

(2016) 02 KAR CK 0198
In the Karnataka High Court
Case No : M.S.A. No. 552 of 2012 (LAC)

Chanabasappa Sangappa Chachadi

APPELLANT

Vs

Karnataka Neeravari Nigam Ltd., Saundatti

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2016) 4 AirKarR 88 : (2016) ILRKarnataka 3663 : (2016) 3 KCCR 2264

Hon'ble Judges : Mrs. B.V. Nagarathna, J.

Bench : Single Bench

Advocate : S.N. Hatti, Advocate, for the Appellant; Ramesh N. Misale, Advocate, for the Respondent No. 1; Smt. Veena Hegde, Govt. Pleader, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Mrs. B.V. Nagarathna, J.—;This is a miscellaneous second appeal, assailing judgment and award passed in LAC. Appeal No. 130/2011 by the Principal District Judge, Belgaum, dated 02.04.2012 by which, judgment and award passed by the Civil Judge (Sr.Dn), Bailhongal, (hereinafter referred to as "the reference court" for the sake of convenience) dated 26.3.2011 in LAC.No.193/2010 has been modified by partly allowing the appeal.

2. Relevant facts of the case are that an extent of 17 guntas out of 1 acre 37 guntas of land, in Sy.No.6/3+4b; 25 guntas in Sy.No.87/ 5 and 35 guntas in Sy.No.85/1 situated at Mugabasava village, Bailhongal taluk, Belgaum District, were acquired for the purpose of River Malaprabha Reservoir Project. In fact the aforesaid lands along with other lands were submerged in the backwaters of Malaprabha River on the construction of the reservoir project. Consequently, the aforesaid lands along with other lands were sought to be acquired by issuance of preliminary notification under Section 4(1) of the Land Acquisition Act, 1894, (hereinafter referred to as "the Act" for the sake of brevity), dated 07.06.2007. Subsequently, declaration was issued under Section 6(1) of the Act and an award

was passed on 23.07.2009. The Special Land Acquisition Officer (hereinafter referred to as "SLAO") awarded compensation of Rs. 56,672/- per acre by a common award.

3. Not being satisfied with the said award, the appellant/claimant filed an application under Section 18(1) of the Act (read with Karnataka Amendment) seeking a reference to the court for enhancement of compensation. The reference court awarded compensation of Rs. 2,70,000/- per acre by assessing escalation in the market value of the land at 8% per annum as per the assessment of the lands in the neighbouring village in the same taluk which were also acquired earlier for the very same purpose. Being aggrieved by the compensation awarded by the reference court, respondent No. 1, beneficiary filed an appeal before the Principal District Judge at Belgaum (hereinafter referred to as the "first appellate court" for the sake of convenience), who by his judgment and award dated 02.04.2012 reduced the compensation to Rs. 2,25,000/- per acre on the basis of capitalisation method. The appellant-claimant had also filed cross-objection before the first appellate court. The cross-objection of the appellant was dismissed on the ground of delay.

4. Being aggrieved by the judgment and award of the First Appellate Court, the claimant has preferred this Second Appeal.

5. I have heard Sri. S.N. Hatti, learned Counsel for the claimant and Sri. Ramesh N. Misale, learned Counsel for respondent No. 1 and Smt. Veena Hegde learned Government Pleader for respondent No. 2.

6. Appellant's Counsel has raised a two prolonged contention in this appeal. Firstly, he contended that the land in question has been acquired for Malaprabha Reservoir Project. In so far as the said acquisition is concerned, while applying escalation method, as has been done by the reference court in this case, the ruling of a Division Bench of this court must be applied. He submitted that the Division Bench has assessed escalation in the price of the land by 10% per annum by judgment dated 01.12.2011 in MFA.No.22947/2011 and that the judgment has been affirmed by the Hon'ble Supreme Court by order dated 16.12.2013 in SLP.No.8875/2013 filed by the first respondent herein. The SLP was dismissed both on the ground of delay as well as on merits and therefore, following the aforesaid dictum, this court may enhance escalation at 10% instead of 8% per annum which was reckoned by the reference court, although the First Appellate Court did not proceed on that basis but on capitalisation method. He contended that if the aforesaid decisions are applied, then compensation would be Rs. 3,00,000/- per acre and accordingly all statutory benefits would apply.

7. His next contention was with regard to payment of interest under Section 34 of the Act. He contended that the land in question was submerged even prior to the issuance of notification under Section 4(1) of the Act on 07.06.2007. No compensation has been awarded for the period from the date of submergence till the issuance of preliminary notification. Under Section 34 of the Act the appellant

is entitled to interest under that Section from the date of Preliminary notification. In support of his submission, he placed reliance on the decision of the Hon''ble Supreme Court in the case of R.L Jain v. DDA [2004(4) SCC 79]: (AIR 2004 SC 1904) (R.I. Jain). He therefore contended that the reference court was not right in placing reliance on Special Land Acquisition Officer v. Karigowda [2010 (5) SCC 708]: (AIR 2010 SC 2322) (Karigowda) and thereby awarding interest from the date of the award and consequently not awarding any interest for the period prior to the award which would be from the date of submergence i.e., taking of possession in the instant case, till issuance of Section 4(1) notification and thereafter, for the period from the date of issuance of the said notification till the date of the award. Of course, on a detailed reading of R.L.Jain, learned Counsel later submitted that under Section 34 of the Act, appellant would be entitled to interest not for the period prior to issuance of notification under Section 4(1) but from the date of issuance of notification under Section 4(1) of the Act. In support of his submission he placed reliance on two judgments of the Division Bench of this court which shall be adverted to later. He therefore, contended that the appeal may be allowed and compensation may be enhanced on that basis.

8. Per contra, learned Counsel for respondent No.1 submitted that no doubt as far as percentage of escalation is concerned, in the case of acquisition of lands for Malaprabha Reservoir Project, the Hon'' ble Supreme Court has upheld the judgment of the Division Bench of this court dated 01.12.2011. But another Division Bench of this Court in MFA. No.23796/2011 has awarded compensation at Rs. 2,25,000/- per acre assessing 5% escalation and therefore, the judgment of this Court dated 25.07.2013 in the aforesaid matter may be taken into consideration, in which case, the appellant would not be entitled to any enhancement.

9. With regard to Section 34 of the Act. it was contended that the reference court was right in placing reliance on Karigowda as the appellant would not be entitled to any interest for the period from the date of taking possession till the date of issuance of notification under Section 4(1) of the Act and also for the period from the date of the said notification till the date of passing of the award. He contended that Section 23(1A) has been inserted in the Act pursuant to amendment made in the year 1984 in order to cover the period from the date of issuance of Section 4(1) notification till the date of passing of the award and therefore, the appellant cannot seek payment of interest twice over for the aforesaid period. He placed reliance on Karigowda which has approved the decision of the Hon''ble Supreme Court in R.L.Jain which has in turn approved the earlier decision of the Hon''ble Supreme Court in Lila Ghosh v. State of West Bengal, AIR 2004 SC 288 (Leela Ghosh). He contended that under Section 34 of the Act the appellant is entitled to interest with effect from the date of the award. He therefore, contended that the appellant cannot succeed in his contention regarding payment of interest under Section 34 of the Act for the period prior to the date of the award i.e., 23.07.2009 in the instant case i.e., from the date of preliminary Notification.

10. Learned Government Pleader supported the submissions of learned Counsel for respondent No.I.

11. Having heard learned Counsel for the parties and on perusal of the material on record, two points arise for my consideration in this appeal:

1. Whether the appellant is entitled to enhancement of compensation based on escalation to be assessed at 10% per annum, in which event, the market value would be Rs. 3,00,000/- per acre?

2. Whether the appellant is entitled to payment of interest under Section 34 of the Act from the date of issuance of notification under Section 4(1) of the Act dated 07.06.2007 or from the date of the award?

3. What order?

12. The first point for consideration should not detain me for long having regard to the fact that in respect of this very project i.e., Malaprabha Reservoir Project a Division Bench of this Court in its judgment dated 01.12.2011 referred to above, had assessed the escalation to be 10% per annum. That judgment has been affirmed by the Hon"ble Supreme Court by its order dated 16.12.2013, on merits. The order of the Hon"ble Supreme Court reads as under:

"UPON hearing counsel the Court made the following:

ORDER

Heard learned counsel for the petitioner and perused the relevant material.

We do not find any legal and valid ground for interference. The special leave petition is dismissed both on the ground of delay as well as on merits."

The aforesaid order was passed on 16.12.2013 which is subsequent to the judgment of another Division Bench of this court in MFA.No.23796/2011 dated 25.07.2013, on which reliance was placed by learned counsel for respondent-No.I. When two judgments of the Division Bench are contradictory to each other and the Hon"ble Supreme Court has affirmed one of them, then this Court is duty bound to follow the order of the Hon"ble Supreme Court which has affirmed the judgment of the Division Bench of this court i.e., the one dated 01.12.2011. In that view of the matter, submission of learned Counsel for respondent-No.I that this Court may follow the judgment of another Division Bench of this court in MFA.23796/2011 dated 25.07.2013 cannot be accepted. Point No. 1 is answered by holding that the appellant is entitled to enhanced compensation in respect of the land acquired by assessing escalation at 10% per annum instead of proceeding on the capitalisation method as has been done by the First Appellate Court or for that matter, 5% escalation applied by another Division Bench of this court. Accordingly point No. 1 is answered in favour of the appellant.

13. As far as point No. 2 is concerned, the controversy is with regard to non-payment of interest for the period from the date of submergence of land which

has to be construed as taking possession under the Act till the date of issuance of 4(1) notification and for the subsequent period. Learned Counsel for appellant though initially contended that interest has to be calculated from the date of taking possession, which is prior to the issuance of notification under Section 4 of the Act, later on, submitted that, under Section 34 of the Act, interest has to be paid under that Section with effect from 07.06.2007, which is the date of issuance of notification under Section 4(1) of the Act and not for the period prior to issuance of notification under Section 4(1) of the Act, nor is it from the date of award.

14. This submission is controverted by learned Counsel for respondents by placing reliance on the latest decision of the Hon'ble Supreme Court in Karigowda. In Karigowda (AIR 2010 SC 2322) and R. L. Jain (AIR 2004 SC 1904) what has been approved is the earlier decision of the Hon'ble Supreme Court in Lila Ghosh.

15. Hence, it would be pertinent to refer to the trilogy of cases referred to above in detail with reference to their facts as well as reasoning.

(a) The first of the cases in this regard is Lila Ghosh.

(i) Lila Ghosh (AIR 2004 SC 288), inter alia, pertained to payment of interest under Section 34 of the Act. Briefly stated the facts in that case were that a film studio was the subject-matter of civil litigation and execution proceedings were filed for eviction. At that stage on 24.12.1979 the concerned State Government i.e., Government of West Bengal (W.B.) requisitioned the property and took possession thereof. The requisition was challenged in a writ petition and a settlement was arrived at between the Government of West Bengal and the owner thereof. It was agreed that the property would be acquired by the Government of West Bengal. A sum of Rs. 11 lakhs was paid by that Government in advance of acquisition. Notification under Section 4(1) of the Act was issued in July, 1982, but it was published only on 05.08.1983. Therefore, the relevant date was taken as 05.08.1983. On 22.05.1985 declaration under Section 6 of the Act was issued, an award was made on 16.09.1986. Not being satisfied with the compensation determined in the award, the claimant sought a reference under Section 18 of the Act. The reference court enhanced the amount of compensation. Still, not being satisfied, the claimants filed an appeal before the Calcutta High Court. The respondents filed cross-objection in the High Court.

(ii) One of the questions considered was with regard to determination of the value of the land. The Hon'ble Supreme Court held that compensation payable was at the rate of Rs. 21,957/- per cottah. The claimant was also entitled to all statutory benefits available to them under the Act. Then the Hon'ble Supreme Court considered the date from which interest was payable. Paragraphs 17, 18 and 19 of the said judgment which are relevant for this case read as under:

"17. The next question which arises is from what date interest is payable. On behalf of the claimants it was argued that possession was taken as far back as on

24th December, 1975. Reliance was placed on Section 34 of the Land Acquisition Act. It was submitted that interest has to be paid from the date of taking possession. It was pointed out that the Reference Court had directed payment of interest from the date of taking possession. However, the High Court has directed payment of interest only from 8th December, 1986. In support of this submission, reliance was placed on the case of Shree Vijay Cotton and Oil Mills Ltd. v. State of Gujarat, reported in 1991(1) SCC 262 : (AIR 1991 SC 656). In this case the possession had been taken much prior to the acquisition proceedings. This Court directed payment of interest under Sections 28 and 34 from the date of taking possession. It was submitted that this authority clearly lays down that the interest must be paid from the date of actual possession.

18. On the other hand Mr. Rohtagi submitted that interest is payable under Section 34, only provided compensation is payable and the same is not paid or deposited. He submitted that compensation can only be paid after an award is made. He submitted that interest can only run from the date of the Award. He further submitted that under the Consent Terms dated 28th February, 1980 the claimant had been paid a sum of Rs. 11,00,000/- in advance even before the acquisition proceedings started. He pointed out that another sum of Rs. 11,00,000/- was also paid to them on 21st May, 1986. He pointed out that this was also before the Award was made. He pointed out that another sum of Rs. 7,45,266/- was paid under the orders of the Court on 18th July, 1986. He pointed out that before the Award was passed, a sum of Rs. 29,45,266/- was already paid to the claimants. He submitted that therefore this was a case where the claimant had already received a very large amount prior to the Award being made. He submitted that if these amounts are taken into consideration, then it would be found that no interest would be payable under Section 34. Mr. Rohtagi also pointed out that pursuant to the orders of this Court, a further sum of Rs. 70,00,000/- was paid on 3rd July, 1977 and a sum of Rs. 52,00,000/- was deposited in Court. He further pointed out that another sum of Rs. 60,00,000/- has already been deposited in this Court on 13th December, 2002. He submitted that the State must get credit for all these amounts and that there can be no interest on the amounts paid or deposited from the dates on which they were so paid or deposited. On behalf of the claimants it was fairly conceded that on the amounts paid or deposited, interest would not run.

19. Even though the authority in Shree Vijay Cotton and Oil Mills Ltd. appears to support the claimants, it is to be seen that apart from mentioning Sections 28 and 34, no reasons have been given to justify the award of interest from a date prior to commencement of acquisition proceedings. A plain reading of Section 34 shows that interest is payable only if the compensation, which is payable, is not paid or deposited before taking possession. The question of payment or deposit of compensation will not arise if there is no acquisition proceedings. In case where possession is taken prior to acquisition proceedings a party may have a right to claim compensation or interest. But such a claim would not be either under Section 34 or Section 28. In our view interest under these sections can

only start running from the date the compensation is payable. Normally this would be from the date of the award. Of course, there may be cases under Section 17 where by invoking urgency clause possession has been taken before the acquisition proceedings are initiated. In such cases, compensation, under the Land Acquisition Act, would be payable by virtue of the provisions of Section 17. As in cases under Section 17 compensation is payable interest may run from the date possession was taken..."

The aforesaid observations have been quoted in R. L. Jain in para 15 of the said judgment.

(b) In R. L. Jain in view of two conflicting decisions of the Hon"ble Supreme Court in Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat, [1991(1) SCC 262] : (AIR 1991 SC 656), (Shree Vijay Cotton and Oil Mills) and Union of India v. Budh Singh [(1995) 6 SCC 233], (Budh Singh) the appeal was placed for hearing before a larger Bench of three Judges. The question was whether in a case where possession was taken before issuance of notification under Section 4(1) of the Act, the claimant (owner of the land) was entitled to interest for the said anterior period in accordance with Section 34 of the said Act.

(i) In R. L. Jain, the facts were that the Chief Commissioner, Delhi, on behalf of Delhi Administration issued a preliminary notification under Section 4(1) of the Act on 13.11.1959 for acquisition of a large area for planned development of Delhi. This was followed by a declaration issued under Section 6(1) of the Act, which was published in the Gazette on 11.10.1961. In the interregnum the appellant therein, R.L. Jain, had purchased plot No. 223 in the said area in the auction held on 8.4.1960, as it was notified as an evacuee property. Sale certificate was issued in his favour on 31.08.1961. In pursuance of the notifications issued under Sections 4(1) and 6(1) of the Act, possession of Plot No. 223 was taken over by the Collector on 10.11.1961 and was handed over to the Delhi Development Authority (for short "DDA"). The plot was included in the award made by the Collector on 30.12.1961 and compensation amount was determined. Appellant therein received compensation amount under protest and sought a reference since he was not satisfied with the grant of compensation offered and paid to him. A reference was made under Section 18 of the Act.

(ii) When the matter stood thus, appellant therein filed a suit seeking a declaration that the proceedings taken for acquisition of his plot No. 223 which had been purchased by him in a public auction was illegal as it was stipulated in the auction notice that the said plot was not included in the preliminary notification issued under Section 4(1) of the Act, which was published on 13.11.1959. The said suit was decreed which attained finality.

(iii) In the meanwhile, on taking possession, DDA proceeded with the construction. The appellant therein filed another suit against Union of India and DDA seeking a decree of permanent injunction restraining them from making any construction over the disputed plot and from disposing of the same in any

manner. The suit was decreed and a direction for demolition of the construction was issued which was also affirmed. Then Special Leave Petition was filed before the Hon''ble Supreme Court. In order to stop the demolition of the building constructed over the plot in dispute, the appropriate authority issued fresh notification under Section 4(1) of the Act for acquisition of the plot in dispute on 09.09.1992 and the declaration was made under Section 6(1) of the Act which was published on 08.09.1993. After noticing that this notification had been issued, Special Leave Petition filed by the DDA was disposed of directing that it would not be appropriate to permit demolition of the flats which had already been constructed on the disputed land. Therefore, a direction was issued to complete the acquisition proceedings. The Collector thereafter made an award on 11.06.1994 for the plot in dispute determining its market value and other statutory benefits. The Collector awarded interest from 10.11.1961 to 09.11.1962 at the rate of 9% p.a. and from 10.11.1962 to 10.06.1994 i.e., from the date of dispossession till the date of the award at the rate of 15% p.a.

(iv) The award of the Collector was challenged by DDA by filing a writ petition before the Delhi High Court which was partly allowed. The High Court held that the award of interest under Section 34 of the Act was without jurisdiction and to that extent award was set aside. The remaining part of the Award i.e., market value of land and solatium had been upheld.

(v) The correctness of the aforesaid judgment was assailed before the Hon''ble Supreme Court in which two earlier decisions of the Hon''ble Supreme Court were re-considered namely Shree Vijay Cotton and Oil Mills Ltd. and Budh Singh. The appellant therein, relied upon Vijaya Cotton & Oil Mills Ltd., while respondents therein, relied upon Budh Singh and it was submitted that same had been reiterated in Lila Ghosh.

(vi) In order to determine the correct position of law with regard to the payment of interest under Section 34 of the Act, the Hon''ble Supreme Court reiterated the scheme of the Act in the following words at paragraph Nos. 11 and 12 in R.L.Jain:

"11. In order to decide the question whether the provisions of Section 34 of the Act regarding payment of interest would be applicable to a case where possession has been taken over prior to issuance of notification under Section 4(1) of the Act, it is necessary to have a look at the Scheme of the Land Acquisition Act. Acquisition means taking not by voluntary agreement but by authority of an Act of Parliament and by virtue of the compulsory powers thereby conferred. In case of acquisition the property is taken by the State permanently and the title to the property vests in the State. The Land Acquisition Act makes complete provision for acquiring title over the land, taking possession thereof and for payment of compensation to the land owner. Part II of the Act deals with acquisition and the heading of Section 4 is "Publication of preliminary notification and powers of officers thereupon". Sub-section (1) of Section 4 provides that whenever it appears to the appropriate Government that land in any locality is

needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Sub-section (2) provides that thereupon it shall be lawful for any officer either generally or specially authorised by such Government in this behalf and for his servants and workmen, to enter upon and survey and take levels of any land in such locality, to dig or bore in the subsoil and to do all other acts necessary to ascertain whether the land is adapted for such purpose etc. etc. This provision shows that the officers and servants and workmen of the Government get the lawful authority to enter upon and survey the land and to do other works only after the preliminary notification under Section 4(1) has been published. Section 5-A enables a person interested in any land which has been notified under Section 4 (1) to file objection against the acquisition of the land and also for hearing of the objection by the Collector. If the State Government is satisfied, after considering the report, that any particular land is needed for public purposes or for a company, it can make a declaration to that effect under Section 6 of the Act and the said declaration has to be published in the Official Gazette and in two daily newspapers and public notice of the substance of such declaration has to be given in the locality. Thereafter the Collector is required to issue notice to persons interested under Section (1) of the Act stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him. Section 11 provides for making of an award by the Collector of the compensation which should be allowed for the land. Section 16 provides that when the Collector has made an award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the Government, free from all encumbrances. This provision shows that possession of the land can be taken only after the Collector has made an award under Section 11. Section 17 is in the nature of an exception to Section 16 and it provides that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. The urgency provision contained in Section 17(1) can be invoked and possession can be taken over only after publication of notification under Section 9(1) which itself can be done after publication of notification under Sections 4(1) and 6 and of the Act. Even here in view of sub-section (3-A) the Collector has to tender 80 per cent, of the estimated amount of compensation to the persons interested/entitled thereto before taking over possession. The scheme of the Act does not contemplate taking over of possession prior to the issuance of notification under Section 4(1) of the Act and if possession is taken prior to the said notification it will de hors the Act. It is for this reason that both Sections 11(1) and 23(1) enjoin the determination of the market value of the land on the date of publication of notification under Section 4(1) of the Act for

the purpose of determining the amount of compensation to be awarded for the land acquired under the Act. These provisions show in unmistakable terms that publication of notification under Section 4(1) is the sine qua non for any proceedings under the Act. Section 34 of the Act, on the basis whereof the appellant laid claim for interest, reads as under:

"34. Payment of Interest - When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

12. The expression "the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited" should not be read in isolation divorced from its context. The words "such compensation" and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. "Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification under Section 4(1) and other amounts like statutory sum under subsection (1-A) and solatium under sub-section (2) of Section 23. The heading of Part II of the Act is "Acquisition" and there is a subheading "Taking Possession" which contains Sections 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Sections 16 or 17 of the Act. These are the only two sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly, the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification under Section 4(1) it would not be in accordance with Section 16 or 17 and will be without any authority of law and consequently cannot be recognised for the purposes of the Act. For parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Section 16 or 17 of the Act. The words "so taking possession" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification under Section 4(1) of the Act which is de hors the provisions of the Act."

(vii) After referring to Budh Singh and Vijay Cotton & Oil Mills, which have been

referred to above the Hon''ble Supreme Court held that Vijay Cotton & Oils Mills could not be considered as an authority for the proposition that where possession is taken before issuance of notification under Section 4(1) of the Act, interest on the compensation amount could be awarded in accordance with Section 34 of the Act with effect from the date of taking possession. The said proposition was discarded by the Hon''ble Supreme Court.

(viii) While reiterating the view taken by the Hon''ble Supreme Court in Lila Ghosh it was further held that under sub-section (1-A) of Section 23 of the Act interest is payable on the amount calculated at the rate of 12% p.a. on such market value, for the period commencing from the date of publication of notification under Section 4(1) in respect of such land, to the date of the award of the Collector or the date of taking possession of land, whichever is earlier.

(ix) Again there were two conflicting decisions in this regard also. In Special Tahsildar (LA), PWD Schemes v. M. A. Jabbar, [(1995) 2 SCC 142] : (AIR 1995 SC 762) (Special Tahsildar), it had been held by a Bench of two Hon''ble Judges of the Supreme Court that the claimant would be entitled to additional sum for the period anterior to publication of notification under Section 4(1). However, in Assistant Commissioner, Gadag Sub-Division, v. Mathapathi Basavannevva [(1995) 6 SCC 355] : (AIR 1995 SC 2492), (Assistant Commissioner, Gadag Sub-Division.), also decided by two Hon''ble Judges, it was held that even though the notification under Section 4(1) was issued after taking possession of the acquired land, the owners would be entitled to additional amount at 12% p.a. from the date of taking possession though notification under Section 4(1) was published later. The Hon''ble Supreme Court in R.L. Jain held that the judgment in the Special Tahsildar supra was correct and that the contrary view taken in Asst. Commissioner, Gadag Sub-Division, was not in accordance with law and over-ruled it.

(x) Thus in paragraph 18 of R.L. Jain it has been observed that, in a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the land owner to recover 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. According to Hon''ble Supreme Court, where possession is taken prior to the issuance of the preliminary notification, 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 landowner for the acquisition of the property. The provisions 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 maybe awarded.

(xi) In the above premise, the appeal filed by R.L.Jain was dismissed by holding

that he was not entitled to any amount from the date of dispossession till the date of second notification under Section 4(1) of the Act which was issued in the year 1992.

(c) The third of the cases to be referred to is Karigowda.

(i) In the aforesaid case, which arose from this Court, the Hon''ble Supreme Court considered the claim with regard to interest payable on taking possession. In that case, the lands was submerged in the backwaters of Tonnur Tank in the year 1993 due to construction of a dam on Hemavathi River. The water from the dam which was canalised to the tank resulted in submergence of lands belonging to different owners. Physical possession of the land belonging to the owners was taken on or about 24.10.1996 and 26.12.1999 respectively. Further Notification under Section 4(1) came to be issued on 04.04.2002. The crops belonging to owners were damaged. The Special Land Acquisition Officer (SLAO) passed an award on 28.08.2003. Aggrieved by the meager compensation awarded by the SLAO, the claimant sought reference to the Civil Court for re-determination of the compensation. The reference court by its judgment and award dated 16.03.2007 enhanced the compensation. The claimants being dissatisfied preferred appeals before this Court. This Court disposed of the appeals by judgment dated 23.01.2008, enhancing compensation payable to the claimants. This court also awarded interest on the enhanced compensation from the date of their submergence in the backwaters of Tonnur Tank.

(ii) Aggrieved by the judgment of the High Court, the SLAO preferred appeals before the Hon''ble Supreme Court. The beneficiary also filed an appeal directly against the judgment of the reference court. One of the questions of law which arose before Hon''ble Supreme Court was whether the High Court could have granted interest on the enhanced compensation from the date the lands were submerged in the backwaters of Tonnur Tank, as such benefit of Section 23(1-A) and Section 23(2), could be granted from the date of notification issued under Section 4(1) of the Act. The claimants contended that they were entitled to receive interest from the date of submergence of their lands i.e., from the year 1993 onwards and not from the date of notification dated 04.04.2002. It was contended that since they had lost possession of land, in lieu of possession they would be entitled to receive interest from various dates in 1993 onwards and not from the date SLAO had granted i.e., 04.04.2002, which is the date of notification issued under Section 4(1) of the Act. The reference court as well as this court had accepted the aforesaid contention and granted relief to the claimants as prayed.

(iii) At para 99 of the said judgment, the Hon''ble Supreme Court reiterated what has been stated in R.L.Jain while approving the observations made in Lila Ghosh. At para 101 it observed as under:

"101. As is evident from the above dictum of the Court, despite dispossession, the title continues to vest in the landowners and it is open for the landowners to

take action in accordance with law. Once notification under Section 4(1) of the Act has been issued and the acquisition proceedings culminated into an award in terms of Section 11, then alone the land vests in the State free of any encumbrance or restriction in terms of provisions of Section 16 of the Act. The court, in situations where possessions have been taken prior to issuance of notification under Section 4(1) of the Act, can direct the Collector to examine the extent of rent or damage that the owners of land would be entitled to, the provisions of Section 48 of the Act would come to aid and the court would also be justified in issuing appropriate direction. This was the unequivocal view expressed by the Court in R.L.Jain case as well. This legal question is no more open to controversy and stands settled by this Court. We would follow the view taken and accept the contention of the appellant State that the Reference Court as well as the High Court could not have granted any interest under the provisions of the Act, for a date anterior to the issuance of notification under Section 4 of the Act. However, following the dictum of the Bench in R.L.Jain case, we direct the Collector to examine the question of payment of rent/damages to the claimants, from the period when their respective lands were submerged under the backwater of the river, till the date of issuance of the notification under Section 4(1) of the Act, from which date, they would be entitled to the statutory benefits on the enhanced compensation."

Following the principle and direction issued in R.L. Jain, liberty was referred to the claimants therein to file applications before the competent authority to claim damages for the dispossession of the lands owned by them from the date of submergence till the date of issuance of notification under Section 4(1) of the Act, i.e., 04.04.2002. The direction for the payment of interest prior to the issuance of notification under Section 4(1) of the Act i.e., 04.04.2002 was set aside.

(iv) In Karigowda, it has been held by following the principles stated in R.L.Jain, that for the period the claimant is dispossessed as a result of submergence till the date of issuance of notification under Section 4(1) of the Act, the claimant can claim damages. But for the period from the issuance of Section 4(1) notification till the passing of the award, interest is awarded under Section 23(1A) of the Act, at the rate of 12% p.a., on the market value which is normally called Additional Market Value. Section 23(1 A) of the Act reads as under:

"23(1 A) In addition to the market-value of the land, as above provided, the court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation: In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be

excluded."

(v) But as far as Section 34 of the Act is concerned, the Hon''ble Supreme Court in Lila Ghosh has held that interest under that Section is payable only when compensation becomes payable and the same is not paid or deposited before taking possession. According to the Hon''ble Supreme Court, payment of compensation does not arise until acquisition proceedings commence. Once acquisition proceedings commence by issuance of notification under Section 4(1) of the Act, till the date of passing of the award, Section 23(1 A) would come into play. Therefore, for that period interest under Section 34 cannot be claimed. It is only after the passing of the award that compensation becomes payable from which date onwards the interest is payable under Section 34 of the Act. Of course, this is not a case where proceedings are initiated under Section 17 of the Act. But in a case where proceedings are initiated under Section 17 of the Act, under sub-section (3A) of Section 17 before taking possession of any land, 80% of the compensation for the land as estimated has to be paid or tendered to the persons interested unless prevented by any of the contingencies mentioned in sub-section (2) of Section 31 of the Act.

16. Therefore, in view of the dictum of the Hon''ble Supreme Court in Lila Ghosh (AIR 2004 SC 288) which has been approved in R. L. Jain (AIR 2004 SC 1904) and subsequently in Karigowda, the appellant would be entitled to interest under Section 34 of the Act only from the date of award i.e., 23.07.2009 in the instant case and not for the earlier period or from the date of issuance of notification under Section 4(1) of the Act. Accordingly point No. 2 is answered against the appellant.

17. However two judgments of the Division Bench of this Court need to be distinguished at this stage.

(a) In MFA.23796/2011 & connected matters, (Basappa v. SLAO & another) disposed of by this Court on 25.07.2013, the contention raised by the beneficiary therein was that interest on the above compensation was payable either from the date of preliminary notification or from the date of taking possession, whichever is later. There was no discussion with regard to the date from which the interest was payable under Section 34 of the Act. While rejecting the contention of the beneficiary therein that payment of interest would not arise, the Division Bench simply held that interest had to be paid from the date of preliminary notification as had been held by the reference court. There was no discussion of the three judgments of the Hon''ble Supreme Court referred to above as in the present case and context. Therefore, the judgment of the Division Bench dated 25.07.2013 cannot be relied upon by the appellants to contend that interest is payable from the date of preliminary notification under Section 34 of the Act as the observation of the Division Bench are contrary to the judgments of the Supreme Court referred to above.

(b) In MFA.No. 179/2005, another Division Bench of this Court has referred to R.

L. Jain (AIR 2004 SC 1904). That appeal was disposed by the Division Bench on 07.09.2006 by holding that interest has to be awarded from the date of taking possession in respect of the acquired lands. In that judgment, reference was made to paragraph 17 of the R.L.Jain. Paragraph 17 reads as under:-

"17. Shri. Dave learned counsel for the appellant has also placed strong reliance on Satinder Singh v. Umrao Singh (AIR 1961 SC 908) wherein the question of payment of interest in the matter of award of compensation was considered by this Court. In this case the initial notification was issued under Section 4(1) of Land Acquisition Act, 1894 but the proceedings for acquisition were completed under East Punjab Act No. 48 of 1948. The High Court negatived the claim for interest on the ground that the 1948 Act made no provision for award of interest. After quoting with approval the following observations of Privy Council in Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission (AIR 1928 PC 287): "upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest upon the principal sum awarded from the date when possession was taken, unless the statute clearly shows a contrary intention."

the bench held as under:-

"....when a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily he is not making claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation."

But the later paragraphs namely paragraph Nos. 17.1 and 18 as culled out here under were not referred to by the Division Bench.

17.1 The normal rule, therefore, is that if on account of acquisition of land a person is deprived of possession of his property he should be paid compensation immediately and if the same is not paid to him forthwith he would be entitled to interest thereon from the date of dispossession till the date of payment thereof. But here the land has been acquired only after the preliminary notification was issued on 09.09.1992 as earlier acquisition proceedings were declared to be null and void in the suit instituted by the landowner himself and consequently, he was not entitled to compensation or interest thereon for the anterior period."

18. In a case where the land owner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner 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 landowner is entitled while determining the compensation amount payable to the landowner 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."

18. Thus, the contention raised by the appellant's counsel in that case was recorded in paragraph No. 17. But is not the ratio of R. L. Jain (AIR 2004 SC 1904). The contents of Paragraphs 17.1 and 18 is the ratio in R.L.Jain which have been extracted supra. In para 18 the Hon"ble Supreme Court reiterated that where possession is taken prior to issuance of preliminary notification it would be just and equitable that the Collector determine the rent and damages for use of the property to which landowner is entitled, while determining compensation amount payable to the landowner for the acquisition of the property.

19. In R. L. Jain, the High Court held that award of interest under Section 34 of the Act at the rate of 9% p.a. with effect from 10.11.1961 to 09.11.1962 and then at the rate of 15% from 10.11.1962 to 10.06.1994 was without jurisdiction and to that extent the award has been set aside. The remaining part of the award has been upheld. Upholding the said dictum of the High Court the Hon"ble Supreme Court dismissed the appeal. Thus, for the period prior to the issuance of notification under Section 4(1) of the Act, even if possession has been taken, interest for that period cannot be awarded. Subsequently, in Karigowda, it has been reiterated that interest has to be awarded under Section 34 of the Act from the date of the award and not from the period of taking possession by following Lila Ghosh (AIR 2004 SC 288) wherein it has been held that interest has to be awarded from the date of award, where possession has been taken prior to issuance of notification under Section 4(1) of the Act. In that view of the matter, the dictum of the Division Bench in MFA. 179/2005 dated 07.09.2006 (The Special Land Acquisition Officer v. V.G. Ranasing and another), with respect, is contrary to the aforesaid dicta of the Hon"ble Supreme Court and thus, cannot be a binding precedent.

20. In the result, the Appeal is allowed in part with costs, by modifying the judgment and award of the First Appellate Court dated 02.04.2012. The compensation is enhanced to Rs. 3,00,000/- per acre along with all statutory benefits by assessing escalation in the value of land at 10% per annum. Also, bearing in mind the observations made supra, interest under Section 34 of the Act would be from the date of the award i.e., 23.07.2009 and not for the period prior thereto.

21. Liberty is reserved to the appellant to file an application to seek damages, if any, for the period between the date of submergence of the land in question till the date of issuance of notification under Section 4(1) of the Act i.e., 07.06.2007. If any such application is filed, the same to be considered in accordance with law.

22. The aforesaid direction is issued by following the dictum of the Hon''ble Supreme Court in R. L. Jain (AIR 2004 SC 1904). The reasons for issuance of such a direction is because the appellant has lost his agricultural land, which is the source of his livelihood due to submergence in the backwaters of Malaprabha River when the reservoir was constructed on that river. Such a direction is in consonance with the principles of environmental justice and more particularly, the principles of sustainable development. Any developmental project cannot take away the livelihood of persons affected by such a project without they being compensated in accordance with law. Any degradation in environment or loss of livelihood on account of a developmental project such as, the reservoir project in the instant case, has to ensure reasonable and fair compensation to those persons, who are adversely affected by such a project. The right to fair compensation on account of submergence of land for developmental purpose is an instance of environmental justice.