

(1991) 01 MAD CK 0040

In the Madras High Court

Case No : C.R.P. No's. 3368 and 3369 of 1988

Lakshmi Ammal and another

APPELLANT

Vs

The Assistant Commissioner, Land Reforms, Villupuram

RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

Constitution of India, 1950 — Article 31

Interest Act, 1839 — Section 1

Madras Land Reforms (Compensation for Surplus Land) Rules, 1966 — Rule 3, 4, 5

Salaries and Allowances of Ministers Act, 1952 — Section 4

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 110, 12, 14, 18(1), 50

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Rules, 1962 — Rule 41

Citation : AIR 1992 Mad 27 : (1991) 1 LW 204 : (1991) 1 MLJ 436

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : B. Lakshminarayanan Reddy, for the Appellant; Advocate General, for N. Muthusamy, Government Advocate, for the Respondent

Judgement

1. These two revision petitions arise out of proceedings initiated under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961.

Unfortunately the litigation has been pending for an inordinately long time, thus putting the owners of the lands to considerable hardship and serious prejudice.

2. C.R.P. No. 3368 of 1988 pertains to the lands owned by one Arunachala Reddiar, who is no more. His wife Lakshmiammal is the petitioner,

having entered his shoes. C.R.P. No. 3369 of 1988 relates to the lands owned by Lakshmi Ammal herself. She is the petitioner therein in her own right.

3. On 13-11-1968 a notification was issued under S. 18(1) of the Tamil Nadu

Land Reforms (Fixation of Ceiling on Land) Act, 1961. Hereinafter referred to as "the Act", declaring a surplus of 117.81 ordinary acres in the holdings of both the husband and wife. On 2-6-1969, the Government took possession of the said extent of lands. On 12-9-1973 a revised notification was issued reducing the surplus to 82.92 ordinary acres. That notification was cancelled on 27-1-1979. There was an amendment to the said notification on 14-3-1979 followed by a further amendment on 24-3-1980. By the last Notification, the surplus was fixed at 70.55 ordinary acres, out of which Arunachala Reddiar had 32.02 acres and his wife Lakshmi Ammal had 38.53 acres.

2. As per R. 45 (1) of the Rules framed under the Act, a draft notification of the assessment of compensation was published fixing the compensation at Rs. 71,154.22. The petitioner and her husband filed objections thereto on 18-6-1981. The objections were overruled and the draft was confirmed on 31-12-1981. The petitioner and her husband filed appeals before the Tribunal constituted under the Act which were taken on file as L.T. C.M.A. Nos. 21 and 22 of 1982. By order dt. 10-8-1983, the appeals were allowed by the Tribunal and the Authorised Officer was directed to follow the report of Special Deputy Tahsildar dt. 22-1-1975 and refix the compensation before 30-6-1983. In the meantime, Arunachala died on 3-5-1983 and the proceedings were continued by his wife, the petitioner. In pursuance of the order dt. 16-3-1983, a fresh draft assessment was made on 21-11-1984 fixing the compensation at Rs. 1,95,677.75. Not being satisfied with the same, the petitioner filed C.R.P. Nos. 4718 and 719 of 1984 in this Court. During the pendency of the Revision Petitions, a direction was issued by this Court in C.M.P. No. 14919 of 1985 on 9-12-1985 to the respondents to deposit the compensation already fixed. On 2-10-1985, an order was passed by the Assistant Commissioner, Land Reforms, Trichy for depositing Rupees 1.95,677.75 plus a sum of Rs. 36,472. 30 Paise as interest. The deposit was actually made on 31-10-1985. This Court directed payment of the amount to the petitioner and the amount was paid on 8-1-1986. On 13-9-1988, the Civil Revision Petitions were allowed and the matter was remitted to the Tribunal for fresh consideration. Ratnam, J. who passed the order, directed the Tribunal to consider the statements filled by the petitioner in

support of her claim for higher compensation and to decide the question whether the petitioner would be entitled to any amount over and above Rs. 1,97,074.25 P. The Tribunal was also directed to decide the rate of interest payable on the amount, which may be ultimately fixed by it as compensation.

3. After remand, the Land Tribunal by order dt. 30-11-1988 confirmed the compensation fixed already and dismissed the appeals before it.

Aggrieved by the said order, the present revision petitions have been filed.

4. It is alleged on behalf of the petitioner that the Tribunal has grievously erred in not considering the in impeachable documents placed before it for

the purpose of enabling it to fix the compensation. In particular, it is contended that the price list produced by the petitioner disclosing the statistics

given by the Assistant Director of Statistics, Villupuram, marked as Ex.A-1 in the case, was not at all taken into account by the Tribunal. Secondly

it is urged that the view taken by the Tribunal that the petitioner is entitled only to interest at the rate of 4% is clearly erroneous in law. According

to the petitioner, interest should have been awarded by the Tribunal on equitable basis at least at 12% per annum.

5. While the matter was being argued in part, the petitioner filed applications to raise additional grounds challenging the constitutional validity of

some of the provisions of the Act and the rules framed thereunder. As they are questions of importance, I permitted the petitioner to raise the

grounds and issued notice to the Advocate General in view of the fact that the Constitutional validity of a statute was being questioned. Thereafter,

the learned Advocate General appeared for the respondent and made his submissions on the Constitutional issues raised by the petitioner. The

Additional Government Pleader addressed the Court on the other matters arising on the merits of the case.

6. I would dispose of the Constitutional issues before proceeding to consider the merits of the case. It is necessary at this stage to refer to the

relevant provisions of the Act and the Rules. Section 18 of the Act provides that after the publication of the final statement under S. 12 or 14, of

the Act, the Government shall publish a notification to the effect that the surplus land is required for a public purpose. Under sub-sec. (3) of that

Section, the publication of the notification, the land specified in the notification

shall be deemed to have been acquired for a public purpose and vested in the Government free from all encumbrances with effect from the date of such publication and all right, title and interest of all persons in such land shall with effect from the said date be deemed to have been extinguished. Sub-sec. (5) enables the Government to make rules specifying the classes of tenants, who may be allowed to continue in possession of the land, permitting any co-operative society registered or deemed to have been registered to continue in possession of the land notwithstanding provisions of the Act, even after the publication of the notification. Under sub-sec. (3-A), every person who was in possession of, or deriving any benefit from, the lands which has vested in the Government shall be liable to pay to the Government for the period, after the commencement of the Act, for which he was in such possession or deriving such benefit, an amount as compensation for the use, occupation or enjoyment of the property as the Authorised Officer may fix in the prescribed manner.

7. Section 50 of the Act provides for determination of compensation for land acquired by the Government. Under sub-s.(1) of S. 50 of the Act, every person whose right, title or interest in any land is acquired by the Government shall be paid compensation according to the rates specified in Schedule III. sub-sec. (2) thereof enjoins any person claiming compensation to prefer a claim before the Authorised Officer within 30 days from the date of publication of the notification under S. 18(1) of the Act. Under sub-sec. (3) of S. 50 of the Act, the Authorised Officer shall determine the amount of compensation at the rate specified in Schedule III and prepare a draft compensation assessment roll in such manner and containing such particulars as may be prescribed. The said roll shall be caused to be published. Sub-sec. (4) provides for consideration of objections to the said roll, which may be preferred thereto. Sub-sec. (5) provides that after such objections are disposed of finally, the Authorised Officer shall make such alteration in the draft roll as may be necessary to give effect to any order made in regard to the objection and cause the same to be published finally in such manner as may be prescribed. Under sub-s. (6), if no objection is preferred within the period specified in the notice published under sub-sec. (3) or within the further time allowed by the authorised officer under that subsection, the authorised officer shall cause the

draft compensation assessment roll to be published finally in such manner as may be prescribed. It is not necessary to refer to the other parts of the Section.

8. Section 55 of the Act provides for the mode of payment of compensation. The same reads as follows:--

(1) The amount of compensation is finally determined under this Act, shall, within such period as may be prescribed be paid either in cash or in bonds or partly in bonds as the Government may deem fit.

(2) The bonds shall be issued on such terms and carry such rate of interest as may be prescribed. The interest shall be paid:

(i) in the case of any land held by any person referred to in clause (a) or (b) of sub-sec. (5) of S. 18 with effect from the date of the publication of

the notification under sub-sec. (1) of S. 18; and

(ii) in any other case, with effect from the date of taking possession of the land under sub-section (4) of S. 18.

9. By virtue of the powers conferred under S. 110 of the Act, the Governor has framed Rules under S.R.O. No. A-32 of 1967. The Rules are

called the Madras Land Reforms (Compensation for Surplus Land) Rules, 1966. Rules 3 and 4 are relevant and they read as follows:

3. Mode of payment of compensation :--(1) Save as otherwise provided in these rules the compensation payable in respect of surplus land

notified under sub-sec. (1) of S. 18 shall be payable within one year from the date of publication of the final compensation assessment roll in

respect of that land.

(1-A). The compensation shall be payable in bonds or in cash in instalments.

(2) The compensation payable in bonds shall be in the denominations of Rs. 50, Rs. 100, Rs. 200, Rs. 500, Rs. 1000, Rs. 5,000 and Rs. 10,000

according to the amount of compensation:--

Provided that where the amount of compensation is less than Rs. 50 or where, after the issue of bonds, there is a balance of compensation which is

less than Rs. 50, such amount or balance shall be payable in cash,

(3)(a) Where the amount of compensation payable in cash does not exceed two thousand rupees, it shall be payable in single instalment. Where

the amount of compensation exceeds two thousand rupees, it shall be payable in

cash in ten equated annual instalments of principal and interest,
commencing from the first date of the quarter following the date from which the
interest on the compensation is due with reference to sub-sec. (2)

of S. 55 :

Provided that where the compensation exceeds two thousand rupees such
portion of the compensation being the balance in excess of clear

multiples of one thousand rupees, shall be payable along with the first instalment.

(b) Interest for the period commencing from the date from which it is due up to
the end of the quarter in which such date falls, shall also be

calculated and paid along with the first instalment.

4. Interest on compensation.-- Interest shall be payable on the amount of
compensation at the rate of four per centum per annum from the date

specified in sub-sec. (2) of S.55.

Rule 5 prescribes the procedure for issue, receipt, custody and delivery of bonds.
Rule 5-A prescribes the procedure for payment of

compensation in cash.

10. It is contended on behalf of the petitioner that S. 50 of the Act is void for
vagueness. It is argued that the Section does not prescribe any time

limit to the concerned authority for fixing the compensation. According to learned
counsel, it is left to the sweet will and pleasure of the concerned

Officer to take his own time to fix the compensation. It is contended that such a
provision in the legislation offends the proprietary rights of the

owners of the lands who have been deprived of their lands by virtue of the
notification under S. 18 of the Act and, therefore, the Section is invalid,

inasmuch as it has conferred unbridled power on the Authorised Officer in the
matter of fixing the compensation. It is next contended that S. 55 of

the Act is bad for excessive delegation in so far as it leaves the relevant matters
to be prescribed by the Government. Under sub-sec. (1), the

period for payment of compensation finally determined is to be prescribed under
the Rules. Similarly, under sub-sec. (2). the terms on which the

bonds shall be issued and the rate of interest which the bonds shall carry are
also left to the Rules. It is argued that the right to claim interest is a

substantive right and it is a matter on which the Legislature should make the
relevant provisions and it is not open to the Legislature to delegate its

functions to the Government for prescribing the relevant matters under the Rules, Reliance is placed by learned counsel on a passage found in the

Principles of Administrative Law by Jain and Jain. Fourth Edition, at page 84. The passage reads as follows:

.....The basic philosophy underlying the technique of delegated legislation is that policies are formulated by the legislature and laid down in the

statutes, and detailed provisions to give effect to those policies may be worked out through rules made by the administration. It, however, happens

at times that matters which ought more properly to be considered by the legislature are not discussed there, but are left to be taken care of

through rules and this, consequently, diminishes parliamentary control of the executive. Therefore, the committees are specifically charged with the

duty to see if the rules contain any matter which should more properly be enacted in the Act, so that important matters do not escape parliamentary

consideration. As for example, the Lok Sabha committee has objected to delegation of rule making power to the government to make rules

regarding allowances to the ministers under the Salaries and Allowances of Ministers Act, 1952, on the ground that it amounts to ministers

legislating for themselves. Such rules, the committee has suggested, should become operative after an affirmative vote by the House. The Rajya

Sabha committee has taken objection to a rule conferring on an authority all the powers of a civil court. The conferment of powers of court on an

authority being a matter of substantive law, it should be provided in the statute itself and not in the rules made under it. Similarly, levy of interest is

to be provided in the enabling Act rather than the rules, or the power of seizure should be provided in the parent statute and not in the rules. At

times the committees have suggested that the matter should be dealt with by rules rather than administrative instructions.

11. In reply to the above contentions, the learned Advocate General submitted that a legislative provision cannot be declared to be invalid merely

because it does not prescribe a time limit for carrying out the functions specified therein by the concerned officials. It is argued that the language of

the Section in entirety will clearly show that the Authorised Officer is directed by the Legislature to function according to a time schedule. Under

sub-sec. (2) of S. 50 of the Act, the claims must be preferred within thirty days from the date of publication of the notification. Under sub-sec. (3),

the Authorised Officer shall cause the draft compensation assessment roll to be published together with a notice stating that objections, if any, in respect of any entry in the draft may be preferred within thirty days from the date of publication. Under sub-sec. (6) the Authorised Officer is enabled to proceed to finalise the compensation if no objection is preferred within the period specified in the notice published under sub-sec. (3). Thus, for the essential matters, in relation to the finalisation of compensation, the Section itself prescribes the time limits. Hence, it is contended that there is no substance in the argument that the Section has conferred unbridled power on the Authorised Officer to fix the compensation by taking his own time according to his will and pleasure. It is pointed out by learned Advocate General that if any Authorised Officer prolongs a matter for an unreasonably long period, it is open to the concerned parties to approach this Court and obtain a writ of Mandamus. I am of the view that a reading of the Section is clear enough to indicate that the Authorised Officer must act promptly and conclude the enquiry as regards the fixation of final compensation within a very reasonable period. All the periods mentioned in the Section, if put together, would indicate that at the worst, the Authorised Officer cannot prolong the matter beyond a period of six months. It is not, however, necessary for me to hold in the case that the Authorised Officer shall finalise the compensation within a period of six months. I am referring to this aspect of the matter only to point out that the section is not conferring any unlimited power on the Authorised Officer to take his own time to fix the compensation. Hence, the contention that the Section is void for vagueness cannot be accepted.

12. As regards the delegation of matters pertaining to interest, the learned Advocate General points out that the Rules framed under the Act shall be placed before the Legislature because of S. 112 of the Act. Under that Section, every rule made under the Act shall be placed before both the Houses of the Legislature as soon as possible after it is made and if before the expiry of the session in which it is so placed or the next session, both Houses agree in making any modification in any such rule or order or both Houses agree that the rule should not be made, the rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment

shall be without prejudices to the validity of anything previously done under that rule or order. Thus, the rules are placed before the Legislature for

consideration by the Legislature. It cannot be contended as was done by learned counsel for the petitioner that in absence of any indication to

show that the legislature actually considered the rules, the validity of the same cannot be accepted. The Legislature is certainly presumed to have

done its duty properly and it is not open to any party to say that the burden is on the legislature to prove that the rules were considered.

13. The learned Advocate General invites my attention to the Judgment of the Supreme Court in D.S. Garewal Vs. The State of Punjab and

Another, . Dealing with the question of excessive delegation, which was raised in that case, the Supreme Court observed as follows:--

(8) Re5: The argument in this connection is that even if delegation is possible, there was excessive delegation in this case, and therefore, the Act

should be struck down. The Act is a short Act of four sections. The first section deals with the short title, the second section defines the expression

all-India Service", and the third section gives power to the Central Government to frame rules for regulation of recruitment and the conditions of

service after consultation with the Governments of the States concerned, and lays down that all rules so framed shall be laid before Parliament and

shall be subject to such modifications as parliament may make. Section 4 which is important is in these terms-

All rules in force immediately before the commencement of this Act and applicable to an all India service shall continue to be in force and shall be

deemed to be rules made under this Act.

It is urged that this Act lays down to be legislative policy or standard at all and everything is left to the Central Government. In this connection

reference was made to the following observations of Mukerjes, J. (as he was then) in 1951 SCR 747 at p. 982 AIR 1951 SC 332 at p. 400

(Supra).

The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding

rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may

delegate the rest of the legislative work to a subordinate authority who will work

out the details within the framework of that policy. So long as a policy is laid down and a standard established by statute no constitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the legislation is to apply.

It is said that in this case Parliament did not even exercise the essential legislative function inasmuch as it did not determine or choose the legislative policy and formally enact that policy into a binding rule of conduct. Apparently, if one looks at the Act, there seems to be some force in this contention. But a close reading of S. 4 of the Act and its scope, purpose and effect will show that this is not a case where the legislature has failed to lay down the legislative policy and formally to enact that policy into a binding rule of conduct. What does S. 4 in fact provide? Undoubtedly, there were rules in force immediately before the commencement of the Act which governed the two all-India services covered by it and the legislature adopted those rules and said in S. 4 that they shall continue to be in force. Thus, though S. 4 appears on the face of it as one short section of four lines, it is in effect a statutory provision adopting all the rules which were in force at the commencement of the Act, governing the recruitment and the conditions of service of the two all-India services. The section certainly lays down that the rules already in force shall be taken to be rules under the Act; but that was necessary in order to enable the Central Government under S. 3 to add to, alter, vary and amend those rules. There is no doubt, however, that S. 4 did lay down that the existing rules will govern the two all-India services in the matter of regulation of recruitment and conditions of service, and in so far as it did so it determined the legislative policy and set up a standard for the Central Government to follow and formally enacted it into a binding rule of conduct. Further, by S. 3 the Central Government was given the power to frame rules in future which may have the effect of adding to, altering, varying or amending the rules accepted under S. 4 as binding. Seeing that the rules would govern the all-India services common to the Central Government and the State Government provision was made by S. 3 that rules should be framed only after consulting the State Governments. At the same time Parliament took care to see that these rules were laid on the table

of Parliament for fourteen days before they were to come into force and they were subject to modification, whether by way of repeal or

amendment on a motion made by Parliament during the session in which they are so laid. This makes it perfectly clear that Parliament has in no way

abdicated its authority but is keeping strict vigilance and control over its delegate. Therefore, reading S.4 alongwith S. 3(2) of the Act it cannot

be said in the special circumstances of this case "that there was excessive delegation to the Central Government by S. 3(1). We are, therefore, of

opinion that the Act cannot be struck down on the ground of excessive delegation.

The ruling of the Supreme Court would apply on all fours to the present case and I hold that S. 55 of the Act does not suffer from excessive

delegation.

14. The learned Advocate General submitted that the Constitutional validity of any statute can be questioned only on three grounds, viz.,

incompetence of the Legislature, violation of fundamental rights and violation of any other provision in the Constitution of India. He pointed out that

in this case, none of the three grounds is available to the petitioner. In fact, the competence of the Legislature is not questioned; nor is it contended

that the provisions are violative of fundamental rights. (Property right has ceased to be a fundamental right long back.) Nor is it pointed out that any

other provision of the Constitution has been violated.

15. In this connection, reference was made to Art. 31-B and 31-C of the Constitution of India and the fact that the Act in question has been

included in the IX Schedule to the Constitution of India. Hence, it is not open to the petitioner to contend that any of the provisions of the Act is

constitutionally invalid.

16. The learned Advocate General argued that the Act is a piece of social legislation and cannot be equated to the Land Acquisition Act, which

provides for acquisition of land for public purposes. It is contended that the main object of the Act is to bring about an egalitarian society by

reducing the excess extent of land in the possession of a few owners and distributing them among the landless poor. According to learned

Advocate General, even if the Act had not provided for any compensation at all, still it would be valid. The said proposition is an extreme one and

I am unable to subscribe thereto. The Supreme Court has in *State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others*, pointed out that

even though the compensation need not be equal to market value, it cannot be illusory or shocking to the conscience of the Court. It was laid down

that a just and equitable compensation should be provided for. In this case, there is a provision for compensation on a particular basis and there is

no necessity for considering the contention that even if there is no provision for compensation, the Act would be valid. Such a contention was put

forward by the learned Advocate General only to emphasise his submission that no complaint can be made by the petitioner against the

constitutional validity of the provisions of the Act. Hence, I hold that the objections raised by the petitioner as to the validity of the provisions of the

Act and the Rules have to fail.

17. Turning to the merits of the case the contention of the petitioner that the Tribunal has overlooked unimpeachable records placed before him in

the matter of fixing compensation is well founded. The Tribunal has referred to the filing of Exs. A-1 and A-2. Ex. A-2 is the price-list as per the

statistics provided by the Commissioner of Statistics. Ex. A-1 is the price-list provided as per the statistics of the Assistant Director, Villupuram.

After extracting the contents of Exs. A-1 and A-2, the Tribunal proceeded to observe as follows: --

According to the evidence of P.W. 3 the price of samba paddy was Rs. 85/- and Kar was Rs. 70 per bag of 75 kgs. This works out to Rs.

113.30 and Rs. 93.30 per quintal. A perusal of the price lists above does not show such a high price. He being not a licensed dealer, his evidence

cannot be given much weight. The Special Deputy Tahsildar has adopted a value of Rs. 52.50 per 75 kgs. of paddy 1st sort and Rs. 49.50 for

2nd sort. This works out to Rs. 70/- and Rs. 66/- respectively per quintal. The price of paddy 1st sort from January '73 to June '73 as per Ex.

A. 2 is Rs. 60/- to Rs. 70.67 and the Highest is Rs. 82.67 during August. The price adopted by the Department is much higher than that of the

lower price shown in Ex. A. 2. There is no evidence for the sale of paddy for Rs. 100/- per quintal as claimed by the appellants nor this price is

based on any date.

18. While discussing the evidence, the Tribunal has not considered the statistics

given under Ex. A-1. No reason has been given by the Tribunal for completely ignoring Ex. A-1. However, he has taken a wrong view that the values adopted by the Special Deputy Tahsildar are more than the values mentioned in Ex. A-2. On the other hand, the value adopted by the Special Deputy Tahsildar is much less than the value found in Ex. A-2.

As T do not find any reason to reject Ex. A-1, I am of the view that the compensation shall be fixed only on the basis of the statistics provided under Ex. A-1. I am supported by the Rules framed under the Act. Under R. 41 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Rules, 1962, the procedure for determination of fair rent has been prescribed. Under sub-rule (3), the Authorised Officer may take into consideration for the purpose of determining such fair rent, the soil classification of the land and the normal or standard out turn of paddy in the case of wet land and of the dry or irrigated crop in the case of dry unirrigated or irrigated land for the different classes and sort of soil, the Government records containing season and crop reports and rain-fall accounts, the accounts of landowners, intermediaries and cultivating tenants wherever available for similar lands enjoying similar advantages; and the oral or documentary evidence adduced by any of the interested parties and decree of civil Courts. Under sub-rule (2) thereof, in commuting the fair rent in terms of cash, the authorized officer shall take into consideration the Government records containing the season and crop and price reports and also consult the Director of Statistics, if necessary.

Under the proviso to the said sub-rule, if a maximum price has been notified under any statutory provision, such price shall not be exceeded. Thus, the authorised officer is bound to consider the data furnished by the Assistant Director of Statistics and he can go up to the maximum price mentioned therein. I find from the records that the maximum price of first sort of paddy as per Ex. A-1 is Rs. 90.67 per quintal during November and December 1973. P.W. 1 has given evidence to the effect that the prices in 1969 were the same as the prices in 1973 and he could not obtain the records from the Director of Statistics or any other government official relating to the prices which prevailed in 1969. There is no evidence contra. Hence, the evidence afforded by Ex. A-1 giving the price which prevailed in 1973 shall be adopted for fixing the compensation in so far as

it relates to the price of paddy. I direct the petitioner to prepare memoranda of calculation on the basis of Ex. A-1. Learned counsel for the petitioner has to day filed in both the cases memoranda of calculations after serving copies thereof on the Additional Government Pleader. The learned Additional Government Pleader is not in a position to vouchsafe the correctness thereof immediately. He prays for time to verify the same and report to this Court. The request is reasonable and I intend granting time to verify the particulars and memos of calculation and report to this Court later.

19. Learned counsel for the petitioner contended that the Special Deputy Tahsildar has chosen to fix arbitrarily the yield from the different lands.

According to him, the evidence produced before the Special Deputy Tahsildar comprised of statements given by owners as well as the statements

given by village officials and villagers. It is argued that while according to the village officials and villagers the yield was for example 18 bags of

paddy per acre in a particular field, the Tahsildar had chosen to fix it at 15 bags of paddy per acre. Learned counsel has filed a statement to-day

giving the particulars of deviation by the Special Deputy Tahsildar from the statements given by the villagers and village officials. No doubt, there is

some force in the contention of learned counsel, but on going through the report of the Special Deputy Tahsildar I do not think it proper for me to

interfere, in revision with regard to the assessment made by the special Deputy Tahsildar as regards the yield from the lands as confirmed by the

Tribunal. The Special Deputy Tahsildar has given certain reasons for fixing the yield at a particular figure. Sitting in revision, it is not possible for this

Court to interfere with the same. Hence, I confirm the finding of the Tribunal affirming the report of the Tahsildar as regards the yield from the

lands. However, the finding of the Tribunal as regards the value of the crops is set aside and the compensation shall be fixed as per the value found

in Ex. A-1.

20. The next contention relates to the interest payable on the final compensation amount fixed in these proceedings. I have already extracted the

provisions of the Section and the rules. While under S. 55 of the Act, interest is payable only when the payment is made in bonds, under sub-sec.

(1), the compensation amount as finally determined shall be paid either in cash

or in bonds or partly in cash and partly in bonds as the Government may deem fit. The period within which the payment shall be made has to be prescribed by the Rules. There is no reference to payment of interest under sub-sec. (1) of S. 55 of the Act. Under sub-sec.(2), bonds shall be issued on terms as may be prescribed and they shall carry such rate of interest as may be prescribed. Thus, under the provisions of the Act, the question of interest will arise only when payment is made in bonds under sub-sec. (2) of S. 55 of the Act. However, in the rules framed under the Act, sub-rule 3(1) prescribes the period within which the compensation amount shall be paid to the owner of the surplus land. The period is one year from the date of publication of the final compensation assessment roll. Under sub-rule (1-A of Rule 3, the compensation shall be payable in bonds or in cash in instalments. While the Section does not contemplate payment of cash in instalments, the Rule has prescribed the payment of cash in instalments. Under sub-rule (2) of R. 3, if the compensation is paid in bonds, it shall be in denominations set out in the rule. Under sub-rule (3) of R. 3, when the compensation is paid in cash, it shall be payable in single instalment if it does not exceed Rs. 2,000/-. If the compensation exceeds Rs. 2000/-. It shall be paid in cash in ten equated annual instalments of principal and interest commencing from the first day of the quarter following the date from which the interest on the compensation is due under sub-sec. (2) of S. 55 of the Act. Under S. 55(2) of the Act, interest is due from the date of taking possession of the land under S. 18(4) of the Act. Under R. 4 of the Rules, interest is payable at the rate of 4% per annum from the date specified in sub-sec. (2) of S. 55 of the Act. In this case, admittedly possession was taken on 2-6-1969. Interest is, therefore, payable from 2-6-1969.

21. However, a curious feature has arisen in this case. The final compensation roll was published on 21-8-1985. It was after a period of 16 years and odd after possession was taken by the Government. Neither the rules nor the provisions of the Act contemplate fixing a final compensation after such a long interval after the taking of possession. I have already referred to the fact that the Section contemplates the finalisation of compensation within a reasonable period. Though the rules go to some extent beyond the provisions of the Section, the Legislature having

approved of the Rules, they cannot be held to be invalid. But, the Rules have to be understood in the proper manner so that the person who is deprived of his property gets the compensation with interest thereon as contemplated by the Act and the Rules. When the Rules provide for payment of cash compensation in ten equated annual instalments of principal and interest, commencing from the first date of the quarter following the date on which possession was taken, the 1st instalment should have been paid on 1-7-1969 and the subsequent instalments on the first of July of every subsequent year. Even as per the statement prepared by the Government as regards the amounts payable, the last instalment was payable on 1-7-1978. But, admittedly, no amount was paid till 1986 when the petitioner was enabled to withdraw the amount as per the orders of this Court.

22. The rate of interest prescribed by Rule 4 of the Rules at 4% would apply only during the period within which the payments should be made as per the Rules. In other words, that rate will apply for a period of ten years commencing from the date on which the first instalment was payable. Therefore, in this case, the rate of interest at 4% would apply from 1-6-1969 to 1-7-1978. After 1-7-78, it is not open to the Government to contend that the same rate of 4% would prevail and the owner of the surplus land will be entitled only to interest at that rate. After 1-7-1978, the interest must be paid in accordance with the principles of equity and the Tribunal or the Court is entitled to fix the interest on the basis of equitable principles.

23. Though there is no direct authority on this position, there are two judgments, one of this Court and another of the Supreme Court, which support my view in holding that interest is payable on equitable principles. This Court had occasion to consider a case in V. A. No. 1161 of 1985 -- The Land Commissioner, Ezhilagam, Madras-5 v. Louis Prakasam. In that case, there was a dispute with regard to a portion of the land which was considered to be surplus. A sum of Rs. 69,178.40 was found payable by way of compensation to the respondent in the said appeal. As the amount remained unpaid for a long time, he filed W.P. No. 6782 of 1985 for issue of a Mandamus directing the appellants in the appeal to publish the final compensation assesment roll with respect to his land of 34.13 acres and

consequently to make the payment of compensation with accrued interest from the date of taking possession. While the writ petition was pending, an order was passed by the single Judge directing the appellants in the writ appeal to deposit the amount of Rs. 69,178.40 p. together with interest at 6% from 4-11-1975, the date of apportionment in the proceedings of the Authorised Officer, on or before 30-11-1985. It was also directed that on such deposit, the interest shall be paid to the owner and the principal amount shall be invested in a Nationalised Bank and the interest thereon shall be paid once in six months to the owner. The appeal was preferred by the Authorities against the said order. A contention was raised before the Division Bench that under R. 4 of the Tamil Nadu Land Reforms compensation for Surplus Land) Rules, interest was payable only at 4%. The Division Bench, to which I was a party, rejected the contention in the following words:

Section 55 (2) of the Act refers to the issuance of the bond and the interest payable on these bonds. In the case of cash payment, it is S. 55(1) which seems to be attracted because S. 55(1) provided that the amount as finally determined under the Act shall, within such period as may be prescribed, be paid either in cash or in bonds or partly in cash and partly in bonds as the Government may deem fit. This is not a case in which payment is being made either wholly or partly in bond, with the result that S. 55(2) of the Act will be out of the picture, and consequently the restriction of four per cent prescribed in R. 4 of the Rules will also not be attracted. There is therefore no substance in the contention that the learned Judge could not have granted interest at the rate of 6 per cent.

24. If the principle accepted and adopted by the Division Bench is followed in this case, there is no difficulty in granting interest to the petitioner on the basis of equitable principles for the period subsequent to 1-7-1978, as the said period falls entirely outside the period contemplated by the Rules. The Rules provide only for ten equited annual instalments from the date of taking possession. That period having come to an end, there is no provision in the Rules with regard to the payment of interest for the subsequent period. The Government cannot escape the liability to pay interest, as the owner had been deprived of possession long prior thereto and the amount of compensation had not been paid to the owner even at the time

of the expiry of the said period.

25. The judgment of the Supreme Court is found in *Hirachand Kothari v. State of Rajasthan*, AIR 1985 SC 998. In that case, there was an

agreement for an exchange of plots between the appellant before the Supreme Court and the State Government of Rajasthan, The State

Government failed to perform its part of the contract, whereunder the State Government agreed to give in exchange a land to the appellant therein

on resumption of his plot, even though it had taken over the land which belonged to the appellant. In the course of the proceedings initiated by the

land owner, there was a sort of compromise, under which the State Government agreed to pay compensation for the land taken over. One of the

questions argued before the Supreme Court was whether interest was payable on the amount of compensation fixed in that case The Supreme

Court answered the question in the following way (Para 11 of AIR):--

We are clearly of the view that the plaintiff having been deprived of the property was entitled to a reasonable rate of interest on the amount found

to be due to him. In somewhat similar Circumstances the Court speaking through Gajendragadkar, J. in *Satinder Singh and Others Vs. Amrao*

Singh and Others, , relied upon the speech of Viscount Cave, I,C in *Swift & Co. v. Board of Trade*, 1925 AC 520 and observed (Para 17):

Stated broadly the act of taking possession of immovable property generally implies an agreement to pay interest on the value of the property

and it is on this principle that a claim for interest is made against the State. This question has been considered on several occasions and the general

principle on which the contention is raised by the claimants has been upheld. In *Swift & Co. v. Board of Trade*, 1925 AC 520 (supra) it has been

held by the House of Lords that on a contract for the sale and purchase of land it is the practice of the Court of Chancery to require the purchaser

to pay interest on his purchase money from the date when he took, or might safely have taken, possession of the land". This principle has been

recognized ever since the decision in *Birch v. Joy*, (1852) 3 HLC 565. In his speech, Viscount Cave, LC added that ""this practice rests upon the

view that the act of taking possession is an implied agreement to pay interest"", and he points out that the said rule has been extended to cases of

compulsory purchase under the ""Lands Clauses Consolidation Act, 1845. In this

connection distinction is drawn between acquisition or sales of land and requisition of goods by the State. In regard to cases falling under the latter category this rule would not apply." We are in respectful agreement with these observations. It was further held in *Satinder Singh and Others Vs. Amrao Singh and Others*, that the Court had ample power under proviso to S. 1 of the Interest Act, 1839 to award interest on equitable grounds.

26. Applying the ruling of the Supreme Court in that case, I hold that the petitioner is entitled to award of interest on equitable grounds.

27. Even though the market rate of interest is very high, the maximum interest which is being paid by Nationalised Banks on fixed deposits is only

11%. Under the provisions of the Interest Act, the Court can direct payment of interest on the current rate of interest prevailing. "Current rate of

interest" has been defined in the Act to be the highest of the maximum rates of interest payable by Schedule Banks. The provisions of the Act may

not apply as such but the principles thereof can be invoked in this case in order to render justice as they are equitable principles. Hence, I hold that

the petitioner is entitled to interest at 11% per annum on the final compensation amount as and from 1-7-1978 upto the date of payment. A portion

of the compensation amount has been paid on 8-1-1986. The interest on that portion of the amount will run upto 8-1-1986 and for the remaining

part of the amount, interest will run up to the date on which the respondents pay the same. For the excess amount fixed as per this order, interest is

payable at the rate of 4% per annum from 2-6-1969 to 1-7-1978 and thereafter at the rate of 11% upto the date of actual payment.

28. The Civil Revision Petitions are allowed to the extent indicated above. The learned Additional Government Pleader is granted time till 7-1-

1991 to report to this Court as regards the correctness of the figures found in the memos of calculation filed by the petitioner to-day. On such

report, I will pass the final order fixing the amount of compensation payable to the petitioner.

29. Post on 7-1-1991. This petition having been set down this day for being mentioned in the presence of the aforesaid advocates on both sides

the court made the following order:--

Learned counsel for the respondent has submitted that the calculation statement

filed by the petitioners shall not be accepted for three reasons. The first ground urged is that the value given in Ex. A-1 is for the year 1973, but subsequent to the notification under S. 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961, dt. 12-9-1973. According to learned counsel, the value prior to the date of notification is the relevant value and the subsequent value should not be taken into account. I have already considered the matter and referred to the fact that in the evidence, P.W. 1 had deposed that the value found in Ex. A-1 was the same as in 1969 also and in fact, I have held that the statement in Ex. A-1 can be accepted for the purpose of arriving at the value in 1969. Hence, this contention is rejected.

30. The second submission is that the lands are situated in three villages viz., Villupuram, Gingee and Thirukkoilur. Learned counsel submitted that Ex. A-1 relates only to Villupuram lands and not to the lands in other two villages. No such argument was advanced before the Tribunal. The respondent did not place any material before the Tribunal to show that the value prevailing in Villupuram was different or higher than the value that prevailed in Gingee and Thirukkoilur. In those circumstances, the present contention cannot be accepted.

31. The third submission is that under R. 41(2) of the Rules framed under the Act, the cash value of the crops in the post-harvest period in the year in which S. 18(1) Notification was published should be taken into account. If that is so, the petitioners are entitled to the value that prevailed in 1973. It is not even necessary for me to hold that the value in 1973 was the same as that was in 1969. The Constitution is really strengthening the arguments advanced by the petitioners. Hence, the petitioners are entitled to have compensation on the basis of the value found in Ex. A-1.

32. Learned counsel for the petitioner had filed a statement calculating the amount due as on date as per my judgment. There are three columns.

The first column gives the amount due as per Special Deputy Tahsildar's report. As I have rejected the report, it is not necessary for me to refer to the same. The third column mentions the amount due as per Ex. A-1 and the guideline value. Learned counsel for the petitioners contends that the Special Deputy Tahsildar had overlooked the materials placed before him to show the guideline value of the waste lands. According to him, the

value adopted by the Special Deputy Tahsildar for waste lands is very much below the guideline value. It is submitted by him that the Special

Deputy Tahsildar has fixed the value at Rs. 8,913.58 whereas the guideline value is Rs. 41,051.88. I am unable to accept this contention, as no such

ground was raised before the Tribunal in the Memorandum of Appeal and it does not appear from the record that any argument was put forward

in that regard. Nor any such ground has been raised in the memoranda in these Civil Revision Petitions. Hence, the petitioner's counsel cannot be

permitted to raise the same at this stage.

33. Thus, what is left is only the middle column, in which the amount due to the petitioners as per my order is mentioned. After giving credit to the

sum of Rupees 2,31,172.50 which was paid to the petitioners on 8-1-1986, the amount due as on date is Rs. 4,82,004.30 p. The respondent shall

pay the sum of Rs. 4,82,004.30 with interest on Rs. 60,557.07 from this date till the date of payment, at the rate of 11% per annum. The amount

shall be paid to the petitioners on or before 31-3-1991. If the amount is not paid to the petitioners by that date, the respondent will be liable to pay

interest at 15% per annum and it will be open to the petitioners to execute the order and recover the amount from the respondent.

34. The Civil Revision Petitions are allowed and the orders of the Special Deputy Tahsildar and the Tribunal are set aside. There will be a decree

by this Court in terms of the above order. The petitioners will be entitled to the costs in these two revision petitions. Counsel's fee Rs. 2000/- in

each case.

35. Petition allowed.