

**(2014) 06 GUJ CK 0070**  
**In the Gujarat High Court**

**Case No :** Special Civil Application Nos. 12814 and 12815 to 12824 of 2013

Government of India

APPELLANT

Vs

Vinodrai Bhogilal Shah

RESPONDENT

**Date of Decision :** 21-06-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 1(4), Order 21 Rule 21, 2(2)  
Constitution of India, 1950 — Article 141, 142  
Land Acquisition Act, 1894 — Section 11, 12, 15, 16, 18

**Citation :** (2014) 3 GLR 2540

**Hon'ble Judges :** K.M. Thaker, J

**Bench :** Single Bench

**Advocate :** K.M. Parikh, Advocate for the Appellant; Mehul S. Shah, Advocate for the Respondent

## Judgement

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K.M. Thaker, J.—Since last about 40 years the claimants (i.e. present respondents) in these group of petitions (wherein the Western Railway is the petitioner) are waiting for unpaid compensation in respect of acquisition of their lands.

1.1. In these group of petitions, learned Advocates for the petitioner and the respondents have, at the outset, jointly clarified that all petitions are similar and identical and the petitions have been preferred against a common order dated 6-5-2013 passed by the learned Executing Court in Land Acquisition Execution Petitions (Darkhast) and that the grounds raised by both sides in all petitions are similar and identical and they are prosecuted on similar and identical ground, and therefore, can be heard together and decided by common order. Learned Advocates for the petitioner-Railway and the respondent-claimants also jointly requested that the petitions may be decided finally at this (i.e. at admission stage) and the Hon'ble the Chief Justice also has passed order dated 15-4-2014.

1.2. Learned Advocates for the petitioner and the respondents have also made common submissions for all petitions. For the sake of convenience, learned Advocates for the petitioner and the respondents have referred to the record of Special Civil Application No. 12814 of 2013. Therefore, all petitions are decided by this common order and the record of Special Civil Application No. 12814 of 2013 is referred to and relied on.

1.3. These proceedings are against common order dated 6-5-2013 passed by learned Executing Court in Land Reference Darkhast No. 1 of 1997 and other connected Darkhast applications, whereby learned Executing Court has directed, inter alia, that:

"Hence, I come to the conclusion that there are no merits in the objections filed by the W.R. and are hereby rejected. The Darkhastdars in whose favour the warrants were issued are entitled to withdraw respective claim amounts with proportionate amount of interest that may have accrued on the fixed deposits issued by Indian Bank."

1.4. In the petition the petitioner has prayed, inter alia, that:

"(A) This Hon"ble Court be pleased to issue a writ of certiorari or any appropriate writ, order or directions by quashing and setting impugned judgment and order at Annexure-A dated 6-5-2013 passed by 3rd Addl. District Judge, Jamnagar in L.R. Darkhast No. 2 of 1997 and consequently, be pleased to hold and declared that Darkhastdar of said Darkhast is not entitled to withdraw the amount as ordered by Executing Court in impugned judgment at Annexure-A.

(B) This Hon"ble Court be pleased to hold and declare that Executing Court has failed to follow the procedure and rules of execution of decree as laid down in C.P.C. at the time of allowing the claim made by Darkhastdar in said Darkhast.

(C) This Hon"ble Court be pleased to hold and declare that impugned judgment and order at Annexure-A is contrary to the oral judgment dated 16-10-2008 delivered by this Hon"ble Court in this Hon"ble Court Spl.C.A. Nos. 5111 to 5122 of 2008 and to that extent, the entire base of calculation made by the claimants in the calculation sheet, more particularly claim made in Col. No. 10 and other columns are not in accordance with the law and the judgment delivered by this Hon"ble Court."

1.5. According to the claimants though the judgment in the First Appeals has attained finality but substantial part of the amount payable towards compensation along with interest, is still unpaid.

So as to consider the grievance raised by the petitioner-Railway, it is appropriate and necessary to take into account relevant facts in background of which the impugned order came to be passed and present petitions came to be filed.

1.6. The petitioner i.e. Western Railway acquired certain parcels of land in district Jamnagar, in 1972-1973.

1.7. For the said purpose Notifications under Sec. 4 of the Land Acquisition Act (hereinafter referred to as "the Act") was issued on 5-7-1972 and Notification under Sec. 6 of the Act was issued on 6-1-1973. The petitioner Western Railway took possession of the lands in question on 2-3-1973, 15-3-1973 and 8-11-1973.

1.8. Subsequently award under Sec. 11 of the Act came to be passed on 15-3-1978.

1.9. The land owners (hereinafter referred as to the "claimants") felt aggrieved by the award under Sec. 11 of the Act. Therefore, the claimants preferred Land Acquisition Reference under Sec. 18 of the Act which came to be decided by the learned Reference Court under common order dated 20-4-1983 against which the State preferred First Appeals and the claimants filed cross-objection in the said First Appeals.

1.10. By judgment dated 22-11-1995, Division Bench of this Court rejected the First Appeal/s and partly allowed the cross-objections filed by the claimants. The relevant part of the common order passed by Division Bench in First Appeal Nos. 1918 to 1928 of 1983, 1934 to 1940 of 1983 and 2171 and 2172 of 1983 (hereinafter referred to as the "said first appeals") reads thus:

"6. The learned Judge has borne in mind the fact that acquisitions were in the year 1970, and thereafter, reasonable increase in the price of lands should be borne in mind and that is what exactly the learned Judge has done. In our opinion, therefore, Reference Court reason for us to interfere with the order of the Reference Court.

7. As noted above, during the pendency of these proceedings, the Land Acquisition Act has been amended. As a result, thereof higher solatium has become payable at the rate of 30% and interest has also been increased. The claimants would now be entitled to the benefits under Sec. 23(2) as well as Sec. 28 of the Land Acquisition Act, as amended in 1984. To this extent, the cross-objections filed by the claimants are partly allowed. The Appeals of the State Government are dismissed. The Cross-objections are partly allowed, as aforesaid. There will be no order as to costs."

1.11. The judgment and order dated 22-11-1995 passed by the Division Bench in the First Appeal/s (arising from land acquisition proceedings) has not been challenged and has been accepted by both sides and it has, thus, attained finality since 1995.

1.12. Despite the fact that the said judgment attained finality, the petitioner, allegedly did not make full and complete payments in accordance with the judgment dated 22-11-1995 to the claimants. Therefore, execution proceedings came to be filed by the claimants and the petitioner-Railways raised certain objections.

1.13. The learned Executing Court passed order dated 7-5-1999 and directed the petitioner to deposit the amount as per the Schedule thereto, within two months

and the learned Executing Court also observed that in event of failure Jangam warrant will be issued.

1.14. Aggrieved by said order dated 7-5-1999, the petitioner herein i.e. Western Railway preferred Civil Revision Applications ("C.R. As.", for short) which were subsequently converted into writ petitions being Special Civil Application Nos. 5111 to 5122 of 2008. The said petitions came to be disposed of vide order dated 16-10-2008. The relevant part of the order dated 16-10-2008 reads thus:

"7.....

8.....

9. Considering the above when the respondents-claimants have not produced the judgment and decree passed by this Court in the aforesaid First Appeals and the cross-objections therein, in absence of the same, the learned Executing Court could not have passed an order in Land Reference Darkhast cases and to that extent, the present Special Civil Applications deserve to be allowed and the matters are to be remanded to the learned Executing Court to decide the same afresh in accordance with law on its own merits, considering the observations stated hereinabove and on production of the certified copy of the judgment and decree passed in the aforesaid First Appeals and the cross-objections therein.

10. Under the circumstances, the impugned orders passed by the learned Executing Court dated 7-5-1999 in Land Reference Darkhast Case Nos. 9 to 18 of 1996, 1 and 2 of 1997 are quashed and set aside and the matters are remanded to the learned Executing Court for deciding the same in accordance with law on its own merits and considering the observations as stated hereinabove, on production of the certified copy of the judgment and decree passed by this Court in cross-objections in First Appeal No. 1927 of 1983 with First Appeal Nos. 1918 to 1926 and 1928 to 1929 of 1983 and whatever amount is already paid, the same would be adjusted while passing the final order. In the facts and circumstances of the case, the learned Executing Court shall decide and dispose of the Land Reference Darkhast cases at the earliest but not later than six months on production of the judgment and decree passed by this Court in cross-objections in First Appeal No. 1927 of 1983 with First Appeal Nos. 1918 to 1926 and 1928 to 1929 of 1983....."

1.15. By the said order the proceedings were remitted to the learned Executing Court with direction to file certified copy of the judgment and order and certified copy of the decree in the First Appeal/s decided by the High Court.

1.16. Against the said direction dated 14-12-2009 the claimants preferred application being M.C.A. No. 688 of 2010 in Spl.C.A. No. 5117 of 2008 and M.C.A. No. 707 of 2010 in Spl.C.A. No. 5118 of 2008 and requested for clarification so far as the direction to file certified copy of the order and decree is concerned. In the said two M.C. As. the claimants also prayed for direction against the registry to formally draw and prepare the decree in the First Appeal

No. 1923 of 1983. The learned Single Judge disposed of the said Misc. Civil Applications vide order dated 16-4-2010 which reads thus:

"(1) Present application has been preferred by the petitioners original respondent No. 1 for an appropriate direction to the Registry of this Court to formally draw up and prepare the decree in First Appeal No. 1923 of 1983 along with the cross-objections forthwith and to issue necessary direction to the learned Executing Court to treat and consider the certified copy of the decree and to proceed with the execution petition being the Land Reference Darkhast No. 14 of 1996 pending before it.

(2) Registry has submitted the report earlier on 31-3-2010 pointing out that at the relevant time, Registry prepared the Decree, Final Writ, Bill of Cost and Farad and the same were sent to the concerned lower Court and that even the period also obtains the certified copy of the same and produced it before the lower Court.

(3) However, Shri Mehul Shah, learned Advocate appearing on behalf of the petitioners-original respondent No. 1 has submitted that trial Court is not considering the Decree, Final Writ, Bill of Cost and Farad prepared and supplied by the Registry for the purpose of execution. Therefore, further report was called from the Registry and it is reported, that therefore, Decree, Final Writ, Bill of Cost and Farad shall be prepared and given to respective parties within a period of 3 (three) weeks from today. As and when respective parties are supplied with the fresh Bill of Cost and Farad by the Registry as per the High Court Appellate Side Rules, either party may produce the same before the Executing Court and in the facts and circumstances of the case, learned Executing Court is hereby directed to treat the same as Decree, Bill of Cost for the purpose of execution of the judgment and decree passed in First Appeal No. 1923 of 1983 along with the cross-objections and proceed further with the execution petition accordingly.

(4) With this, present application is disposed of accordingly."

(Emphasis supplied)

1.17. Learned Single Judge clarified, vide said order dated 16-4-2010, that for the purpose, of execution of the judgment in group of first appeals, the Farad and certified copy of the judgment and Bill of Cost may be taken into consideration and the certified copy of the judgment and the Bill of Cost and Farad should be treated as sufficient for the purpose of execution. After and in pursuance of and in light of the said order dated 16-4-2010 the learned Executing Court passed fresh order dated 3-1-2011. According to the petitioner-Railway said order was a non-speaking order, and therefore, petitioner-Railway preferred another group of petition being Special Civil Application Nos. 3624 of 2011 and 4261 to 4267 of 2011.

1.18. The said group of petitions came to be disposed of vide order dated 6-5-2011 whereby the matter was remanded to the learned Court for further

action. The relevant part of the said order dated 6-5-2011 reads thus:

"6.2. Having heard the learned Advocates appearing on behalf of the respective parties, it appears that the main dispute on behalf of the petitioners-original judgment-debtor is that while issuing Jangam Warrants the learned executing Court has not considered objections raised by the petitioners -judgment-debtors and calculation submitted on behalf of the petitioners-judgment-debtors. The aforesaid is not disputed by the learned Advocate appearing on behalf of the original claimants. Even otherwise, considering the impugned orders, it appears that while issuing Jangam Warrants the learned executing Court has not considered the calculation submitted on behalf of the petitioners-judgment-debtors and has not properly considered and dealt with the objections raised by the petitioners-judgment-debtors. Under the circumstances, the impugned order dated 3-1-2011 issuing Jangam Warrants against the petitioners by the learned executing Court in respective execution petitions, deserve to be quashed and set aside and the matters are to be remanded to the learned executing Court for passing appropriate orders afresh after considering the objections raised by the petitioners-judgment-debtors and also considering the calculation submitted by the petitioners and after giving an opportunity to all the concerned.

6.3. Now, so far as the request made on behalf of the learned Advocate appearing on behalf of the original claimants to direct the petitioners to deposit the disputed amount with the learned executing Court and to invest the said amount in Fixed Deposit so that whoever succeed in the execution proceedings may be permitted to withdraw the same, is concerned, it is to be noted that as such the execution petitions have been preferred for execution of the judgment and award passed by the learned reference Court in the year 1983 in Reference Case No. 18 of 1979 and other References and the same were challenged by the petitioners before this Court by way of First Appeal No. 1923 of 1983 and other First Appeals, which came to be dismissed by this Court by judgment and order dated 22-11-1995 and the judgment and award passed by the Courts below came to be confirmed, however, for whatever reasons the execution petitions are still not finally decided and disposed of and the claimants are waiting to get compensation as per the judgment and award dated 20-4-1983 passed by the learned Reference Court. Therefore, the disputed amount is to be directed to be deposited by the petitioners-judgment-debtors in the learned Executing Court to protect the interest of the claimants, however, at the same time, interest of the petitioners-judgment-debtors is also required to be protected so that if ultimately they succeed in the execution proceedings, and in the meantime, if the amount is permitted to be withdrawn by the claimants, it will be very difficult for the petitioners to recover the said amount. Under the circumstances, this Court is of the opinion that if the petitioners-judgment-debtors are directed to deposit the disputed amount with the learned executing Court and the same is directed to be invested in Fixed Deposit in the name of Nazir and the claimants are not permitted to withdraw even the interest that may be accrued thereon, it will meet the ends of justice and protect the interest of both the parties.

6.4. Now, so far as undisputed amount is concerned, the same can be permitted to be withdrawn by the original claimants.

6.5. In view of the above and for the reasons stated hereinabove, all the petitions succeed in part. The impugned orders passed by the learned executing Court dated 3-1-2011 passed in respective Execution Petition Nos. 14 of 1996, 2 of 1997, 17 of 1996, 18 of 1996, 16 of 1996, 15 of 1996, 11 of 1996 and 10 of 1996 issuing Jangam Warrants against the petitioners for the recovery of the amount mentioned in the respective Jangam Warrants are hereby quashed and set aside and all the matters are remanded to the learned executing Court for passing appropriate order afresh in accordance with law and on merits, and after considering the claims made on behalf of the rival parties, inclusive of the objection/calculation submitted by the petitioners-judgment-debtors. In the meantime, the petitioners-judgment-debtors are hereby directed to deposit the entire amount as mentioned in the respective Jangam Warrants issued by the learned executing Court (which are now set aside and matters are remanded) within a period of THREE MONTHS from today and on such deposit the learned executing Court to invest the same in Fixed Deposit in the name of Nazir in any Nationalised Bank initially for a period of one year with cumulative interest (meaning thereby the interest shall be accrued on the said Fixed Deposit). However, before such investment the original claimants shall be permitted to withdraw the undisputed amount as mentioned hereinabove in the statement in column No. 5 and only thereafter the balance amount shall be invested in the name of Nazir, as stated hereinabove. Necessary further orders shall be passed by the learned executing Court with respect to payment on the basis of final order that may be passed by the learned executing Court on remand....."

(Emphasis supplied)

1.19. After the above mentioned order, the learned Executing Court passed the order dated 6-5-2013 which is impugned in present petition.

2. It is also relevant to mention that after the Court passed order dated 16-4-2010 in M.C.A. No. 707 of 2010 and before the impugned order dated 6-5-2013 came to be passed, the petitioner-Railway had filed another M.C.A. being M.C.A. No. 2816 of 2010 seeking recall and review of the said order dated 16-4-2010. The said M.C.A. No. 2816 of 2010 came to be disposed of by the Court vide order dated 4-10-2013 i.e. five months after the impugned order dated 6-5-2013 came to be passed.

3. At the time of hearing of present petitions learned Advocate for the petitioner-Railway assailed the order dated 6-5-2013 and submitted, inter alia, that (a) though in the original award dated 20-4-1983 passed in Reference proceedings, the learned Reference Court has not allowed in the judgment and order dated 22-11-1995 passed in the First Appeals and the High Court also has not allowed any benefit under Sec. 23(1A) of the Act, however, the learned Executing Court has included the said claim and directed payment towards the said claim under

the impugned order and thereby the Executing Court has travelled beyond the judgment and decree, and; (b) the Executing Court has calculated the interest component in such a manner that the learned Executing Court has granted - allowed interest over interest though, under the provisions of the Act, it is not permissible to grant such claim and the said direction is unjust and; (c) since the decree is not filed the execution proceedings and the impugned order are bad in law and unsustainable as it overlooks the requirement to file decree or certified copy thereof. At the time of hearing, above mentioned three contentions have been pressed in service and any other contention is not raised by learned Advocate for the petitioner-Railway. Learned Advocate for the petitioner also relied on the decision of the Hon''ble Apex Court in case between Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh and Company, . He submitted that the decision by Hon''ble Apex Court in case between Gurpreet Singh Vs. Union of India (UOI), , is not applicable in the facts of the case.

4. Mr. Mehul S. Shah, learned Advocate for the respondent-claimants has opposed the petitions and submitted that the petitioner is not justified in contending that though Reference Court and/or this Court have not granted benefit under Sec. 23(1A), the order granting said benefit i.e. the claim made by the claimants under said Section is unjustified, is, in light of the judgment dated 22-11-1995 misconceived. Learned Advocate for the respondent further submitted that under the judgment dated 22-11-1995 the High Court granted all statutory benefits which would be available to the claimants under the Act and learned Executing Court has not committed any error in granting the said benefit. He further submitted that the petitioner-Railway is not justified in claiming that learned Court has allowed interest over interest. As regards the petitioner's objection against the action of the Court of passing impugned order though the requirement to file certified copy of the decree is allegedly not complied, learned Advocate for the respondent-claimants submitted that this Court had at the relevant time, expressly clarified that the certified copy of the judgment and Farad and Bill of Cost would suffice the requirement for filing the certified copy of the decree for the purpose of execution. Learned Advocate for the respondent-claimants submitted that certified copy of the judgment and the certified copy of Farad and Bill of Cost in the First Appeals are already filed and that the requirement is complied with more particularly as per the clarification made by learned Single Judge in the order dated 16-4-2010 in Misc. Civil Application No. 707 of 2010.

5. I have heard learned Advocate for the petitioner-Railway. I have also taken into account the orders passed by the learned Single Judge which have been referred to and relied on by the learned Advocates and the common judgment and order passed by Division Bench in group of First Appeals and the other documents referred to and relied on by learned Advocates.

6. For sake of convenience the third contention (i.e. the objection mentioned at (c) above) may be considered first. On that count it is relevant to mention that

the said objection was raised by the petitioner-Railway on earlier occasion i.e. in Special Civil Application No. 5111 of 2008 and Special Civil Application No. 5122 of 2008 wherein this Court passed order dated 16-10-2008 and observed, inter alia, that:

"7. Heard the learned Advocates appearing on behalf of the respective parties. At the outset, it is required to be noted that the respondents-original claimants have submitted respective Land Reference Darkhast Cases before the learned Executing Court to execute the judgment and decree passed by this Court in First Appeal No. 1927 of 1983 with First Appeal Nos. 1918 to 1926 and 1928 to 1929 of 1983 and the cross-objections therein on the basis of the judgment and order dated 22-11-1995. However, it is an admitted position that the respective claimants-respondents have not produced the judgment and decree before the learned Executing Court, and therefore, the objection raised by the petitioner-Union of India, Western Railway is well founded. When a decree is sought to be executed and the Land Reference Darkhast Case is filed, the judgment and decree must be produced alongwith the Land Reference Darkhast Case. Unless and until the judgment and decree is produced, there is no question of proceeding further with the execution. The learned Advocate appearing on behalf of the respective respondents-claimants has submitted that they will produce the judgment and decree passed by this Court in First Appeal No. 1927 of 1983 with First Appeal Nos. 1918 to 1926 and 1928 to 1929 of 1983 and the cross-objections therein before the learned Executing Court. Under the circumstances, to that extent, the present Special Civil Applications are required to be allowed and the matters are required to be remanded to the learned Executing Court to decide the same afresh on production of the certified copy of the judgment and decree passed by this Court in First Appeal No. 1927 of 1983 with First Appeal Nos. 1918 to 1926 and 1928 to 1929 of 1983 and the cross-objections therein."

(Emphasis supplied)

6.1. Subsequently, when, in view of learned Executing Court's order dated 14-12-2009, the claimants filed M.C.A. No. 688 of 2010 and M.C.A. No. 707 of 2010 learned Single Judge, vide order dated 16-4-2010 clarified that the certified copy of the judgment and Farad and Bill of Cost should be considered sufficient for the purpose of execution. The relevant part of the said order reads thus:

"2. Registry has submitted the report earlier on 31-3-2010 pointing out that at the relevant time, Registry prepared the Decree, Final Writ, Bill of Cost and Farad and the same were sent to the concerned lower Court and that even the period also obtains the certified copy of the same and produced it before the lower Court.

However, Shri Mehul Shah, learned Advocate appearing on behalf of the petitioners-original respondent No. 1 has submitted that trial Court is not considering the Decree, Final Writ, Bill of Cost and Farad prepared and supplied by the Registry for the purpose of execution. Therefore, further report was called

from the Registry and it is reported, that therefore, Decree, Final Writ, Bill of Cost and Farad shall be prepared and given to respective parties within a period of 3 (three) weeks from today. As and when respective parties are supplied with the fresh Bill of Cost and Farad by the Registry as per the High Court Appellate Side Rules, either party may produce the same before the Executing Court and in the facts and circumstances of the case, learned Executing Court is hereby directed to treat the same as Decree, Bill of Cost for the purpose of execution of the judgment and decree passed in First Appeal No. 1923 of 1983 along with the cross-objections and proceed further with the execution petition accordingly."

6.2. In light of the order dated 16-4-2010 in M.C.A. No. 707 of 2010 and M.C.A. No. 688 of 2010 directing/clarifying that "the Court is hereby directed to treat the same as decree, Bill of Cost for the purpose of execution.....", the learned Executing Court proceeded with the execution proceeding.

6.3. When the proceedings were conducted and until the learned Executing Court passed the impugned order, the said order dated 16-4-2010 in M.C.A. No. 707 of 2010 was in operation. Actually the said order dated 16-4-2010 remained in operation even after present petitioners filed the above mentioned M.C.A. No. 2816 of 2010 inasmuch neither the said order was set aside nor any order staying operation of said order dated 16-4-2010 was passed in the said M.C.A. No. 2816 of 2010 during their pendency. Thus, while passing the impugned order dated 6-5-2013 learned Executing Court acted in light of the order dated 16-4-2010. In view of the fact that the learned Court actually acted as per the direction by the High Court vide order dated 16-4-2010 any fault cannot be found with impugned order and/or the action of the learned Court in proceeding with the execution proceedings in accordance with the said direction vide order dated 16-4-2010 in M.C.A. No. 707 of 2010.

7. As regards the petitioner's grievance that the decree is not filed it is appropriate to recall the observation and direction by this Court in the order dated 16-4-2010 in M.C.A. No. 707 of 2010. Upon taking into account the above mentioned aspects, this Court, again called for the explanation/report from the Registry. In this context Registry has informed this Court that:

"In this connection, it is respectfully submitted that, pursuant to the disposal of aforesaid First Appeals, Registry prepared the draft of the decretal Order on Farad and also the draft of Bill of Costs and after following due procedure as provided under Rule 138 of Gujarat High Court Rules, 1993, said Farad order and Bill of Costs were signed by the Deputy Registrar and Taxing Officer on 4-9-1996 and it was dispatched to the trial Court by Decree Dispatch No. 4292 of 1997 on 11-3-1997.

In this connection, it is further submitted that, pursuant to the aforesaid direction of the Hon'ble Court, decretal order on the Farad and Bill of Costs were prepared again on 30th April, 2010 and below the Bill of Costs, learned Advocates, Mr. M.R. Anand, Mr. J.R. Nanavati and Mr. L.R. Pujari, A.G.P. have

signed in token of their approval prepared by the Office (Flag "A"). The said decretal Order on Farad, Bill of Costs and Final Writ were duly signed by the Deputy Registrar and Taxing Officer and were sent to the trial Court by Decree Dispatch No. 3390 of 2010 on 5th May, 2010."

7.1. The Registry has informed that it has followed the procedure prescribed under Rule 138 of High Court of Gujarat Rules, 1993. It is also clarified that the draft of decretal Order and the Draft of Bill of Cost were shown to the learned Advocates of the appellant and the opponent and the learned Advocates had even approved the same, and thereafter, they were duly signed by Deputy Registrar and Taxing Officer and subsequently the decree, decretal order and Farad along with the final writ were sent to the trial Court on 5-5-2010. The Registry has also clarified that this was second time that the decree department carried out the prescribed procedure and forwarded the said material to the learned trial Court. In this view of the matter and having regard to the fact that the disbursement of the amount to the claimants is pending since many years the Court considers it appropriate to clarify that the learned Executing Court shall act in accordance with order dated 16-4-2010 passed by this Court in the above mentioned two civil applications. For the foregoing reasons the impugned order does not deserve to be set aside on the ground raised by the petitioner.

8. In view of the rival submissions as regards the other two contentions it is appropriate and relevant to note that with reference to the benefit under Sec. 23(1A) of the Act, a controversy is raised by the petitioner on the ground that in the First Appeals, this Court did not grant the benefit under Sec. 23(1A) of the Act and that the Reference Court also did not grant the said benefit, hence the Executing Court cannot allow said benefit.

9. Before proceeding further it is appropriate to mention that the learned Counsel for the petitioner raised the controversy by way of oral submissions at the time of hearing though any specific contention in express terms is not raised under the heading "grounds" in the petition.

9.1. On this count it would not be out of place to mention that in this group of petitions such objection/contention is not raised and on perusal of the reply dated 11-1-2013 filed by the petitioners before the learned Executing Court it prima facie appeared that such objection was not raised before the learned Executing Court. Moreover, from perusal of the petitioner's written arguments dated 25-3-2013 also it prima facie appeared that in the said written arguments dated 25-3-2013 also the said contention was not raised. Likewise from the perusal of the impugned order also it prima facie appeared that probably at that stage also the said contention was not raised. However, now the petitioner wants that the impugned order should be examined and should be set aside in light of the said contention. Therefore, the learned Advocate for the petitioner-Railway was asked to respond to the claimants' objection that when the contention is not raised in the petition, the said contention should not be entertained.

9.2. On this count, learned Counsel for the petitioner submitted that at the initial stage i.e. when the petitioner filed its initial reply in response to the execution petition the petitioner had raised the objection and that even in the said C.R. As. the said objection was raised. The learned Counsel for the petitioner relied on the replies/objections filed by the petitioner-Railway in response to the darkhast and the memo of the C.R. As. He further contended that the said objection is question of law and can be raised at this stage, and that therefore, also the said contention may be allowed to be raised and may be considered. The learned Counsel for the claimants could not dispute the said submissions/facts.

9.3. At this stage it is also relevant to take into account that from the record it also appeared that the claimants had not claimed the said benefit in their cross-objections filed in the said First Appeals. Thus, when the Division Bench decided the said First Appeals and the cross-objections, the said claim (i.e. the claim for benefit under Sec. 23(1A) of the Act was not mentioned in the cross-objections). In this context the learned Counsel for the claimants relied on the execution petitions originally/initially filed by the claimants and he submitted that from inception of execution proceedings this claim is raised by the claimants. The said factual aspect is not disputed by the learned Counsel for the petitioner.

9.4. Having regard to the said facts, submissions and also in view of the fact that the said issue is question of law and is also covered by the decision by Hon''ble Apex Court, the Court granted opportunity to the petitioner and the claimants and allowed the petitioner to raise the said contention and also allowed the claimants to oppose the said contention which are considered and dealt with in present order.

9.5. In this background learned Advocate for the petitioner submitted that the learned Executing Court could not have included the claim for benefit under Sec. 23(1A) since neither Reference Court has granted said benefit nor Hon''ble Division Bench allowed the said benefit, and therefore, any amount under and as per Sec. 23(1A) is not payable, however the learned Executing Court has taken into account the claim under Sec. 23(1A) of the Act and the amount payable towards said benefit is included in the total amount directed to be paid which is unjust and arbitrary.

9.6. In this context it is also relevant to note that while passing the common judgment dated 22-11-1995 the Division Bench relied on the previous decision in other/previous group of Appeals i.e. First Appeal No. 2054 of 1983, First Appeal No. 1930 of 1983 and First Appeal No. 2053 of 1983 and First Appeal No. 2055 of 1983 wherein also the issue related to market value of and appropriate rate of compensation for the land in respect of which notification under Sec. 4 of the Act for the same acquiring body and for the land in same/adjoining areas was issued, was considered. The said previous Appeals came to be decided by the High Court vide separate orders passed on 7-3-1985, and the said orders were considered and relied on by Hon''ble Division Bench while passing the common judgment dated 23-11-1995. Therefore, this Court inquired from the learned Advocate for

the petitioner-Railway as to whether in the said cases the petitioner-Railway had paid benefit under Sec. 23(1A) of the Act or not. In response to the said query, learned Advocate for the petitioner-Railway filed affidavit stating, inter alia, that:

"3. I humbly submit that as per judgment and order delivered by this Hon"ble Court in F.A. No. 1930 of 1983 and F.A. No. 2055 of 1983 with respective cross-objections, the petitioners-Railway has deposited the amount for increased rate of interest as provided under Sec. 28 of the L.A. Act as well as deposited higher solatium @ 30% under Sec. 23(2) of the L.A. Act towards the entitled claims available to the claimants of the said First Appeals and petitioner-Railway has not paid or deposited any additional amount of compensation @ 12% p.a. as provided in Sec. 23(1A) of the Land Acquisition Act, 1894, as amended from time to time. Thus, I declare on oath on behalf of the petitioner-Railway that petitioner have not paid or deposited additional amount of compensation to those claimants as provided under Sec. 23(1A) of the Act. I also crave leave of this Hon"ble Court to place on record statement showing additional amount paid by the Railway to the respective claimants as per orders dated 7-3-1995 passed by Hon"ble High Court in F.A. No. 1930 of 1983 with F.A. No. 2055 of 1983 with respective cross-objections filed by respondent No. 1.

8. As a matter of clarification to this Hon"ble High Court, I humbly submit that there is no express speaking order passed by Hon"ble Gujarat High Court in their oral judgment dated 22-11-1995 passed in F.A. Nos. 1918 to 1928 of 1983 and 1934 to 1940 of 1983 with respect to payment to be made by the petitioner-Railway to the respective claimant under Sec. 23(1A) of the Act. In absence of specific directions to the effect of such claim claimed by the claimants under Sec. 23(1A) of the Act, this Hon"ble High Court should not allow the same as claimed by the claimants in the executing proceedings and to that extent, impugned order at Annex.-A in all the respective writ petitions deserves to be quashed and set aside by holding that respective claimants of the group of writ petitions filed by the petitioner-Railway are not entitled to get benefit of statutory provisions of Sec. 23(1A) of the Act in any case in any manner as settled by Hon"ble Supreme Court."

9.7. The petitioner's above mentioned contention is opposed by the learned Counsel for the claimants who relied on the observations by this Court in common judgment dated 22-11-1995 and submitted that since the said provision was in force when the appeals were heard and decided, the Division Bench took into consideration all provisions and observed in the common judgment dated 22-11-1995 that:

"As noted above during the pendency of this proceedings the Land Acquisition Act has been amended."

9.8. Learned Counsel for the claimants also relied on further observations in the said common judgment i.e.:

"As a result thereof higher solatium has become payable at the rate of 30% and

interest has also been increased. The claimants would now be entitled to the benefits under Sec. 23(2) as well as Sec. 28 of land in question as amended in 1984."

9.9. The learned Counsel for the claimants submitted that the said observation clarify that Division Bench granted all benefits which came to be introduced in 1984 by Amendment Act 68 of 1984 which would include the benefit under Sec. 23(1A) of the Act and the learned Executing Court has not committed any error in the impugned order and it is not true that the Division Bench has not allowed all benefits introduced by the amendment.

9.10. From the submissions by the learned Advocate for the petitioner and the claimants it has emerged that there is no dispute about the fact that by the impugned order the learned Executing Court has included the amount payable towards the benefit under Sec. 23(1A) in the total amount for which the learned Executing Court passed the direction to issue Jangam Warrant.

9.11. Since the said benefit confers the benefit either from the date of publication of Notification under Sec. 4(1) of the Act or from the date when the possession of the land in question is taken over, whichever is earlier, the date of publication of the Notification under Sec. 4(1) and the date on which possession of the land is taken over become relevant and in view of the nature of controversy, the date on which the said provision came to be introduced and the date from which the provision came in force are also relevant.

9.12. In this context, it may be mentioned that the Notifications under Sec. 4(1) came to be issued on 5-7-1972, and the possession of land was also taken over on 2-3-1973 and 8-11-1973. Thereafter the Land Acquisition Officer passed award under Sec. 11 of the Act on 15-3-1978 and the learned Reference Court passed common final award dated 20-4-1983 whereas the said provision i.e. Sec. 23(1A) of the Act came to be introduced by Act 68 of 1984 and came into force w.e.f. 24-9-1984.

9.13. Moreover, along with the introduction of the said provision the legislature also made transitional provision i.e. Sec. 30 of Act 68 of 1984 which reads thus:

"30. Transitional provisions:--(1) The provisions of sub-sec. (1A) of Sec. 23 of the principal Act, as inserted by clause (a) of Sec. 15 of this Act, shall apply and shall be deemed to have applied, also to and in relation to -

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill in the House of People) in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act.

(2) The provisions of sub-sec. (2) of Sec. 23 and Sec. 28 of the principal Act, as amended by clause (b) of Sec. 15 and Sec. 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill 1982, in the House of the People and before the commencement of this Act.

(3) The provisions of Sec. 34 of the principal Act, as amended by Sec. 20 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,-

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People) and the amount of compensation for such acquisition had not been paid or deposited under Sec. 31 of the principal Act until such date with effect on and from that date; and

(b) every case in which such possession had been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said Sec. 31 with effect on and from the date of taking such possession."

9.14. On plain reading of the said provision it emerges that (a) the said provision is transitional provision; (b) it circumscribes and limits the retrospective applicability-operation of the provision under Sec. 23(1A) of the Act; and (c) though the said Sec. 30 is contained in separate Act i.e. Amending Act 68 of 1984, Sec. 23(1A) of the principal Act and Sec. 30(1) of the Amending Act have to be read together.

9.15. Sub-section (1) of Sec. 30 of the Amending Act divides the land acquisition proceedings into two categories viz. proceedings which had commenced prior to 30-4-1982 and the proceedings which had commenced after 30-4-1982. Clause (a) of Sec. 30(1) deals with the proceedings which had commenced prior to 30-4-1982 whereas clause (b) deals with proceedings which commenced after 30-4-1982. The former sub-clause is relevant for those proceedings which had commenced prior to 30-4-1982 wherein award had not been passed by the Collector before 30-4-1982. Meaning thereby the proceedings (i) which were pending before the Collector on 30-4-1982 and the Collector passed the award after 30-4-1982 but before the date of commencement of Amending Act (i.e. 24-9-1984) and (ii) the proceedings wherein the award was made by the Collector after the date of commencement of the Amending Act, are covered under clause (a) of Sec. 30(1). Whereas, clause (b) of Sec. 30(1) covers the proceedings (i) which had commenced after 30-4-1982 and wherein award was made prior to the commencement of the Amending Act and (ii) those proceedings wherein award was made after the commencement of the Amending

Act. It is further explained by Hon"ble Apex Court : "the difference in the phraseology in sub-secs. (1) and (2) of Sec. 30 only indicates the limited nature of the retrospectively that has been given to provisions contained in Sec. 23(1A) under Sec. 30(1) as compared to that given to the provisions of Secs. 23(2) and 28 under Sec. 30(2)." (See K.S. Paripoornan Vs. State of Kerala and Others, .

9.16. In this context and in this background it is appropriate to recall that in present case not only the Notification under Sec. 4(1) was issued on 5-7-1972 (i.e. before the cut-off date mentioned under Sec. 30(1) of the Amending Act and before the date on which Sec. 23(1A) came into force) but even the Collector passed the award on 15-3-1978 i.e. before the cutoff date mentioned under Sec. 30(1) of the Amending Act and before the date on which Sec. 23(1A) came into force. In present case, there is an additional fact which is relevant viz. the Reference Court passed the final judgment and award on 20-4-1983 i.e. before 24-9-1984 when the said Sec. 23(1A) came into force.

9.17. Despite such facts and in spite of the above mentioned transitional provision i.e. Section 30 of the Act 68 of 1984 (i.e. Amending Act) and in spite of the decision by Hon"ble Apex Court in case of K.S. Paripoornan Vs. State of Kerala and Others, the petitioner-Railway and respondent-claimants at the time of hearing (and also in the petition) concentrated and focused the submissions only on one ground (viz. the Reference Court and the High Court has not granted the said benefit hence the said benefit cannot be taken into account) and did not make any submission in light of the provision under Sec. 30 of the Amending Act 68 of 1984. However what is relevant and necessary to take into account is the provisions under Sec. 30 of the Act No. 68 of 1984 and the Court is obliged to take into account the transitional provision under Sec. 30 of the Act No. 68 of 1984 and to also take into consideration the decision by Hon"ble Apex Court in case between K.S. Paripoornan v. State of Kerala (supra). It is relevant to mention that actually in light of the transitional provision i.e. Sec. 30 of Act 68 of 1984, the ground on which the objection is raised, does not have much relevance.

9.18. In the above mentioned case between K.S. Paripoornan v. State of Kerala (supra) Hon"ble Apex Court examined the question as to whether the benefit under Sec. 23(1A) of the Act is restricted to the matters referred to in clauses (a) and (b) of sub-sec. (1) of Sec. 30 of the Amending Act or it is to be awarded in every case where the reference was pending before the Reference Court on 24-9-1984 (the date of commencement of the Amending Act) irrespective of the date on which the award was made by the Collector and Apex Court observed inter alia, that -

"46. The question which is required to be examined by the Bench is : Whether the additional amount payable @ 12% per annum on the market value under Sec. 23(1A) is restricted to matters referred to in clauses (a) and (b) of sub-sec. (1) of Sec. 30 of the Amending Act or is to be awarded in every case where the reference was pending before the Reference Court on September 24, 1984 (the date of the commencement of the Amending Act) irrespective of the date on

which the award was made by the Collector.

69. The provisions of Sec. 23(1A) have to be construed in the light of the aforementioned principle. If thus construed, it would be evident that under Sec. 23(1A) an obligation to pay an additional amount by way of compensation has been imposed. Such an obligation did not exist prior to the enactment of the said provision by the Amending Act. If the said provision is applied to the acquisition proceedings which commenced prior to its enactment and an additional obligation in the matter of payment of compensation is imposed for such acquisition the effect would be that the said provision would be operating retrospectively in respect of transactions already past. We are, therefore, unable to agree with the view expressed in *Union of India (UOI) and Another Vs. Zora Singh and Others*, that Sec. 23(1A) would only operate prospectively and will not have retrospective operation if it is construed as applying to proceedings which were pending before the Reference Court on the date of the commencement of the Amending Act and in which the Reference Court makes the award after the commencement of the Amending Act.

74. If sub-sec. (1A) of Sec. 23 is construed in the light of the provisions contained in sub-sec. (1) of Sec. 30 of the Amending Act, there is no escape from the conclusion that Sec. 23(1A), by itself has no application to proceedings which had commenced prior to the enactment of the Amending Act and the applicability of the said provision to pending proceedings is governed exclusively by sub-sec. (1) of Sec. 30 of the Amending Act. A perusal of sub-sec. (1) of Sec. 30 of the Amending Act shows that it divides the proceedings for acquisition of land which had commenced prior to the date of the commencement of the Amending Act into two categories, proceedings which had commenced prior to April 30, 1982 and proceedings which had commenced after April 30, 1982. While clause (a) of Sec. 30(1) deals with proceedings which had commenced prior to April 30, 1982, clause (b) deals with proceedings which commenced after April 30, 1982. By virtue of clause (a) Sec. 23(1A) has been made applicable to proceedings which had commenced prior to April 30, 1982 if no award had been made by the Collector in those proceedings before April 30, 1982. It covers (a) proceedings which were pending before the Collector on April 30, 1982 wherein award was made after April 30, 1982 but before the date of the commencement of the Amending Act and (b) such proceedings wherein award was made by the Collector after the date of the commencement of the Amending Act. Similarly Sec. 30(1)(b) covers (a) proceedings which had commenced after April 30, 1982 wherein award was made prior to the commencement of the Amending Act, and (b) such proceedings wherein award was made after the commencement of the Amending Act. It would thus appear that both the clauses (a) and (b) of sub-sec. (1) of Sec. 30 cover proceedings for acquisition which were pending on the date of the commencement of the Amending Act and to which the provisions of Sec. 23(1A) have been made applicable by virtue of Sec. 30(1). If Sec. 23(1A), independently of Sec. 30(1) is applicable to all proceedings which were pending on the date of the commencement of the Amending Act clauses (a) and (b) of

Sec. 30(1) would have been confined to proceedings which had commenced prior to the commencement of the Amending Act and had concluded before such commencement because by virtue of Sec. 15 the provisions of Sec. 23(1A) would have been applicable to proceedings pending before the Collector on the date of commencement of the Amending Act. There was no need to so phrase Sec. 30(1) as to apply the provisions of Sec. 23(1A) to proceedings which were pending before the Collector on the date of the commencement of the Amending Act. This only indicates that but for the provisions contained in Sec. 30(1), Sec. 23(1A) would not have been applicable to proceedings pending before the Collector on the date of commencement of the Amending Act.

75. Merely because sub-sec. (1) of Sec. 30 only refers to award made by the Collector while sub-sec. (2) of Sec. 30 also refers to an award made by the Court as well as the order passed by the High Court or the Supreme Court in appeal against such award does not mean that Sec. 23(1A) was intended to have application to all proceedings which were pending before the Civil Court on the date of the commencement of the Amending Act. The difference in the phraseology in sub-secs. (1) and (2) of Sec. 30 only indicates the limited nature of the retrospectively that has been given to provisions contained in Sec. 23(1A) under Sec. 30(1) as compared to that given to the provisions of Secs. 23(2) and 28 under Sec. 30(2). The limited scope of the retrospectively that has been conferred in respect of Sec. 23(1A) under sub-sec. (1) of Sec. 30 does not lend support to the contention that the scope of such retrospectively should be enlarged by reading such further retrospectively into the provisions of Sec. 23(1A). For the reasons aforementioned. We are of the view that in relation to proceedings which were initiated prior to the date of the commencement of the Amending Act Sec. 23(1A) would be applicable only to those cases which fall within the ambit of clauses (a) and (b) of sub-sec. (1) of Sec. 30 of the Amending Act. In this context, it is also necessary to bear in mind the rule of statutory construction that even where a statute is clearly intended to be to some extent retrospective, it is not to be construed as having a greater retrospective effect than its language renders necessary. [See : Halsbury's Laws of England, 4th Edn., Vol. 44, Para 924]. There is therefore no scope for extending the ambit of retrospective operation of sub-sec. (1A) of Sec. 23 beyond the limits specified in Sec. 30(1) of the Amending Act so as to apply it to all proceedings initiated prior to the date of coming into force of the Amending Act which were pending before the Civil Court on reference under Sec. 18 of the principal Act irrespective of the date on which the award was made by the Collector. For the reasons aforementioned we are unable to subscribe to the view taken in *Union of India (UOI) and Another Vs. Zora Singh and Others*, that sub-sec. (1A) of Sec. 23 would apply to all proceedings pending in the Reference Court on the date of commencement of the Amending Act irrespective of the date on which award was made by the Collector. In our opinion, the provisions of Sec. 23(1A) of the principal Act and Sec. 30(1) of the Amending Act have been correctly construed in *Union of India and Others Vs. Filip Tiago De Gama* of

Vedem Vasco De Gama, to mean that the obligation to pay additional amount in respect of proceedings initiated before the date of commencement of the Amending Act is confined to the matters covered by clauses (a) and (b) of sub-sec. (1) of Sec. 30 of the Amending Act and we endorse the said view.

80. For the reasons aforementioned it must be concluded that in respect to acquisition proceedings initiated prior of date of commencement of the Amending Act the payment of the additional amount payable under Sec. 23(1A) of the Act will be restricted to matter referred to in clauses (a) and (b) of sub-sec. (1) of Sec. 30 of the Amending Act. Union of India (UOI) and Another Vs. Zora Singh and Others, insofar as it holds that the said amount is payable in all cases where the reference was pending before the Reference Court on September 24, 1984, irrespective of the date on which the award was made by the Collector does not lay down the correct law.

111. In respect of acquisition proceedings initiated prior to the date of commencement of the Amending Act 68 of 1984, the payment of the additional amount under Sec. 23(1A) of the Act will be restricted to matters referred to in clauses (a) and (b) of sub-sec. (1) of Sec. 30 of the said Amending Act. Union of India (UOI) and Another Vs. Zora Singh and Others, , insofar as it holds that the said amount is payable in all cases where the reference was pending before the Reference Court on September 24, 1984, irrespective of the date on which the award was made by the Collector does not lay down the correct law."

9.19. The said aspect was again considered by Hon"ble Apex Court in case of Union of India (UOI) Vs. Giani, wherein Hon"ble Apex Court observed, inter alia, that:

"6. Section 23(1A) of the Land Acquisition Act, 1894 was inserted, w.e.f, 24-9-1984, by way of amendment to the Act which was made applicable to proceedings pending on or after 30-4-1982. The said sub-sec. (1A) provides that in addition to the market value of the land, the Court would 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 Sec. 4, sub-sec. (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. In sub-sec. (2) of Sec. 23 of the Act the words "thirty per centum" replaced the words "fifteen per centum", w.e.f., 24-9-1984 and it was also made applicable to certain awards made and order passed after 30-4-1982. The specific and the only issue which was agitated by the Counsel appearing for the appellant before us during the course of hearing was that, since the aforesaid amendment by Act No. 68 of 1984 inserted a new provision in the nature of sub-sec. (1A), which was inserted, w.e.f., 24-9-1984 (and was made applicable to proceedings pending on or after 30-4-1982) sub-sec. (1A) would not be applicable in the present case. In support of the said contention reference was made to the decision of the Constitution Bench of this Court in K.S. Paripoornan Vs. State of Kerala and Others, in which this Court upon a combined reading of

Sec. 23(1A) and Sec. 30(1) of the Act held as follows:

"74..... A perusal of sub-sec. (1) of Sec. 30 of the Amending Act shows that it divides the proceedings for acquisition of land which had commenced prior to the date of the commencement of the Amending Act into two categories - Proceedings which had commenced prior to 30-4-1982 and proceedings which had commenced after 30-4-1982. While clause (a) of Sec. 30(1) deals with proceedings which had commenced prior to 30-4-1982, clause (b) deals with proceedings which commenced after 30-4-1982. By virtue of clause (a), Sec. 23(1A) has been made applicable to proceedings which had commenced prior to 30-4-1982 if no award had been made by the Collector in those proceedings before 30-4-1982. It covers (i) proceedings which were pending before the Collector on 30-4-1982 wherein award was made after 30-4-1982 but before the date of the commencement of the Amending Act, and (ii) such proceedings wherein award was made by the Collector after the date of the commencement of the Amending Act. Similarly Sec. 30(1)(b) covers (i) proceedings which had commenced after 30-4-1982 wherein award was made prior to the commencement of the Amending Act, and (ii) such proceedings wherein award was made after the commencement of the Amending Act. It would thus appear that both the clauses (a) and (b) of sub-sec. (1) of Sec. 30 cover proceedings for acquisition which were pending on the date of the commencement of the Amending Act and to which the provisions of Sec. 23(1A) have been made applicable by virtue of Sec. 30(1). If Sec. 23(1A), independently of Sec. 30(1), is applicable to all proceedings which were pending on the date of the commencement of the Amending Act, clauses (a) and (b) of Sec. 30(1) would have been confined to proceedings which had commenced prior to the commencement of the Amending Act and had concluded before such commencement because by virtue of Sec. 15 the provisions of Sec. 23(1A) would have been applicable to proceedings pending before the Collector on the date of commencement of the Amending Act. There was no need to so phrase Sec. 30(1) as to apply the provisions of Sec. 23(1A) to proceedings which were pending before the Collector on the date of the commencement of the Amending Act. This only indicates that but for the provisions contained in Sec. 30(1), Sec. 23(1A) would not have been applicable to proceedings pending before the Collector on the date of commencement of the Amending Act."

8. In the present case, the acquisition proceeding commenced with the Notification under Sec. 4 issued on 6-3-1965 and it culminated in passing of the award by the Collector on 9-7-1980 i.e., before 30-4-1982, the date from which the Amending Act 68 of 1984 was made applicable to the pending and subsequent proceedings. Therefore, in terms of the law laid down by the Constitution Bench decision of this Court in the case of K.S. Paripoornan Vs. State of Kerala and Others, the respondents are not entitled to the benefit of Sec. 23(1A)."

9.20. It comes out from the above quoted observations that since the acquisition

proceedings had commenced before the cut-off date and in view of the fact that the said acquisition proceedings have been culminated in Collector's award which was also passed before the said cut-off date (inasmuch as Notification under Sec. 4 was issued on 6-3-1965 and the award was passed on 9-7-1980 in the said case) the respondent will not be entitled to the benefit under Sec. 23(1A) of the Act.

9.21. Likewise, in present case also, the acquisition proceeding commenced before the said cut-off date and the said proceedings culminated in Collector's award which was also passed before the cut-off date, the same consequences should follow.

9.22. When the facts of the present case are examined in light of the said provision under Sec. 30 of Act No. 68 of 1984 (i.e. transitional provision) and in light of the above quoted observations by Hon'ble Apex Court then it emerges that in present case the process of land acquisition commenced in July 1972 i.e. long time before the cut-off date mentioned under Sec. 30 of Amending Act, and the Collector/Land Acquisition Officer passed the award under Sec. 11 on 15-3-1978 i.e. long time before the cutoff date (i.e. 30-4-1982) prescribed under the Act 68 of 1984. Therefore, in view of the said facts, the claim raised by the claimants i.e. the claim for benefit under Sec. 23(A)(1) of the Act is hit by the said transitional provision i.e. Section 30 of the Act 68 of 1984.

9.23. Consequently, the claimants, in present cases are not entitled for the benefit of compensation under Sec. 23(1A) of the Act. This is not so, for the reason or ground on which the petitioner-Railway has opposed the order and/or the claimants are justifying their claim but in view of the provision under Sec. 30 of Act 68 of 1984 which, as aforesaid is explained by Hon'ble Apex Court.

9.24. However, the learned executing Court has included the claim under Sec. 23(1A) of the Act in the quantification of the amount to be paid for execution of the judgment. The total amount for which Jangam Warrant is issued (by virtue of the impugned order) includes the amount towards the benefit available under Sec. 23(1A) of the Act.

9.25. Having regard to the said transitional provisions and the decision by the Hon'ble Apex Court and also having regard to the above mentioned dates and facts it has to be held that in light of the said transitional provision i.e. Sec. 30 of Act 68 of 1984, the claimants, in this case are not entitled for the benefit under Sec. 23(1A) of the Act and the impugned order deserves to be set aside and is accordingly hereby set aside.

10. So far as the objection by learned Advocate for the petitioner on the ground that the learned trial Court ought not and could not have granted interest over interest is concerned, it is appropriate to mention that on consideration of rival submissions and in light of the provisions under the Act e.g. Sec. 28 and Sec. 34 of the Act and in light of the facts of the case, more particularly in light of the fact that the amounts payable (as per the Division Bench judgment read with the

order of learned Reference Court) to the claimants were deposited from time to time which continued until November, 2011, the said contention is not tenable.

10.1. The answer to the objection raised by the petitioner is to be found in the provision under Sec. 28 and Sec. 34 of the Act. The said provisions read thus:

"28. Collector may be directed to pay interest on excess compensation. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court:

[Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of 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 such excess or part thereof which has not been paid into Court before the date of such expiry.]

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.]"

10.2. The said provisions impose obligation to pay interest.

10.3. According to the said provision the question or obligation to pay interest arises when the compensation is not paid or deposited on or before the date of taking possession of land.

10.4. Moreover, the said provisions also prescribe (a) the eventuality/circumstances on occurrence of which the obligation to pay interest arise and (b) two termini, viz. the date from which and the date until which interest will have to be paid and (c) the rate at which interest will have to be paid. Thus, if the compensation - which is payable as per Court's award/judgment - is not paid and if any delay in depositing/paying the compensation (payable as per Court's award/judgment) is caused then it will invite obligation to pay interest.

10.5. Hence, it is necessary to ascertain as to whether the petitioner paid/deposited the compensation on or before the date/s prescribed for the purpose.

10.6. On this count the petitioner has claimed that:

"....interest amount has already been paid by the petitioner to Darkhastdar upto 8-5-1984, till the payment of compensation, and therefore, once the principal amount is paid, there is no question of interest payable thereon as canvassed by claimant."

10.7. The learned Counsel for the claimants disputed petitioner's claim and submitted that the petitioner is not right or justified in claiming or alleging that the total amount for which the impugned order is passed includes interest over interest.

10.8. From the facts of the case and in light of the material on record it has emerged that the petitioner-Railway is conveniently ignoring and overlooking certain relevant facts viz. it is an undisputed fact that after the learned Reference Court passed final award dated 20-4-1983 whereby learned Reference Court enhanced the rate of compensation from what was awarded by Land Acquisition Officer, and thereafter, the Division Bench passed common judgment dated 22-11-1995 whereby the Division Bench granted further benefit viz. the benefit under Secs. 23(2) and 28 of the Act, the amount payable as per the award by learned Reference Court and as per the judgment by Division Bench remained unpaid for long time, and that therefore, the claimants had to file the execution petition and it was, thereafter, that the petitioner deposited the compensation at different times during pendency of execution petitions.

10.9. In this context, it is relevant and necessary to take into account the fact that while entertaining the C.R. As No. 1287 of 1999, 1303 to 1313 of 1999 (which, subsequently, were converted into writ petitions) preferred by the petitioner-Railway the Court passed almost similar orders (all dated 1-9-1999) in all C.R. As. directing the petitioner-Railway to deposit the amounts specified in the said orders. Illustratively, order in C.R.A. No. 1312 of 1999 can be taken into account wherein the High Court observed, inter alia, that:

"Learned Counsel for the petitioner states that the petitioner has already deposited the amount of solatium in compliance with the Court's order dated 7-3-1995. If such amount has been deposited, the respondent would be at liberty to withdraw the same. Execution of the Attachment Warrant in compliance with the order dated 7-5-1999 shall remain stayed provided the petitioner deposits the amount of Rs. 9,13,021/- within a month from today. If such amount is deposited the claimant-respondent would be at liberty to withdraw the same on furnishing the surety of the like amount to the satisfaction of the Court concerned without prejudice to the rights and contentions of the parties."

10.10. From the above quoted observation it emerges that even at that stage full amount payable towards "compensation" was not paid/deposited.

10.11. It also appears that even after the above quoted orders in Civil Revision Applications, the Court had to pass order as regards the petitioner's obligation to

pay/deposit the amount (payable as per the judgment dated 22-11-1995) inasmuch as the Court had to pass order dated 6-5-2011 in Special Civil Application No. 6324 of 2011 with Special Civil Application Nos. 4261 to 4267 of 2011 wherein after considering the submissions of both sides, the Court directed, inter alia, that:

"6.3. Now, so far as the request made on behalf of the learned Advocate appearing on behalf of the original claimants to direct the petitioners to deposit the disputed amount with the learned executing Court and to invest the said amount in Fixed Deposit so that whoever succeed in the execution proceedings may be permitted to withdraw the same is concerned, it is to be noted that as such the execution petitions have been preferred for execution of the judgment and award passed by the learned Reference Court in the year 1983 in Reference Case No. 18 of 1979 and other References and the same were challenged by the petitioners before this Court by way of First Appeal Nos. 1923 of 1983 and other First Appeals which came to be dismissed by this Court by judgment and order dated 22-11-1995 and the judgment and award passed by the Courts below came to be confirmed, however, for whatever reasons the execution petitions are still not finally decided and disposed of and the claimants are waiting to get compensation as per the judgment and award dated 20-4-1983 passed by the learned Reference Court. Therefore, the disputed amount is to be directed to be deposited by the petitioners-judgment-debtors in the learned executing Court to protect the interest of the claimants, however, at the same time, interest of the petitioners-judgment-debtors is also required to be protected so that if ultimately they succeed in the execution proceedings, and in the meantime, if the amount is permitted to be withdrawn by the claimants, it will be very difficult for the petitioners to recover the said amount. Under the circumstances, this Court is of the opinion that if the petitioners-judgment-debtors are directed to deposit the disputed amount with the learned executing Court and the same is directed to be invested in Fixed Deposit in the name of Nazir and the claimants are not permitted to withdraw even the interest that may be accrued thereon, it will meet the ends of justice and protect the interest of both the parties.

6.4. Now, so far as undisputed amount is concerned, the same can be permitted to be withdrawn by the original claimants.

6.5. In view of the above and for the reasons stated hereinabove, all the petitions succeed in part. The impugned orders passed by the learned Executing Court dated 3-1-2011 passed in respective Execution Petition Nos. 14 of 1996, 2 of 1997, 17 of 1996, 18 of 1996, 16 of 1996, 15 of 1996, 11 of 1996 and 10 of 1996 issuing Jangam Warrants against the petitioners for the recovery of the amount mentioned in the respective Jangam Warrants are hereby quashed and set aside and all the matters are remanded to the learned Executing Court for passing appropriate order afresh in accordance with law and on merits, and after considering the claims made on behalf of the rival parties, inclusive of the objection/calculation submitted by the petitioners-judgment-debtors. In the

meantime, the petitioners-judgment-debtors are hereby directed to deposit the entire amount as mentioned in the respective Jangam Warrants issued by the learned executing Court (which are now set aside and matters are remanded) within a period of THREE MONTHS from today and on such deposit the learned executing Court to invest the same in Fixed Deposit in the name of Nazir in any Nationalised Bank initially for a period of one year with cumulative interest (meaning thereby the interest shall be accrued on the said Fixed Deposit). However, before such investment the original claimants shall be permitted to withdraw the undisputed amount as mentioned hereinabove in the statement in column No. 5 and only thereafter the balance amount shall be invested in the name of Nazir, as stated hereinabove. Necessary further orders shall be passed by the learned executing Court with respect to payment on the basis of final order that may be passed by the learned executing Court on remand.

Rule is made absolute to the aforesaid extent in each of the petitions. No costs.

Direct Service is Permitted."

10.12. From the said order also it appears, prima facie, that at the time when the Court passed the said order full amount was probably not deposited.

10.13. In view of lack of clarity as regards the dates on which the petitioner deposited different amounts and as regards the exact amount which the petitioner deposited from time to time, the learned Counsel for the petitioner was requested to provide relevant details, if available, and to also clarify the aspects as to the dates when the amounts were deposited and the exact amounts which were deposited.

10.14. In response to the query the learned Counsel for the petitioner informed the Court that on 30-4-1984 the petitioner deposited Rs. 69,75,366-70 (as per the statement at pages 148 and 149 of Special Civil Application No. 12814 of 2013), and thereafter, further sum of Rs. 6,10,046/- was deposited on 25-4-1997 (as per the statement at page 145 of Special Civil Application No. 12814 of 2013). Learned Counsel for the petitioner also submitted that on 2-5-1998, Rs. 32,447/- was deposited (as per the Purshis dated 2-5-1998 at page 141 of Special Civil Application No. 12814 of 2013) and on 4-10-1999 further sum of Rs. 38,89,867/- was deposited (as per the Purshis dated 4/5-10-1999 at pages 137 and 138 of Special Civil Application No. 12814 of 2013). The learned Counsel for petitioner then referred to statement at page 122 of Special Civil Application No. 12814 of 2013 and submitted that on 18-3-2011 Rs. 66,41,306/- was deposited and on 11-4-2011 Rs. 38,555/- was deposited and on 27-4-2011 Rs. 1,93,559/- was deposited and on 7-9-2011 Rs. 2,25,53,890/- was deposited. The total of the amounts so deposited on and after 30-4-1984 i.e. during the period from 30-4-1984 to 7-9-2011 comes to around Rs. 4,09,35,036/-.

10.15. From the said clarification and details it has prima facie emerged, at this stage that the requisite amounts were not paid to the claimants or were not

deposited in the Court on or before the specified date/s and that the petitioner's contention to the effect that the liability to pay interest for the period after 8-5-1984 could not have been imposed, overlooks and disregards the above mentioned dates and details and the fact that the compensation payable as per the award dated 20-4-1983 and the decision and order dated 22-11-1995 by Division Bench were deposited by the petitioner after substantial delay. In that view of the matter, the liability and obligation to pay interest on the compensation in accordance with the provisions of the Act has arisen and the petitioner is under obligation to pay interest for the period of delay.

10.16. The question which, therefore, arises is whether the amounts deposited by the petitioner from time to time included interest (calculated until the date of deposit) or not.

10.17. According to the learned Counsel for the petitioner the amount deposited on 30-4-1984 included interest component calculated upto 30-4-1984.

10.18. The said submission is disputed by the claimants. Whether the said amount constituted total compensation including interest payable as per the common judgment dated 20-4-1983 or not is a matter required to be examined by learned trial Court in light of the material and details available on record before it. Moreover, the learned Counsel for the petitioner could not clarify as to whether the amounts which the petitioner deposited subsequently included interest component or not.

10.19. The relevant material and details and exact facts and position as regards the actual date on which the petitioner-Railway deposited different amounts and the details as regards exact amount deposited on a particular date and whether the amounts deposited from time to time included interest component are available on record before the Executing Court. Thus, it can be verified and ascertained only by the Executing Court from the record available before it.

11. Another issue which arises from the rival submissions is about the mode and method of calculating the interest and the items which will carry interest.

11.1. The position with regard to the issues viz. (a) which components/heads or items will constitute and comprise "compensation" and (b) which are the components of compensation in respect of which interest would be payable, came up for consideration before Hon'ble Apex Court.

12. The diverse aspects related to the right to claim and obligation to pay interest are explained by Hon'ble Apex Court in the decision the case between *Sunder Vs. Union of India (UOI)* . In the said decision the Hon'ble Apex Court has observed that:

"14. Question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession of the land. It is inequitable that the person who is deprived of the possession of the land, on account of acquisition proceedings is not given the amount which law demands

to be paid to him, any delay thereafter would only be to his detriment. There must be a provision to buffet such iniquity. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made in Sec. 34 of the Act. That Section is extracted below:

"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."

14. When the Court is of opinion that Collector should have awarded a larger sum as compensation the Court has to direct the Collector to pay interest on such excess amount. The rate of interest is on a par with the rate indicated in Sec. 34. This is so provided in Sec. 28 of the Act which is extracted below:

"If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court:

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of 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 such excess or part thereof which has not been paid into Court before the date of such expiry."

16. Thus, interest has to accrue as per Sec. 34 and Sec. 28 of the Act on the compensation awarded, whether it is as per the award initially passed by the Collector or by the Court later. What is meant by "the compensation" awarded? Both sides cited different definitions for the word "compensation" as contained in different lexicographs. In "Words and Phrases" (Permanent Edn.) different connotations of the word "compensation" have been delineated. One of them relates to the law of eminent domain, where compensation means recompense in value, a quid pro quo, and must be in money. Another is relating to the property taken for public use. Then it is the fair market value at the time of taking it. From the constitutional perspective the word "compensation" for the property taken was understood as the just equivalent of the value of the property. But

when compensation is regarded as a statutory obligation the aforesaid definitions need not detract the Courts in fathoming the real import of it. The exercise can be done with the aid of the provisions in the statutes. So what the Court, in the context of land acquisition, has to decide is how the Act has designed the compensation vis-à-vis the liability to pay interest. In this context we have to read Sec. 23 of the Act.....

19. Section 26 does not say that the award would contain only the amounts granted under sub-sec. (1) of Sec. 23. The special mention of that sub-section in Sec. 26 is only for the purpose of directing that the grounds or reasons for awarding the amount under each of the clauses in the sub-section shall be specified in the award. It is unnecessary to mention any reason or ground in any award as to why the sums indicated in sub-sec. (1A) and sub-sec. (2) of Sec. 23 of the Act were granted, because they are only the sequels or concomitant adjuncts of the determination of the total amount indicated in sub-sec. (1). No judicial exercise is required to quantify the sums mentioned in sub-sec. (1A) or sub-sec. (2) because the Section itself specifies the percentage to be worked out for the purpose of adding to the total amount arrived at under sub-sec. (1). Otherwise Sec. 26 is not intended to show that the compensation awarded would be bereft of the additional amount and the solatium envisaged under sub-sec. (1A) or sub-sec. (2). This can be clearly discerned from the commencing words of Sec. 26 itself. They are : "Every award under this Part shall be in writing signed by the Judge". What is referred to therein is Part III of the Act which comprises of a fascicules of twelve provisions starting with Sec. 18 and ending with Sec. 28A of the Act. There can be no doubt that all the three heads specified in the three sub-sections in Sec. 23 are the sums to be "awarded by the Court". Hence the words "every award under this Part" cannot be treated as the award after delinking the amounts awarded under sub-sec. (1A) or sub-sec. (2) of Sec. 23.

20. We may now see whether exclusion of the factor "any disinclination of the person interested to part with the land acquired" from being considered as part of the compensation indicated in Sec. 24 of the Act would be of any aid for excluding solatium from the purview of interest accrual process. No doubt what is intended under Sec. 23(2) is additional to the market value of the land and "in consideration of the compulsory nature of the acquisition". But it cannot be equated with any damage caused on account of "any disinclination of the person to part with the land acquired".

23. In deciding the question as to what amount would bear interest under Sec. 34 of the Act, a peep into Sec. 31(1) of the Act would be advantageous. That sub-section says : "On making an award under Sec. 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by someone or more of the contingencies mentioned in the next sub-section." The remaining sub-sections in that provision only deal with the contingencies in

which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-sec. (1) of Sec. 23 but the remaining sub-sections thereof as well, it is thus clear from Sec. 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Sec. 23 including all the subsection thereof.

24. The proviso to Sec. 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum 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". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the Legislature intended was to make the aggregate amount under Sec. 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Sec. 34 was not in the contemplation of the Legislature when that Section was framed or enacted."

(Emphasis supplied)

13. Interest is, thus, payable on entire "compensation" and if payment or deposit is delayed, then interest would be payable from the date of entitlement until the amount is actually paid or deposited.

14. When the amount is deposited, ordinarily, the decree holder would be entitled to and justified in appropriating the amounts deposited from time to time by the judgment-debtor, in accordance with the provision under Order 21, Rule 1.

14.1. However, in light of the facts of the case and the rival submissions, it appears that the learned Executing Court ought to have either itself and independently undertaken the process of calculation of interest in consonance with relevant provisions of the Act and ought to be ascertained whether "compensation" is deposited in accordance with relevant provisions and the judgment of the Division Bench and after taking into account the different dates on which different amounts of compensation were deposited according to appropriate method and mode of calculation of interest as explained by Hon"ble Apex Court.

14.2. The learned Court ought to have examined and ascertained and satisfied itself about the aforesaid aspects.

14.3. During the said process the learned Court ought to have also taken into account that in the decision in case between *Sunder v. Union of India* (supra), Hon''ble Apex Court observed and explained that expression "compensation" would include not only the total sum arrived at as per Sec. 23(1) but also other sums under remaining sub-section of Sec. 23.

14.4. In the said decision in case of *Sunder v. Union of India* (supra), Hon''ble Apex Court also held that the person entitled to get compensation awarded by the Court is also entitled to get interest on aggregate amount including solatium.

15. On examination of the order any discussion and/or Court's conclusion on these aspects does not come out and while passing the impugned order the learned Court does not appear to have addressed the said issues and does not appear to have dealt with the said issues. The calculation of the amount payable towards interest can be effectively and properly done by the Executing Court more particularly because the relevant material and documents which can throw light on the relevant aspects are available on record before the learned Executing Court.

15.1. Therefore, the Executing Court will have to also find out as to whether the amounts deposited by the petitioner from time to time includes interest calculated (until the date on which respective amounts were deposited) in accordance with law.

16. So far as the question about mode and method of calculation of interest and/or about apportionment is concerned, it came to be considered by Hon''ble Apex Court in the case between *Gurpreet Singh Vs. Union of India* (UOI), , and thereafter, in case of *Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh and Company*, , wherein Hon''ble Apex Court considered the said issue in light of the decision in case of *Sunder v. Union of India*, (supra). In the decision in case of *Gurpreetsingh* (supra) the aspect related to the mode and method of calculation of interest is examined by Hon''ble Apex Court in light of the provisions under the Act. In the said decision Hon''ble Apex Court also examined the applicability of "Stage-wise appropriation Rule" and held that:

"28. Going by this principle and for the moment keeping out the scheme of the Land Acquisition Act, it appears to us that on payment or deposit of the amount awarded by the Collector in terms of Sec. 11 read with Sec. 31 of the Act, the claimant cannot thereafter claim any interest on that part of the compensation paid to him or deposited for the payment to him once notice of deposit is given to him. Thereafter, when the Reference Court enhances the compensation with consequential enhancement in solatium and interest under Sec. 23(1A) of the Act and further awards interest on the enhanced compensation in terms of Sec. 28 of the Act, the claimant/decreed holder can seek an appropriation of the amounts deposited pursuant to that award/decreed, only towards the enhanced amount so awarded by the reference Court. While making the appropriation, he can apply the amount deposited, first towards the satisfaction of his claim towards interest

on the enhanced amount, the costs, if any, awarded and the balance towards the land value, solatium and the payment under Sec. 23(1A) of the Act and if there is a shortfall, claim that part of the compensation with interest thereon as provided in Sec. 28 of the Act and as covered by the award decree. Once the sum enhanced by the reference Court along with the interest is deposited by the State, there will be no occasion for the claimant/awardee to seek a reopening of the amount awarded by the Collector, substituted by the amount awarded by the Reference Court and seek to have a re-appropriation of the amount towards what is due. Same would be the position in a case where the amount awarded by the Reference Court including the interest is deposited, but the amount is further enhanced in appeal by the High Court. Again, the same principle would apply. The principle would continue to apply when the Supreme Court awards further enhancement in a further appeal to that Court. But if after the award by the Reference Court the amount is not deposited by the State, interest would run on the compensation in terms of Sec. 28 of the Act on that amount as provided in Sec. 28. The same would be the position regarding the enhancement given in appeal by the High Court and in the enhancement given in appeal by the Supreme Court. The mandate of Sec. 34 and Sec. 28 that interest would run from the date the Collector takes possession till the particular amount is deposited as provided in those Sections ensures that the claimant is recompensed adequately. Section 28 ensures such recompense at each stage of enhancement of compensation.

29. Let us now consider the scheme of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Amendment) Act 68 of 1984. After the publication of the preliminary notification under Sec. 4 of the Act and after hearing of objections, a declaration has to be made under Sec. 6 of the Act. The Collector is then to take the order for acquisition from the Appropriate Government or the officer authorised in that behalf by the Government. After completing the formalities contemplated and the enquiry made in terms of Sec. 11 of the Act, the Collector has to make an award indicating the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of the compensation among the persons known or believed to be interested in the land. In making the award, the Collector shall be guided by Secs. 23 and 24 dealing with matters to be considered in determining the compensation and matters to be excluded in determining the compensation as enjoined by Sec. 15 of the Act. Under Sec. 12 of the Act, the award becomes final as between the Collector and the persons interested and the Collector is to give notice of his award to persons interested. On making the award, the Collector may take possession of the land in terms of Sec. 16 of the Act. Under Sec. 31, on making an award under Sec. 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by the contingencies referred to in Sec. 31 itself. Under Sec. 34 of the Act, when the amount of compensation awarded 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 cent per annum from the time of taking possession till it shall have been paid or deposited. But if the compensation or any part thereof is not paid within a period of one year from the date on which possession is taken, interest is payable at the rate of fifteen per cent per annum 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. It is relevant to notice that on payment of the amounts thus due, the award made by the Collector stands satisfied.

32. In the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed. Obviously, the award takes in all the amounts contemplated by Sec. 23(1) of the Act, Sec. 23(1A) of the Act, Sec. 23(2) of the Act and the interest contemplated by Sec. 34 of the Act. The whole of that amount is paid or deposited by the Collector in terms of Sec. 31 of the Act. At this stage, no shortfall in deposit is contemplated, since the Collector has to pay or deposit the amount awarded by him. If a shortfall is pointed out, it may have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage. On the deposit by the Collector under Sec. 31 of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest.

33. The second stage occurs on a reference under Sec. 18 of the Act. When the Reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under Sec. 23(1), Sec. 23(1A), Sec. 23(2) and interest on the enhanced amount as provided in Sec. 28 of the Act and costs in terms of Sec. 27. The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made, falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference.

34. The third stage occurs, when in appeal, the High Court enhances the compensation as indicated already. That enhanced compensation would also bear interest on the enhanced portion of the compensation, when Sec. 28 is applied. The enhanced amount thus calculated will have to be deposited in addition to the amount awarded by the Reference Court if it had not already been deposited.

35. The fourth stage may be when the Supreme Court enhances the compensation and at that stage too, the same Rule would apply.

36. Can a claimant or decree holder who has received the entire amount awarded by the Reference Court or who had notice of the deposit of the entire amount so awarded, claim interest on the amount he has already received merely because the appellate Court has enhanced the compensation and has made payable additional compensation? We have already referred to Order 21

and Order 24 of the Code to point out that such a blanket re-opening of the transaction is not warranted even in respect of a money decree. Section 28 of the Act indicates that the award of interest is confined to the excess compensation awarded and it is to be paid from the date of dispossession. This is in consonance with the position that a fresh re-appropriation is not contemplated or warranted by the scheme of the Act. But if there is any shortfall at any stage, the claimant or decree holder can seek to apply the rule of appropriation in respect of that amount, first towards interest and costs and then towards the principal, unless the decree otherwise directs.

43. This Court made a detailed survey of the relevant provisions of the Land Acquisition Act and after summing up the position, held:

"A reading of the above provisions would establish that the award consists of (a) the compensation determined under Sec. 23(1), (b) solatium on the market value determined under Sec. 23(2), as additional sum for compulsory nature of acquisition, and (c) payment of interest on the amount of compensation under Sec. 11, on excess or part thereof under Sec. 26 awarded by Court from the date of taking possession till date of payment or deposit into the Court at the rates specified under the respective provisions of Secs. 34 and 28. Under Sec. 23(1A), additional amount at 12 per centum per annum shall be paid or deposited from the date of notification under Sec. 4(1) till date of award or taking possession of land, whichever is earlier. The additional amount under Sec. 23(1A) and solatium under Sec. 23(2) are in addition to the compensation under Sec. 11 and excess amount determined under Sec. 23(1) read with Sec. 26 or Sec. 54. Equally, under Sec. 26 of the Act award is deemed to be a decree under Sec. 2(2) of the C.P.C. for the excess amount determined by the Court; this would be so proprio vigore, when the appellate Court under Sec. 54 has further enhanced the compensation."

44. Section 34 of the Act fastens liability on the Collector to pay interest on the amount of compensation determined under Sec. 23(1) with interest from the date of taking possession till date of payment or deposit into the Court to which reference under Sec. 18 would be made. On determination of the excess amount of compensation, Sec. 28 empowers the Court, if it was enhancing the compensation awarded by the Collector to award interest on the sum in excess of what the Collector had awarded as compensation. The award of the Court may also direct the Collector to pay interest on such excess or part thereof from the date on which he took possession of the land to the date of payment of such excess into Court at the rates specified thereunder. The Court stated:

"In other words, Secs. 34 and 28 fasten the liability on the State to pay interest on the amount of compensation or on excess compensation under Sec. 28 from the date of the award and decree but the liability to pay interest on the excess amount of compensation determined by the Court relates back to the date of taking possession of the land to the date of the payment of such excess into the Court."

45. The Court concluded:

"It is clear from the scheme of the Act and the express language used in Secs. 23(1) and (2), 34 and 28 and now Sec. 23(1A) of the Act that each component is a distinct and separate one. When compensation is determined under Sec. 23(1), its quantification, though made at different levels, the liability to pay interest thereon arises from the date on which the quantification was so made but, as stated earlier, it relates back to the date of taking possession of the land till the date of deposit of interest on such excess compensation into the Court....

The liability to pay interest is only on the excess amount of compensation determined under Sec. 23(1) and not on the amount already determined by me Land Acquisition Officer under Sec. 11 and paid to the party or deposited into the Court or determined under Sec. 26 or Sec. 54 and deposited into the Court or on solatium under Sec. 23(2) and additional amount under Sec. 23(1A)."

52. What is to happen when a part of the amount awarded by the Reference Court or by the appellate Court is deposited pursuant to an interim order of the appellate Court or of the further appellate Court and the awardee is given the liberty to withdraw that amount? In such a case, the amount would be received by the decree holder on the strength of the interim order and the appropriation will be subject to the decision in the appeal or the further appeal and the direction, if any, contained therein. In such a case, if the appeal is disposed of in his favour, the decree holder would be entitled to appropriate the amount already received by him pursuant to the interim order first towards interest then towards costs and the balance towards principal as on date of the withdrawal of the amount and claim interest on the balance amount of enhanced compensation by levying execution. But on that part appropriated towards the principal, the interest would cease from the date on which the amount is received by the awardee. Of course, if while passing the interim order, the Court had indicated as to how the deposited amount is to be appropriated, that direction will prevail and the appropriation could only be done on the basis of that direction.

53. Thus, on the whole, we are satisfied that the essential ratio in the Prem Nath Kapur (supra) on appropriation being at different stages is justified though if at a particular stage there is a shortfall, the awardee/decreed holder would be entitled to appropriate the same on the general principle of appropriation, first towards interest, then towards costs and then towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment-debtor while making the deposit intimating the decree holder of his intention. We, thus, approve the ratio of Prem Nath Kapur (supra) on the aspect of appropriation.

54. One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in Courts all over the country, we permitted Counsel to address us on that question. That question is whether in the light of the decision in Sunder (supra), the awardee/decreed holder would be entitled to claim interest on

solatium in execution though it is not specifically granted by the decree. It is well settled that an execution Court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negative either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate Court, the executing Court will have necessarily to reject the claim for interest on solatium based on *Sunder* (supra) on the ground that the executing Court cannot go behind the decree. But if the award of the Reference Court or that of the appellate Court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the appellate Court and merely interest on compensation is awarded, then it would be open to the Executing Court to apply the ratio of *Sunder* (supra) and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the Executing Court will be entitled to permit its recovery from the date of the judgment in *Sunder* (September 19, 2001) and not for any prior period. We also clarify that this will not entail any re- appropriation or fresh appropriation by the decree-holder. This we have indicated by way of clarification also in exercise of our power under Arts. 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question."

(Emphasis supplied)

16.1. On this count it is relevant and necessary to recall that in the common judgment dated 22-11-1995 the Division Bench expressly clarified that the claimants will be entitled for benefit available under Sec. 23(2) as well as under Sec. 28 of the Act.

16.2. In the decision in case between *Bharat Heavy Electrical Ltd.* (supra) - which is relied on by learned Counsel for the petitioner, Hon"ble Apex Court - after taking into account the decision in case of *Sunder* (supra) as well as the decision in case of *Gurpreet Singh* (supra) and also observation in the decision in case between *Prem Nath Kapur* (supra) observed, inter alia, that :

"24. From what has been stated in the said decision, the following principles emerge:

(a) The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and cost, and thereafter, towards payment of the principal amount subject, of course, to any agreement between the parties.

(b) The legislative intent in enacting sub-rules (4) and (5) is clear to the pointer that interest should cease to run on the deposit made by the judgment-debtor and notice given or on the amount being tendered outside the Court in the

manner provided in Order 21, Rule 1 sub-clause (b).

(c) If the payment made by the judgment-debtor falls short of the decreed amount, the decree holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards cost and finally towards the principal amount due under the decree.

(d) Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit, interest on that part of the principal sum will cease to run thereafter.

(e) In cases where there is a shortfall in deposit of the principal amount, the decree holder would be entitled to adjust interest and cost first and the balance towards the principal and beyond that the decree holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for re-appropriation."

16.3. The issue related to the mode and method of calculation of interest, during execution of the decree came up for consideration before Hon"ble Apex Court in case between V. Kala Bharathi and Others Vs. The Oriental Insurance Company Ltd. Br. Chitoor, . In the said decision Hon"ble Apex Court considered, in light of the provisions under Order 21 Rule 1 read with sub-rule (4) and (5), the issue "whether amount deposited by judgment-debtor in a decree has to be adjusted first towards interest or principal decretal amount" and observed, inter alia, that:

"14. We have heard learned Counsel for the parties and gone through the entire material available on record.

15. Before advertng to the various issues involved in the case and the contentions advanced by the Counsel on either side, we have given our anxious consideration to the judgment impugned of the learned single Judge of the Andhra Pradesh High Court. The learned Judge, while adjudicating the issue, has considered the judgments of this Court in Meghraj (supra), Industrial Credit and Development Syndicate (supra) and Rajasthan State Road Transport Corporation, Jaipur Vs. Smt. Poonam Pahwa and others, and has passed the judgment by giving reasons which are basis for his conclusion.

26. In view of above and more particularly keeping in view the ratio of the Constitution Bench judgment in Gurpreet Singh (supra), where considering an identical question in respect of Order 21, Rule 1 of the C.P.C., it was held that if the amount deposited by the judgment-debtor falls short of the decretal amount, the decree holder is entitled to apply the rule of appropriation by appropriating the amount first towards interest, then towards costs and subsequently towards principal amount due under the decree; we are of the opinion that the appellants herein are entitled to the amount awarded by the Executing Court, as the amounts deposited by the judgment-debtor fell short of the decretal amount. After such appropriation, the decree-holder is entitled to interest only to the

extent of unpaid principal amount. Hence, interest be calculated on the unpaid principal amount."

16.4. Thus, the obligation to pay interest is imposed by virtue of Sec. 28 and Sec. 34 of the Act. The obligation to pay interest on excess amount of compensation determined by the Court would relate back to the date of taking possession of the land. If, there is any shortfall, at any stage in payment/depositing the amount, as per the decree, then the claimant/decreed-holder will be entitled to appropriate such amount in accordance with the direction in the decree, however if the decree is silent on this count then general principles of appropriation will apply and the claimant/decreed-holder can apply the rule of appropriation in respect of the short paid amount and thereby claimant/decreed-holder may first appropriate the amount paid towards interest and cost and then towards principal, unless the decree provides otherwise. However, the interest shall cease to run if notice as provided under Order 21(2) read with Rules (1)(a) or 1(c) is given while depositing the amount and if part of the principal amount is deposited along with interest due as on the date of deposit on such amount the four stages in this context are explained by Hon'ble Apex Court in paragraph Nos. 32 to 36 in the decision in case of Gurpreet Singh (supra).

17. On examination of the impugned order dated 6-5-2013 passed by learned Executing Court, it has emerged that while passing the impugned order the learned Court has not undertaken the process of calculating interest after taking into consideration the dates on which the petitioner deposited different amounts of compensation and the learned Court seems to have also not examined whether notice of deposit was served to the claimants or not or whether the notice was filed in the Court, or not and/or whether the petitioner deposited the amounts in accordance with Secs. 28 and 34 of the Act.

18. Therefore, while not accepting the petitioner's contention that in present case any question of payment of any amount towards interest does not arise and/or that there is no obligation to pay any amount towards interest, it has to be held, in view of facts of present case, particularly in light of the fact that different amounts of compensation came to be deposited by the railway at different point of time - most of it during 1999 to 2011 and some part in 1997, that the obligation to pay interest has arisen and accrued in this case and the petitioner-Railway cannot escape from the said obligation.

19. However, the said liability is not properly quantified in accordance with law.

20. In this view of the matter, the impugned quantification as regards the interest component whereby the amount payable to the claimants towards interest is quantified is required to be re-worked and modified by the learned Court in accordance with law and after taking into account the details of the different dates on which the amounts came to be deposited and by applying above discussed principles and guidelines emerging from the decisions by Hon'ble Apex Court and for that purpose the said part of the order deserves to

be set aside and accordingly, to that limited extent and for that limited purpose and reason, is set aside, however with the clarification and direction to re-work the quantification.

21. In light of the facts and circumstances of the case and material on record and in light of the foregoing discussion and for the above mentioned reasons the impugned order, so far as it relates to the benefit under Sec. 23(1A) of the Act deserves to be and is accordingly set aside.

22. So far as the calculation of interest payable over the total compensation is concerned, it is also set aside and the petitions are disposed of and they are remitted to learned Executing Court to pass fresh order after hearing the parties and after recalculating the interest component and after deducting the amount towards benefit under Sec. 23(1A) of the Act in light of the foregoing discussion and observations by Hon'ble Apex Court in the above discussed decisions. In the result:

"(i) The direction to pay benefit as per Sec. 23(1A) of the Act and calculation of interest are set aside.

(ii) As regards the petitioner's submission with reference to the certified copy of the judgment and decree it is clarified that the direction by the Court vide previous order dated 16-4-2010 in the M.C.A. No. 707 of 2010 and M.C.A. No. 688 of 2010 is in light of High Court Appellate Side Rules, and that therefore, the learned Court shall act as per the said order.

(iii) The learned Court shall, having regard to the foregoing discussion, recalculate the interest component after deducting the amount related to the benefit under Sec. 23(1A) and for that purpose the learned Court shall-

(a) take into account the total amount already paid/disbursed to the claimants and the respective heads with regard to which the said payments have been disbursed, and thereafter, recalculate the amount required to be paid/disbursed to each claimant.

(b) exact amount payable towards interest will have to be re-calculated by the learned Executing Court after taking into account (i) different dates when different amounts came to be deposited and after ascertaining whether the petitioner had specified the head/item toward which the particular amount was deposited and (ii) the learned Court will also ascertain as to whether the petitioner-Railway while depositing the amount had specified the head/item towards which the amount was being deposited. If so, then interest component/liability shall be calculated after taking into consideration the said details.

(c) The learned Executing Court shall also take into account the principles and guidelines for mode and method of appropriation as borne out from Order 21 Rules 1(4) read with (2) and as explained by the decisions by Apex Court in case of *Sunder v. Union of India* (supra), and the decision in case of *Gurpreet Singh* (supra) particularly in Paragraph Nos. 28, 29, 32, 33, 34, 35, 36, 43, 44, 45, 52,

53, 54 of the said decision and in the case of Mehrawal Khewaji Trust (supra) as well as the decision in case between V. Kala Bharati (supra) particularly in Paragraph Nos. 14, 15 and 26 of the said decision and in light of foregoing discussion.

(d) The learned Court shall also take into account this order as well as the observations as regards the interest components/liability and the common judgment and order dated 22-11-1995.

(e) It will be open to the petitioner as well as the claimants to submit their respective statements of calculation which, the learned trial Court may refer to, if required, while determining the interest liability.

(f) It is also clarified that it will be open to both the sides to raise all the contentions, objections and defence as available in law and the learned Executing Court will pass appropriate fresh order after hearing the parties and after considering the submissions.

(g) It is further clarified that the foregoing direction are for purpose of recalculating the interest component only, of course after deducting the amount towards benefit under Sec. 23(1A) of the Act which is not payable in the facts of the case."

It is, however, clarified that this process of recalculation is to be restricted to the issue related to interest.

Learned Executing Court shall complete the process as expeditiously as possible and preferably within one month from the date when petitioner or claimants submit certified copy of present order.

With the aforesaid direction and clarifications the petitions are disposed of. Orders accordingly.