taken over by the officers of the State Government and the said Government Resolution is not applicable to the cases where possession is taken by private negotiations by other agencies which are not part of the set up of the State Government. Essentially, the Government Resolution incorporates the policy of the State Government to compensate the land owner from the date of taking over possession till the full amount of final award is paid. Therefore, the liability of payment of rental compensation is primarily of the State Government inasmuch as the rental compensation is payable when the possession by private negotiations is taken over by the departments of the Government named therein. It is obvious that rental compensation which is to be paid comes from the funds of the State Government itself as the Resolution is applicable only when the possession is taken over by private negotiations by Irrigation and Power Department/Building and Communication Department Officers. Relevant part of clause 6 of the Government Resolution dated 1st December, 1972 reads thus;

6.Payment of rental compensation. :-... Government has now decided that the rental compensation payable shall be 6-1/2 per cent of the final award value in respect of both non-Agricultural land and Agricultural land. With a view to avoiding any inconvenience to the owners of the land who have willingly parted with their land and to ensure timely and regular payment of rental compensation, the following procedure should be adopted:-

[i] As soon as possession is taken over, the estimated values of the lands should be ascertained from the Collector of the District or any other revenue officer not below the rank of Tahsildar on his behalf but not the concerned Land Acquisition Officer. The amount of yearly rental compensation should then be worked out at 5 per cent of the estimated value of the land and paid yearly to the land owners. These yearly payments will be provisional and should be paid to the land owner. After the award is declared and the award value is known, final amount of rental compensation should be worked out at 6-1/2 per cent of the award value and the balance amount if due, should be paid to the land owner within three months from the date the award value is paid. If provisional payment of rental compensation made are in excess of the final amount, the excess amount should

be recovered from the land owner with the help of Revenue Department Officers where necessary. In case in which advance payment of land compensation is made in accordance with Government Orders in Government Resolution, Revenue and Forest Department No. LQN-3570-H, dated the 3rd August 1970, the rental compensation should be worked out on the balance amount to be paid.

[ii] Where the land is cultivated by the tenant, the landlord should be paid the rent payable under Tenancy Act and the balance to the tenant. Charges, if any, on the land payable to Government either by the landlord or the tenant should be deducted from rent payable to them.

8. Thus, the rate of rental compensation laid down in the said Government Resolution is 6-1/2 per cent of the final award value in respect of both, the agricultural lands and non agricultural lands. We may state here that by the further Government Resolution dated 2nd April 1979, the said rate has been enhanced to 8 per cent. Clause 6 makes a salutary provision that as soon as possession is taken over, the estimated value of the land should be ascertained by the Collector or any other revenue officer not below the rank of Tahsildar and not by the concerned Land Acquisition Officer. On the estimated value, ad-hoc/provisional yearly rental compensation at the rate of 5 per cent is required to be paid to the land owner for each year till the date on which full amount of final award is paid to him. After the award u/s 11 is declared and the award value is known, final amount of rental compensation should be worked out at the rate of 8 per cent of the award value. The final amount is payable after deducting the amount paid by way of provisional compensation. The final amount has to be paid to the land owner within a period of three months from the date the award value is paid. Thus, the policy of the State Government is that the provisional compensation at the rate of 5 per cent of the estimated value becomes payable immediately after the possession is taken over and the entitlement of the land owner is to receive yearly rental compensation till the full amount under the final award u/s 11 of the said Act is paid. The clause 8 of the said Government Resolution also makes a provision regarding liability of payment of rental compensation when possession of land is taken through private negotiations. The said clause puts burden on the local officers of Irrigation and Power Department/ Building and Communication Department to ensure that provisional rental compensation is regularly paid. Clause 10 of the Government Resolution lays down the procedure for making payment of crop compensation. The clause provides for the procedure to be followed for determination of yield. It requires panchanama to be drawn. After complying with the procedure provided therein, a statement is required to be prepared which is to be approved by the authority competent to sanction the same. Thereafter, the Sub Divisional Officer is under obligation to prepare first and final bill and make payment to parties concerned, through Tahsildar. There is another salutary provision in the Resolution that possession of the lands should be taken as far as possible after crops are matured and harvested so as to avoid payment of crop compensation.

9. After having considered the entire scheme of the Government Resolutions, it is apparent that it is the obligation of the State to pay rental compensation, first provisional, and thereafter final. It is not at all necessary for the land owner, who is deprived of possession, to make an application for grant of rental compensation. A large number of petitions which have come up before this court show that the officers of concerned departments are under a wrong impression that it is for the land owners to apply for rental compensation. It is the obligation of the State Government to pay the rental compensation in terms of the Government Resolution in all cases to which the same is applicable.

10. On this aspect, we must make a reference to the decision of the Division Bench of this Court in the case of Dinkar Sandipan Gholve and ors. vs. The State of Maharashtra (Writ Petition No. 2559 of 2008) delivered on 24th July 2008. This Court had an occasion to deal with the Government Resolutions referred to above, as well as the judgment of the Supreme Court in the case of R.L. Jain (supra ). It will be necessary to make a reference to paragraph 9 of the said decision of the Division Bench of this Court wherein this Court has observed that the Apex Court in R. L. Jain's case has cast a duty on the Collector to award rent or damages. This Court also considered the question in the light of the Government Resolution dated 1st December, 1972 and 2nd April, 1979 which are referred to above and, in fact, has extensively quoted relevant portions therefrom. Thereafter, this Court made a reference to the decision of the Apex Court in State of Maharashtra and Others Vs. Maimuma Banu and Others, . After considering the relevant decisions, this Court in paragraph 11 of the judgment in Dinkar Gholve's case has held thus;

11. ... The rental compensation is worked out at 8% of the Awarded value. The awarded value, therefore, considering Section 23 of the Land Acquisition Act would include all components included u/s 23. It must be borne in mind that this rental compensation is payable based on two aspects. (1) Possession has earlier been taken and for possession earlier taken, the interest in terms of Section 34 is not payable and also non-payment of additional amount u/s 23(1-A). The rental compensation, therefore, payable is the compensation worked out at the rate of 6-1/2 per cent or 8 per cent as the case may be on the awarded value and is payable from the date of taking possession till the full amount of final award is paid to the land owner.

(Underlines added )

11. In paragraph 12 of the judgment, this court also noted that the land owner who in good faith has given possession of his land, is denied additional amount and interest u/s 34 which is at the rate of 9 per cent and 15 per cent respectively and hence, the said Government Resolution has to be construed in that background. Therefore, this court has observed in paragraphs 12 and 13 thus;

12... The Government G.R. has to be construed in that background. The rental compensation is directed to be paid from the date of taking possession till the

rental compensation is paid. We may point out that ordinarily the Collector could not have taken possession unless he had paid the compensation as awarded (see Hissar Improvement Trust Vs. Smt. Rukmani Devi and another, .) The principle, therefore, in considering the G.R. is that as the land owner is being denied the additional amount and the interest which otherwise he would be entitled under the provisions of the Act the State in terms of the G.R. has decided to compensate the land owner. The State cannot contend that though it takes possession of the land and deprives the owner the right to use the land yet it will not compensate the land owner. The rental compensation is, therefore, payable from the date the possession of the land was taken till the date on which the full amount of the final award is paid.

(underlines added )

13. Learned Counsel apart from that brought to our attention the judgment of the Supreme Court in State of Maharashtra and Others Vs. Maimuma Banu and Others, which has also considered the G.Rs. issued by the State including another resolution dated 24th March, 1988 which requires that the payment will be realised expeditiously as possible but in no case beyond the period of six months from the date of the judgment by the Collector concerned. It is in that context that the Supreme Court observed that it will be appropriate that if the appellant pay interest at the rate of 6% on the rental compensation. If, therefore, the respondent- State has not paid the rental compensation within six months as contemplated by resolution of 24th March, 1988, the said rental compensation will carry interest at the rate of 6% till payment.

12. Normally, whenever possession is taken over by private negotiations, which is governed by the said Government Resolution, a reference of the said fact is always mentioned in the award passed u/s 11 of the said Act. In fact, the Government Resolution makes a provision that the Collector has to be informed that the possession has been taken over by private negotiations and, in fact, the Collector or any other officer not below the rank of Tahsildar is under an obligation to determine the estimated value of the land. It is unjust to expect the land owner, who has lost possession by private negotiations, to make an application for grant of rental compensation. That is not the scheme of the Government Resolution. The land owner must get the yearly provisional compensation without making an application provided he has a title to the land taken over. If the yearly interim compensation is not paid promptly, the very purpose of the policy reflected from the Government Resolution will be defeated. Due to inaction on the part of the officers and due to complete ignorance of the provisions of the said Government Resolution, a large number of litigants are compelled to file writ petitions in this court invoking Article 226 of the Constitution of India. As held by this Court in the case of Dinkar Gholve's case (supra ) and subsequent decisions, in a case where there is a default on the part of the State in payment of rental compensation, the State will have to be saddled with liability of payment of interest on "rental compensation". It is, therefore,

necessary that in the cases in which the said Government Resolution is applicable, the Collector issues directions for payment of provisional and final rental compensation without even waiting for the owner making an application seeking rental compensation. Wherever applications for rental compensation are pending, the Collector must ensure that the said applications are scrutinized at the earliest and if it is found that the said Government Resolution is applicable, action is expeditiously taken on the basis of such application, by making payment of rental compensation. Needless to say that this exercise has to be done only in those cases where the said Government Resolution has the application.

13. Now, turning to the cases in hands, we find that in some cases, representations have been made by the petitioners seeking rental compensation and also statutory benefits under Sections 23-1 (A) and 34 of the said Act. We, however, make it clear that the officers of the State Government will be under obligation to consider only the prayer for grant of rental compensation in terms of the policy of the State reflected from the said Government Resolutions. In cases where possession is taken over as per the Government Resolution, even if there is no representation/ application pending, the State will have to direct the officers concerned to examine the cases, and if it is found that the said Government Resolution is applicable, to release the rental compensation to the land owners. We have already observed that the law on this aspect has been laid down and in a given case, by filing appropriate proceedings, the land owner can seek interest on unpaid amount of rental compensation in case of delay in making payment. However, grant of interest depends on facts of each individual case.

14. Hence, we dispose of all the petitions, by issuing following directions. (A) The State Government shall forthwith direct the concerned officers to examine the cases of the petitioners in the light of the Government Resolution dated 1st December, 1972, as modified by Government Resolution dated 2nd April, 1979 and after considering the law laid down by the Apex Court and this Court, to release the rental compensation to the land owners/petitioners, provided their cases are governed by the said Government Resolutions.

(B) This exercise shall be completed within a period of four months from today.

(C) These directions will apply to the present petitioners.

(D) The State Government shall circulate copies of this judgment and order to all the Divisional Commissioners/Additional Commissioners, as well as to the Collectors and to the Revenue Officers acting as the Land Acquisition Officers.

(E) The concerned officers of the State will have to examine all pending cases where applications have been made by the concerned land owners for grant of rental compensation. They shall ensure that the said applications are disposed of as expeditiously as possible in accordance with law and in the light of the aforesaid Government Resolutions, as well as decisions of the Apex Court and this Court. Such steps shall be taken to ensure that the State is not required to



pay interest on the overdue rental compensation.

(F) The State Government may also consider of issuing directions to all the concerned officers to examine the cases where the land owners are entitled to compensation but the same has not been paid to them as no applications have been made by them. This will ensure that the rental compensation is promptly paid to the concerned land owners.

(G) The State Government may issue such directions so as to avoid burden on exchequer by way of payment of interest on overdue rental compensation.

(H) The directions issued under this judgment are confined only to payment of rental compensation covered by the aforesaid Government Resolutions.

(I) It is made clear that we have not adjudicated on the question whether the petitioners in the present petition are entitled to rental compensation, as well as interest thereon. As far as interest payable on rental compensation is concerned, it is for the petitioners to take out appropriate proceedings.

Rule is partly made absolute in above terms. Petitions stand disposed of, accordingly.