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**(2004) 06 KAR CK 0001**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 27744 of 2001**

M. Gangappa

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

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**Date of Decision :** 09-06-2004

**Acts Referred:**

Land Acquisition Act, 1894 — Section 23 (1A), 34, 4 (1)

**Citation :** (2004) ILR (Kar) 4397 : (2004) 4 KCCR 2719

**Hon'ble Judges :** S. Abdul Nazeer, J

**Bench :** Single Bench

**Advocate :** A.S. Mahesh, for the Appellant; Ratna N. Shivayogimath, HCGP, for the Respondent

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## Judgement

S. Abdul Nazeer, J.—Petitioner is the owner of the lands in Survey Nos. 27/1 and 27/2 each measuring 4 Acres and 5 Guntas situated at Hoisanahalli Village, Hallaluru Hobli, Shimoga Taluk, Shimoga District. The respondents took possession of the said property in the year 1960 without initiating acquisition proceedings. After taking possession of the lands as above, sites have been formed and allotted to certain persons who have constructed their houses on the said sites. Since the respondents have taken possession of the lands without initiating acquisition proceedings, petitioners made representations to the respondents for grant of compensation. Therefore, second respondent issued a preliminary notification u/s 4(1) of the Act dated 30.11.1999, published in the Gazette on 30.12.1999, followed by a final notification dated 18.7.2000 published in the Gazette on 17.8.2000. Learned Counsel for the petitioner has produced a copy of the preliminary notification. In the note to the said notification it is stated that the possession of the lands was already taken for shifting of a village and for Tunga right bank project. Since the petitioner was not awarded any compensation, he filed Writ Petition No. 36474/2000 for a mandamus directing the respondents to pass an Award. This Court by the Order dated 13.1.2001 directed the Special Land Acquisition Officer to pass an Award in accordance with the provisions of the Land Acquisition Act within a period of six

months from the date of the order. Thereafter, second respondent has passed an Award on 26.5.2001 awarding a total compensation of Rs. 4,94,990/-. The second respondent did not pass any Order for Payment of interest as per Section 34 of the Land Acquisition Act. The relevant portion of the Award is as follows:-

"In addition to the above Rs. 4,94,990/- 23(1A) additional market value at the rate of 12% on the award amount will be paid subject to the approval of the Deputy Commissioner, Shimoga. Interest on the award amount as per Section 34 of the Land Acquisition Act is not considered as per the letter No. R1.LAQ.SR. 1/99-2000 dt. 10.5.2001 of the Deputy Commissioner, Shimoga."

Since the second respondent did not award interest as per Section 34 of the Land Acquisition Act, petitioner has filed this Writ Petition for a direction to the respondents to pay interest as per Section 34 of the Land Acquisition Act on the award amount from the date of taking possession till the date of deposit. Learned Counsel for the petitioner does not press the other reliefs claiming additional compensation u/s 23(1A) of the Act, as the same is already awarded by the Land Acquisition Officer.

2. The State has filed its objections. It is not disputed that possession was taken earlier to the date of preliminary notification. However, the respondents have disputed the claim of the petitioner for payment of interest as per Section 34 of the Act.

3. Heard the learned Counsel for the parties and perused the materials placed on record.

4. Sri Mahesh, learned Counsel appearing for the petitioner submits that since possession was taken much earlier to the date of preliminary notification, the petitioner is entitled for interest from the date of preliminary notification. In the alternative he submits that if the petitioner is not entitled for the interest, he is entitled for atleast damages or rents from the date of possession till the date of preliminary notification and interest as per Section 34 of the Act from the date of preliminary notification till the date of deposit of award amount. He has placed reliance on the decision of the Hon"ble Supreme Court in the case of R.L. JAIN v. D.D.A. AIR 2004 SCW 1629 for the said proposition. He further submits that a claim for interest can be enforced through Writ Petition and not through reference u/s 18 of the Act. In this connection, he has relied on a Division Bench decision of this Court in Channarajamanni Vs. Union of India and Others, . On the other hand, learned Government Pleader has justified the award passed by the second respondent. It is argued that a Writ Petition for award of interest is not maintainable and that the remedy available is to seek a reference u/s 18 of the Act.

6. It is not in dispute that possession of the land was taken much earlier to the date of preliminary notification. The preliminary notification shows that possession of the land was taken prior to its publication. In the Award dated 26.5.2001 it is stated that possession of the land was taken during 1960- 61 for

the purpose of shifting the village. The petitioners have not sought reference u/s 18 of the Act for award of interest.

7. In the light of rival contentions of the parties, the points that arise for consideration are as follows:

i) Whether a Writ Petition enforcing payment of interest u/s 34 of Land Acquisition Act on the compensation awarded is maintainable?

ii) Whether the petitioner is entitled for interest u/s 34 of the Act from the date of taking possession of the land, when possession is taken anterior to the date of preliminary notification;

iii) If it is held that the petitioner is not entitled for interest from the date of taking possession, what is the remedy available to the petitioner for utilisation of the land by the Government from the date of taking possession till the date of preliminary notification?

Regarding Point No. (i)

8. Section 18 of the Land Acquisition Act provides for seeking a reference in case where the party concerned does not accept the compensation awarded by the Land Acquisition Officer. The Section is as follows:-

"Section 18:- Reference to Court:-

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award.

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

A reading of the above section shows that any person interested who has not accepted the award can seek reference relating to measurement of land, for determination of the amount of compensation, the person to whom it is payable or, apportionment of compensation among person interested. The claim of the petitioner is not for higher compensation. The claim arises consequent on the acceptance of the compensation award.

9. Section 34 of the Act provides for payment of interest. It is as follows:-

"Section 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."

The language employed in the Section indicates that the Government is required to pay interest at the rate of 6 percent per annum on compensation awarded from the date of taking possession till the date of making deposit of compensation.

10. The Division Bench of this Court in Smt.Channarajamanni" s Case (supra) has held that when the claim flows from statutory provision namely Section 34 of the Land Acquisition Act, it can be enforced through an order made under Article 226 of the Constitution of India and that there is no justification to direct the party to file a civil suit

11. In the case of Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat, the Hon"ble Supreme Court has held that reference u/s 18 is primarily for determination of the market value of the land. Award of interest is never an issue between the parties. Once the conditions u/s 28 or 34 of the Act are notified, the award of interest is consequential and automatic. It is further held that the costs and interest if not awarded by the lower Court can always be awarded by the higher Courts in any proceedings under the Act and to any party entitled to the same under the Act. It is further observed that the procedural hassle cannot come in the way of substantive rights of the citizens under the Act. The relevant portion of the decision is as follows:-

"The interest to be paid u/s 34 and also u/s 28 is of different character than the compensation amount u/s 23(1) of the Act. Whereas, the interest, if payable under the Act, can be claimed at any stage of the proceedings under the Act, the amount of compensation u/s 23(1) which is an Award-Decree u/s 26, is subject to the rules of procedure and limitation. The rules of procedure are hand maiden of justice. The procedural hassle cannot come in the way of substantive rights of citizens under the Act.

We do not, therefore, agree with the reasoning and the findings reached by the High Court. We are of the opinion that it was not necessary for the appellant-claimant to have filed separate appeals/cross objections before the High Court for the purposes of claiming interest u/s 28 or Section 34 of the Act. He could claim the interest in the State-appeal. The fact that he filed cross-objections which were dismissed as time-barred is wholly irrelevant.

We, therefore, partly allow the appeal and set aside the judgment of the High Court on the second point and direct that the appellant is entitled to interest on the compensation amount for the period from November 19, 1949 to February 1,

1955"

12. From the discussion made above, it is clear that payment of interest u/s 34 of the Act is statutory in nature and is mandatory. The payment of interest arises consequent on the acceptance of the compensation awarded. Thus award of interest is consequential and automatic. As held by the Apex Court in Vijay Cotton Oil Mills Case (supra) it can be claimed in any proceedings under the Act. It can even be claimed in a State appeal even though the cross-objections filed by the claimant was dismissed. The rules of procedure cannot come in the way of substantive rights of the citizens under the Act. Therefore, a Writ Petition for enforcing payment of interest on compensation awarded is maintainable, because once the compensation is determined, right to claim interest u/s 34 of the Act is a legally enforceable right. I answer Point No. (i) accordingly.

Regarding Point No. (ii)

13. It is not in dispute that the possession of the land was taken much earlier to the date of preliminary notification. Therefore the question for consideration is from what date the petitioners are entitled for interest u/s 34 of the Land Acquisition Act, whether from the date of taking possession of the land or whether from the date of preliminary notification. It is well established that the parameter for initiation of proceedings is the date of publication of notification u/s 4(1) of the Act. The condition precedent is publication of notification u/s 4(1) in the appropriate gazette and that would give legitimacy for the State in accordance with the provisions of the Act. The Act is a self-contained Code and good conscience cannot be extended in awarding interest, contrary to the provisions of the statute. A similar question arose before the Hon'ble Supreme Court in the case of R.L. JAIN(D) BY L.rs. v. D.D.A. and Ors. That case was placed before the larger Bench of the Hon'ble Supreme Court in view of conflict of opinion in two decisions namely Vijay Cotton & Oil Mills Case (supra) and UNION OF INDIA v. BUDH SINGH & ORS. 1995 (6) SCC 2337. The question in controversy was where possession was taken before issuance of notification u/s 4(1) of the L.A. Act, whether the claimant (owner of land) is entitled to interest anterior to the date of preliminary notification. The Apex Court has held as under: -

"In order to decide the question whether the provisions of Section 34 of the Act regarding payment of interest would be applicable to a case where possession has been taken over prior to issuance of Notification u/s 4(1) of the Act it is necessary to have a look at the Scheme of the Land Acquisition Act. Acquisition means taking not by voluntary agreement but by authority of an Act of Parliament and by virtue of the compulsory powers thereby conferred. In case of acquisition the property is taken by the State permanently and the title of the property vests in the State. The Land Acquisition Act makes complete provision for acquiring title over the land, taking possession thereof and for payment of compensation to the land owner."

"The Scheme of the Act does not contemplate taking over of possession prior to the issuance of Notification u/s 4(1) of the Act and if possession is taken prior to the said Notification it will de hors the Act. It is for this reason that both Sections 11(1) and 23(1) enjoin the determination of the market value of the land on the date of publication of notification u/s 4(1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act. These provisions show in unmistakable terms that publication of notification u/s 4(1) is the sine qua non for any proceedings under the Act."

At paragraph 18, it is held that in such a situation, land owner is only entitled to get rent or damages for use and occupation for the period Government retains possession. In the light of the authoritative pronouncement of the Hon'ble Supreme Court as above, I am of the view that the Court has no jurisdiction to award interest for any period anterior to the notification u/s 4(1) of the Act. A similar view if taken by this Court in the case of The Special Land Acquisition Officer Vs. Fakirappa Mugubasappa and Others, . I answer the point accordingly.

Regarding Point No. (iii)

14. If the land owner is dispossessed prior to the issuance of the preliminary notification, the Government merely takes possession of the land but the title continues to vest with the land owner. The Apex Court in R.L. Jain's Case (Supra) has held that it is open for the land owner to recover the possession of his land by taking appropriate legal proceedings. It is further held that the land owner is entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. It is further held that while determining compensation payable to the land owner for acquisition of the property the Collector concerned to determine the rent or damages for use of the property to which the land owner is entitled. It is held as follows :-

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

15. It is clear from the award produced by the petitioner that the Land Acquisition Officer has not awarded interest nor has he considered award of rent

or damages for use of the property by the State Government from the date of taking possession till the date of preliminary notification. I am of the view that in cases where possession is taken anterior to the date of preliminary notification, the Land Acquisition Officer is required to determine the rent or damage for the use of the property by the Government for a period from the date of taking possession till the date of preliminary notification, in addition to determination of compensation payable to the land owner. In the present case, since the compensation payable is already determined, the Land Acquisition Officer is required to determine rent or damages payable to the land owner for use of the property by the State Government from the date of possession till the date of preliminary notification.

16. In the light of the above discussion, I pass the following:-

#### ORDER

(i) The Respondent - Land Acquisition Officer is directed to award interest payable to the petitioner from the date of preliminary notification till the date of deposit, in accordance with Section 34 of the L.A. Act within a period of three months from the date of receipt of a copy of this Order.

(ii) I further direct the second Respondent to hold an enquiry and determine and award rent/damages to the petitioner for use and occupation of the property by the State Government from the date of taking possession till the date of preliminary notification. Petitioner is directed to make a representation claiming Rent/damages to the Land Acquisition Officer within eight weeks from the date of receipt of copy of this order.

Writ Petition is disposed of accordingly. No costs.