

(2006) 05 DEL CK 0222

In the Delhi High Court

Case No : Writ Petition (C) 4739, 4740, 4741, 4742, 4743, 4744, 4745 and 4746 of 2006

Sh. Chander Mal etc.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Land Acquisition Act, 1894 — Section 1, 10, 11, 12(2), 16

Citation : (2006) 89 DRJ 385

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Satpal Singh, for the Appellant; Gaurav Sarin, for DDA, Sanjay Poddar and Sachin Nawani for LAC, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—In a petition moved by the petitioners under Article 226 of the Constitution of India invoking the extraordinary jurisdiction of this Court and praying for issuance of an appropriate writ, order or direction to the respondents for payment of statutory interest on the awarded compensation u/s 34 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), on behalf of the respondent Delhi Development Authority (for short "DDA") a legal question has been raised with regard to the applicability of Section 34 of the Act to the present case. It is argued that the claimants are not entitled to claim any interest under the provisions of Section 34 of the Act as the possession of the land had not been taken by the Collector or the DDA, prior to making of the award. With some vehemence it is further submitted that there is no specific or general obligation on the part of the Collector to deposit the compensation in court. The non-payment or non-deposit of compensation by itself is not a sufficient ground for applicability of provisions of Section 34 of the Act. It is also contended that provisions of Section 34 of the Act would be applicable only to the cases where the possession was taken before making of the award by the Collector. While

placing reliance upon a judgment of the Division ECHO is on. Bench of this Court in the case of Rattan Singh Vs. Union of India, it is also argued that in the present writ petition the court would not pass direction for payment of any interest in terms of Section 34 of the Act.

2. According to the stand taken by the Collector, interest under the provisions of Section 34 of the Act could not be disbursed to the claimants as the same was not received from the DDA despite requests. Thus, we are called upon to examine the applicability and scope of the provisions of Section 34 in relation to the scheme of acquisition, under the provisions of the Act. Section 34 of the Act reads as under:

34. Payment of interest.- When the amount of such compensation is not paid or deposited on or before taking possession of land, the Collector shall pay the amount awarded with the 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.

3. The language of the above provision do not admit any ambiguity. The effective part of this Section can be dissected into following parts:

(a) That the amount of such compensation is not paid or deposited.

(b) On or before taking possession of the land.

(c) liability of the Collector to pay interest on the awarded amount @ 9% or 15% as the case may be, would arise. "Such compensation" obviously includes compensation which is payable in terms of Section 23 read with other provisions of the Act.

4. The legislative intent of expeditious action as well as providing benefit to the owners of the land is sufficiently indicated by the fact that the rate of interest payable to the claimants would sharply increase from 9% in the first year to 15% in the subsequent years from the date of taking possession of the acquired land. The essence of the provision is non-payment or non-deposit of compensation, on or before taking the possession of the land which in default triggers the liability to pay interest in accordance with the provisions of Section 34. It is not necessary in any way to expand or limit the scope and application of these provisions by adding or subtracting expressions which do not appear in the Section itself. The liability to pay interest arises only where the possession is taken. The purpose is that before a claimant is divested or dispossessed of his property, he should get the compensation, either at the same time or even prior thereto. The provisions of Sections 28 and 34 of the Act are neither dependent

on each other, nor are in contradiction. They operate in different fields and are intended to achieve different objects. The Legislature in its wisdom has imposed two different obligations on the Collector to pay interest. Section 28 is relatable to the liability to pay interest where in the opinion of the Court the compensation is awarded by the court in excess of the sum which the Collector awarded, while Section 34 operates irrespective of the element of enhancement by the court as its pre-requisite. Recourse to enforcing liability u/s 34 is relatable to taking of possession and non-deposit of payment of compensation. The ambit and scope of the provisions of Section 34 is much wider than Section 28. A possession might be taken without making an award but in consonance with the provisions of Section 17 of the Act. Shortly, we will revert back and discuss in further detail all the ECHO is on. legal aspects of this case, as it will be appropriate to refer to the facts giving rise to the filing of the present writ petition.

5. A notification u/s 4 of the Act was issued on 6.4.1964 acquiring large tracts of lands in the revenue estate of Village Ali, Tehsil Kalkaji, New Delhi. The land was acquired for a public purpose, namely "Planned Development of Delhi". After complying with the necessary requirements of law, the Land Acquisition Collector passed an award being award No. 31/1997-98 dated 10.12.1997 whereby the market value of the land was fixed at Rs. 1200/- per bigha with all statutory benefits. The claimants were entitled to receive the compensation in terms of the award. The petitioners claimed compensation @ Rs. 4000/- per sq. yard for the acquired lands and being dissatisfied with the amount of compensation awarded by the Collector, the same not having been assessed in consonance with the settled principles of law, the petitioners filed objections to the award under Sections 9 and 10 of the Act. The Land Acquisition Collector took possession of the acquired lands vide kabza karwai report dated 26.5.1997. The petitioners, who are the owners/bhumidaars of the acquired lands had lost their right and the land vested in the Government in accordance with the provisions of Section 16 of the Act, free of any encumbrances. Despite the fact that possession had been taken, payment of the assessed compensation was not made by the Collector for a period of 7 years, and only after the request and representation by the petitioners, the payment of compensation was made to the petitioners in March, 2005. Even then, the interest payable in terms of the provisions of Section 34 of the Act was not made compelling the petitioners to file the present writ petition claiming statutory interest in terms of Section 34 of the Act. The petitioners had also stated in the petition that in the case of Hari Chand and Anr. v. Government of NCT of Delhi and Anr. [W.P.(C) No. 10943-10944/2004] the Court had directed the respondents to pay the compensation claimed by the petitioners in those writ petitions within a period of two weeks from the date of the order and had also directed that the reference applications filed by the claimants be referred to the court in accordance with law. Despite such orders of the court no payment was made till March"2005. No detailed counter affidavit was filed and in fact the records were produced by the respondents only during the course of hearing.

6. The facts in the present case are hardly in dispute. It is not in dispute that

possession of the acquired lands were taken by the Collector and handed over to the Delhi Development Authority (DDA) on or before 26.5.1998. The payments had been made in the year 2005. The possession, thus, in the present case was taken after the award was made and the compensation payable to the claimants was determined. Another apparent fact of the present case is that the acquisition was made in the year 1964 but the award was made on 10.12.1997 i.e. after a lapse of more than 33 years.

7. It is also clear that despite taking possession of the lands of the claimants, compensation was not paid to them for a considerable time. Serious delays in complying with the provisions of the Act as well as in making timely payments to the claimants does not work out to the advantage of any, but on the other hand causes unjust and inequitable results. It is obligatory upon the authorities to find out ways and means to work in line with the scheme of the Act and with utmost object of avoiding delays, in compliance of the provisions of the Act. Provisions of Section 34 imposes a statutory liability on the authorities to a considerable extent, and every effort should be made to save the public money by timely actions. In a recent judgment, a Division Bench of this Court in the case of Mahender Kumar v. Land Acquisition Collector W.P.(C) No. 13308-12/2005 decided on 11.5.2006, held as under:

The Land Acquisition Collector claims that he had written various letters right from 4th July, 2005 to 31st October, 2005 but DDA sent no amounts for disbursement to the claimants. The DDA for the first time sent even the ECHO is on. determined compensation on 16.11.2005. Interests for this period and the interests payable u/s 34 to the claimants have not been sent till today despite that the payment was received on 16.11.2005 but the same was paid in part to the claimants only on 19.1.2006 as according to the Land Acquisition Collector they received the payment on 20.12.2005. Be that as it may, one thing is evident that the public exchequer has been burdened with the liability of heavy interests because of lack of responsibility, will and apparent negligence on the part of the concerned officers/officials in various wings of the DDA as well as the LAC. The contention of the DDA that the interest u/s 34 is not payable to the claimants is without any merit. Relying upon the judgments of the Supreme Court in Hissar Imporvement Trust Vs. Smt. Rukmani Devi and another, and Lila Ghosh (Smt.) (Dead) through Smt. Lila Ghosh (Dead) through LR Shri Tapas Chandra Roy Vs. The State of West Bengal, and even on the bare reading of the provisions of Section 34, it is amply clear that in the default of payment or deposit of compensation or or before taking the possession of the land, the Collector shall pay the amount awarded with interest thereon @ 9% per annum from the time of so taking possession until it shall have been so paid or deposited. Of course, the interest increases for the subsequent period. The above elaborate discussion clearly depicts a situation where the law is entirely tilted in favor of the claimants and against the respondents. It is not only the pious duty of the court to find out the cause of the thing caused but also Boni juiciest causes lithium dirimere.

8. The computation, awarding and disbursement of compensation has to be in accordance with and as postulated under the provisions of the Land Acquisition Act. In cases where the possession of the land is taken even prior to the commencement of the acquisition proceedings (that is by publication of a notification u/s 4 of the Act), there the proceedings would be one not commenced as contemplated under the Act and for the period prior to Section 4 notification the provisions of Section 34 would not be attracted.(Refer : R.L. Jain (D) by Lrs. Vs. DDA and Others,

9. In the case of Hissar Improvement Trust v. Smt. Rukmani Devi and Anr. AIR 1990 (77) SC 200, the Supreme Court stated the scope and applicability of the provisions of Section 34 of the Act and held as under:

... Section 34 provides for payment of interest in the event of compensation, which has to be paid or deposited in the Court as provided u/s 31, being not so paid or deposited before taking possession of the land. In the present case, according to the, according to the appellant, the amount of compensation had been paid by him to the Collector in time i.e. Before possession was taken. If the Collector had not paid the money or deposited the same in Court as provided by Section 34, counsel for the appellant submits, the liability is that the Government and not of the appellant.

It cannot be gainsaid that interest is due and payable to the land owner in the event of the compensation not being paid or deposited in time in Court. Before taking possession of the land, the Collector has to pay or deposit the amount awarded, as stated in Section 1, failing which he is liable to pay interest as provided in Section 34.

10. In the case of Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, , the Supreme Court clearly stated the principle that when the compensation is determined u/s 23(1) of the Act its quantification, though made at different levels, the liability to pay interest thereto arises not only from the date on which the quantification was so made but 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 arises as and when the compensation is further ECHO is on. enhanced and the same would be coterminus with the payment of the amount. u/s 34 of the Act from the date of taking possession till date of the payment or deposit; or u/s 28 or Section 34 of the Act from the date of taking possession till the date of deposit of such excess amount in the court. These provisions are applicable to specific situations and are in apparent contradistinction to the fact that no liability accrues from the date of making of the award till taking over of the possession. But still the obligation of the government to act expeditiously even during this period cannot be obviated. It would be essential and in the interest of all concerned that no step for acquisition, before they are culminated, be permitted to take unnecessarily prolonged period, as only result of such would be unnecessary liabilities. In the case of Smt. Lila Ghosh (Dead) through LR Shri Tapas Chandra Roy Vs. The State

of West Bengal, , emphasis was laid by the Supreme Court on the principle that interest is payable to the claimants under Sections 28 and/or 34 of the Act only from the date on which the possession is taken in accordance with the provisions of the Act. The Court in that judgment held as under:

However the High Court has directed payment of interest only from 8th December 1986. In support of this submission, reliance was placed on the case of Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat, . In this case the possession had been taken much prior to the acquisition proceedings. This Court directed payment of interest under Ss. 28 and 34 from the date of taking possession. It was submitted that this authority clearly lays down that the interest must be paid from the date of actual possession....

...Even though the authority in Shree Vijay Cotton and Oil Mills Ltd. Appears to support the claimants, it is to be seen that apart from mentioning Ss. 28 and 34, no reasons have been given to justify the award of interest from a date prior to commencement of acquisition proceedings. A plain reading of S. 34 shows that interest is payable only if the compensation, which is payable, is not paid or deposited before taking possession. The question of payment or deposit of compensation will not arise if there is no acquisition proceedings. In case where possession is taken prior to acquisition proceedings a party may have a right to claim compensation or interest. But such a claim would not be either under S. 34 or S. 28. In our view interest under these sections can only start running from the date the compensation is payable. Normally this would be from the date of the Award. Of course, there may be cases under S. 17 where by invoking urgency clause possession has been taken before the acquisition proceedings are initiated. In such cases, compensation, under the Land Acquisition Act, would be payable by virtue of the provisions of S. 17. As in cases under S. 17 compensation is payable interest may run from the date possession was taken. However, this case does not fall into this category.

11. For attracting these provisions the action has to be taken within the provisions of the Act. The acquisition proceedings must be taken and/or possession of the land taken under the provisions of the Act and not de hors. The contention of the respondents that they have no obligation to tender/pay and/or deposit the amount in Court is misconceived in law. There are different provisions in the Act which imposes an obligation upon the Govt. and the authorities to be ready with the compensation even prior to taking of possession of the acquired lands and disburse the same expeditiously with notice to the claimants. Even in absence of such specific provision, the public law obligation would require the respondents to ensure payment of compensation due to the claimants within a reasonable time. It is unfortunate that such a contention could be raised on behalf of the authorities who are taking possession of the lands of various persons by the process of compulsive acquisition. In fact, this aspect of the case need not detain us any longer in view of a recent judgment of ECHO is on. this Court in the case of Mahinder Kumar v. Land Acquisition Collector

(supra) where the Court not only examined this aspect of the duty of the respondents to make payment to the claimants and in the event of any default on the part of the claimants, deposit the same before the Court of Competent Jurisdiction but also the public and statutory duty of the officers of the respondents. The law requires a concerted effort on the part of the respondents to be ready with the amount of 80% of the estimated compensation, if they are invoking emergency provisions by recourse to Section 17 of the Act prior or at least at the time of taking of the possession and prior to issuance of notice u/s 12(2), if the award has been made and the authorities intend to take possession of the acquired land. These provisions have no element of mandatory requirement though their non-compliance may not vitiate the acquisition proceedings. It would be necessary for the authorities to ensure timely payments to the claimants in their own interest as well as in larger public interest. Reference in this regard can be made to a recent judgment of this Court in the case of Shri Mahender Kumar v. Land Acquisition Collector where in the Court held as under:

Both these adverse consequences can easily be avoided by the authorities concerned by timely and coordinated action. The authorities are required to have a more practical and pragmatic approach to provide solution to this persisting problem. Various files of the authorities which have been produced before us in number of cases do not reflect any better state of affairs but mostly a mere inaction on the part of the concerned officers/officials in the Government hierarchy. We have already stated that large number of writ petitions are being filed in this Court claiming the similar reliefs. In most of the cases, the respondents do not even dispute the claim of the petitioner based on awarded compensation. Let us examine the law in regard to public accountability for default of performance of statutory and public duties which are relatable to the powers vested in the administrative and executive authorities under the provisions of this Act. Reference in this regard can be made to the judgment of this Court of the same date in the case of Sukhbir Singh Tyagi and Ors. v. Lieutenant Governor and Ors. WP(C) 22895-927/2005 where the court held as under:

4. Various provisions of the Land Acquisition Act impose a duty upon the authorities to act within a specified time. Consequences of violation of such duty normally would be spelled out in the statute itself, even if it is not so stated. Aggrieved party cannot be said to be without remedy. The duty imposed by the statute may also be actionable by the express terms of the statute or on the principle that an action lies for any indictable wrong. There is clear distinction between the duty and the power. However, a duty may be implied from a power. The Courts may not look for or require a party to establish negligence as a fact because breach of statutory duty itself is a proof of negligence. The authorities enjoy considerable discretion under the provisions of the Act. Thus, it requires adherence to higher standards of care and ensuring that the public at large or a class of persons, subjected to their discretion are not exposed to undue delay

and financial losses as a result of inaction of the authorities. The powers vested in the public officers under the provisions of the Act includes both statutory and administrative powers taking within its ambit the corresponding duty obligations to effectively carry out the object of the Act. If the public officers or public bodies fail to perform any public duty with which they have been charged, an order of mandamus will lie to compel them to carry it out and in some circumstances even if the time to perform under the statute had not left. In accordance with this principle, writ of mandamus will issue to the Government Officials in their capacity as public officers exercising executive duties, which affect the rights of the private persons. Occasionally and now more often mandamus may also be sought to enforce the non- statutory duties. The statutory duty must be performed without any reasonable delay. Delay in action, particularly grant of relief to which a private person ECHO is on. is entitled to, would vest the affected party with further consequences while making the officer responsible for his latches. Action taken by persons holding public offices is to be in conformity with the basic rule of law and standard policies and must be free of arbitrariness. The Supreme Court in the case of Shivsagar Tiwari Vs. Union of India (UOI) and Others, even held a minister responsible personally for illegal allotments as exercise of power tantamount to misuse of power.

5. Breach of duty is an actionable wrong. Rights of the authorities and their duties are co-related. Violation of one's right is the breach of other's duty. In some cases, the department may be called upon to examine the conduct of its various officers as the department would be responsible for their action/inaction. Breach of duty may not essentially result from wrong doing, which may arise from negligence, failing to act timely or even by breach of duty under the statute, the duty may be specifically envisaged in the language of the provision or it may arise by necessary interpretation applying the concept of reasonable conduct. The expansion of rights would lead to expansion of bonds of liability. They are co-related and inter-dependent. Expansion of one would result in widening result of other. Of course, they will have to be examined with reference to the needs and situations, which are contemplated under the law. Negligence or inaction have larger consequences and implies an obligation on the authorities vested with the powers to act with greater and higher standards of care. If there is a right under the law, there must be a remedy for its violation as law commands nothing vainly- *Lex nil frustra jubet*.

6. Another facet of statutory duty is to impose negative obligations on the State not to encroach upon the rights of the individual or to frustrate what is granted under law to the citizen. Declaration of rights would be meaningless unless there is effective machinery for enforcement of the rights. Remedy is the essence of a right. A right really become effective and meaningful when its enforceability is accepted by the procedure of law. The legality or illegality of a State action, particularly when they are acting in furtherance to the statutory powers vested in them, would be subject to judicial review, not in its narrowest sense. Wherever a cause is relatable to breach of statutory or implied duty of a public officer, the

rule of law would essentially provide for a remedy even if it is not so specifically spelled out in the provisions of the Act. Arbitrariness and unreasonableness being facets of Article 14 are available as grounds not only for questioning an administrative action but in certain cases may even invalidate subordinate legislation. Timely action is the essence of government functioning and unreasonable delay questions the very correctness of such orders. Wherever the records offer no Explanation for prolonged unreasonable delay, the equity will tilt more in favor of the petitioners than uphold the action of the authorities to be correct, being done in the normal course of its business. Books Referred to :

2002(3) Supreme Court Cases 7 Dr. Subramanian Swamy Vs. Director, CBI and Others, (VI) Supreme Court Cases 1390 "The Law of torts" - 9th Edition by Ramaswamy Iyer. "Law of torts" - 12th Edition By Salmond and Heuston Halsbury's Laws of England - 4th Edition By Lord Hailsham of St. Marylebone.

7. Concept of public accountability has been applied to the decision making process in the government by the courts for a considerable time. This concept takes in its ambit imposition of costs and its recovery from the officer concerned for their negligence or acts of prolonged, unexplained delays running ECHO is on. into years. In the case of State of Andhra Pradesh v. Food Corporation of India 2004 (13) Scc 53, the Court directed as under:

We are shocked as to the manner in which the State Government is filing petitions in this Court resulting not only in wasting the time of this Court and all others concerned but in total waste of public money. The impugned orders have been challenged after more than eight years with almost no Explanation, as is evident from the paragraph reproduced above. In this view, while dismissing the applications seeking condensation of delay, we direct that enquiry be made forthwith by the State Government as to the person responsible for this state of affairs, recover from such person the costs involved in filing these petitions and submit the report to this Court within a period of four weeks.

8. Administrative or executive actions are subject matter of judicial review. Noticing the significance of scope of judicial review in this regard and bureaucracy accountability, the Supreme Court in the case of State of Bihar and others Vs. Subhash Singh, held as under:

In our democracy governed by the rule of law, the judiciary has expressly been entrusted with the power of judicial review as sentinel in *qui vive*. Basically judicial review of administrative actions as also of legislation is exercised against the actions of the State. Since the State or public authorities act in exercise of their executive or legislative power, they are amenable to the judicial review....

...The normal principle that the permanent bureaucracy is accountable to the political executive is subject to judicial review. The doctrine of full faith and credit applied to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is apposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed.

It is now settled legal position that the bureaucracy is also accountable for the acts done in accordance with the rules when judicial review is called to be exercised by the Courts. The hierarchical responsibility for the decision is their in-built discipline. But the Head of the Department/designated officer is ultimately responsible and accountable to the Court for the result of the action done or decision taken. Despite this, if there is any special circumstance absolving him of the accountability or if someone else is responsible for the action, he needs to bring them to the notice of the Court so that appropriate procedure is adopted and action taken. The controlling officer holds each of them responsible at the pain of disciplinary action. The object thereby is to ensure compliance of the rule of law....

...A member of the permanent executive, is enjoined to comply with the orders of the Court passed in exercise of the judicial review. When a Court issues certain directions to the executive authorities it is expected that the authorities would discharge their duties expeditiously as enjoined under the rules and as per the directions. If they do not discharge the duty, necessarily, they are required to give Explanation to the Court as to the circumstances in which they could not comply with the direction issued by the Court or if there was any unavoidable delay, they should seek further time for compliance. When, neither of the steps have been taken by the officer in that regard the Court can impose the costs personally against him for non-compliance of the order....

...It is known fact that in transaction of the Government business, none would own personal responsibility and decisions are leisurely taken at various levels. It is not uncommon that delay would be deliberately caused in filing appeal or ECHO is on. revision by Government to confer advantage to the opposite litigant; more so when stakes involved are high or persons are well connected/influential or due to obvious considerations. The Courts, Therefore, do not adopt strict standard of proof of every day's delay. The imposition of costs on officers for filing appeals causes public injustice and gives the manipulators an opportunity to compound the camouflage. Secondly, the imposition of costs personally against the officers would desist to pursue genuine cases of public benefit or importance or of far-reaching effect on public administration or exchequer deflecting course of justice.

9. The principle of care, maintenance of higher caution, expeditious decision-making process in exercise of statutory powers, public accountability and transparency are also applicable to the various proceedings under the law of acquisition. Various provisions of the Act could be referred to demonstrate that the exercise of powers emanating from statutory provisions is coupled with public obligation, to protect the rights of the land owners.

10. The Land Acquisition Collector is expected to conduct a survey prior to the issuance of notification u/s 4 of the Act for acquisition of the land. Sub-section (2) of Section 4 empowers the Officer to enter upon any property for the purposes of survey and other acts stated in that provision. The Legislature has

even taken precautions to make a statutory provision for payment of compensation for any damage which may be done during completion of such duty imposed upon the Officer, under the provisions of Section 4 of the Act. In regard to deficiency of the amount so offered or tendered, the dispute could be referred to the Collector or the Chief Revenue Officer. After having issued declaration u/s 6 of the Act, the next effective step to be taken by the authorities is to issue notices to the interested persons u/s 9 of the Act. It is intended to convey to the public, the intention of the Government to take possession and calling upon them to make claims in regard to the lands acquired. The Collector would make an enquiry and then pronounce his award as contemplated u/s 11 of the Act. The Collector is to take approval of the government before the award could be made enforceable. Section 11(a) was introduced by the Amending Act 68 of 1984 to require the authorities to make an award within 2 years from the date of publication of declaration. The consequences of non-compliance were to the extent that entire acquisition proceedings shall lapse. The only Explanation in providing the period of 2 years was the exclusion of the period during which orders of stay passed by the court were in operation. After pronouncing of the award u/s 11 of the Act, unless the case was covered under the provisions of Section 17 of the Act, the Collector was to take possession of the lands u/s 16, and such lands would vest in the government, free from all encumbrances. After the award is made the Collector is required to give immediate notice of his award to the persons interested who were not personally present before him so that the compensation could be awarded to the rightful claimants. Then the award of the Collector in regard to apportionment, area value of the land and the interested persons attains finality in that field. The claimants have a right to claim compensation without prejudice to their rights and contentions by making reference petitions u/s 18 of the Act. From the stage of making of a reference, the matters are transferred from the administrative and executive authorities functioning under the provisions of the Act, for adjudication process to the courts.

11. The Land Acquisition Collector is expected to caution the authorities (beneficiaries for whose benefit the lands are acquired) that they should make the funds available for their disbursement to the rightful claimants. This now is the clear directive stated in Section 50 of the Act.

12. Under the provisions of the Act, a duty is cast upon the authorities to make payment of compensation determined to the rightful claimants expeditiously. The provisions of Section 9 indicate a preparatory step by the ECHO is on. State authorities invoking the plea that the Government intends to acquire the lands as well as calling upon the claimants to claim compensation. The Collector would determine the fair market value of the acquired land and direct its payment/apportionment amongst the rightful claimants i.e. interested persons. The right of the persons to claim money is, thus, instantly available to them upon making of the award except in cases where the compensation of the lands of the owners is taken u/s 17(3) of the Act wherein they become entitled to 80% of the estimated compensation before taking possession of the land. The provisions of

the Act even provide a safeguard to the citizen and obligation to the State that where estimated compensation cannot be paid because of contingencies stated in Section 31(2), they are required to deposit the same in terms of the Section 31. u/s 19 while the Collector is making the reference he is required to provide information to the Court in writing, including the amounts which have been paid or deposited and all other amount for damages or compensation, which were tendered in accordance with the provisions of the Act. Section 23(1-A) requires authorities to pay, in addition to the market value as called in terms of Section 23, an amount @12% per annum on the market value for the period commencing from the date of notification issued u/s 4(1) of the Act to the date of the award of the Collector or the date of taking possession of the land. In addition to this, 30% of the market value of the land is payable on account of compulsory nature of acquisition. Section 34 further postulates that the amount of compensation so determined and if not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereupon @9% per annum from the date of taking of possession until it shall have been so paid or deposited. Further, for the period in excess of one year from the date of taking over possession, interest is payable @15% per annum for the compensation amount determined or part thereof which has not been paid or deposited before the date of such expiry.

13. The scheme of the Land Acquisition Act has an inbuilt check and balances and the legislative intent of providing just and fair market value to the owners of the lands and expeditiously is more than evident under various provisions of the Act. A dual purpose is sought to be achieved by providing even the periods within which the authorities are expected to discharge their duties and ensure disbursement of compensation to the claimants. In default thereof, certain further liabilities accrue against the department. Surely, the Act does not contemplate and rightly so that a claimant entitled to receive compensation is expected or it is even desirable for him to run in various departments of the Govt. or the authorities to receive his compensation, which may not be paid to him for years together. Certain benefits are available to the claimants for delay in acquisition proceedings commencing with u/s 4 and making of the award u/s 11, as the authorities are required to pay interest @12% per annum to the claimants for this period. The claimants are also protected to some extent against compulsive acquisition as well as from the date the possession is taken till entire payment of the awarded compensation is made to the claimants. But the Statute has a lacunae inasmuch as it gives no benefit much less an additional benefit to the claimants, whose lands are required for the entire period commencing from the date of making of the award till taking over of possession by the Department. No liability of any kind comes on the department despite any length of this period i.e. where the judicial pronouncements would abridge the gap and require the authorities to ponder over this aspect of the matter and not leave the claimants unbenefited or remedy less for this period. There are number of cases before the Court where the awards are made and for years compensation is not paid. In

some of them, may be the department has some reasonable excuses but in most of them at least the records produced before the Court in those cases do not reflect so. Still in another set of cases, the land is acquired, award is made and possession ECHO is on. thereof is not taken for years together and the period varies from 7 years to 30 years. Still in another set of cases the possession is taken and for years compensation is not paid and if it is paid, it is not paid in its entirety. There are large number of writs, which are coming up before the Court every day falling in either of these categories. This aspect has been discussed by the Court in some detail in another case being WP (C) No. 13308-12/2005, which is being disposed of by the judgment of the same date.

14. Inaction and action taken after inordinate delay by various functionaries working under the scheme of the Act results in seriously jeopardizing interest of claimants as well as the public money. In some cases, the claimants are not paid their dues entitling them for higher rate of interest and interest for unnecessarily prolonged period. This may be their gain but it certainly is to the disadvantage of the public exchequer and an avoidable financial loss. On the other hand, the claimants would suffer accrual of any benefits, if their properties are acquired, award is made and the possession is not taken for years together. This further leads to dual dies functional results. The very purpose for which the land is acquired may stand frustrated because of long intervening period as a result of unauthorised construction or colonies coming up on the acquired land, and secondly it occasions in generating litigation which again is avoidable. Thus, timely action for completing acquisition proceedings and expeditious determination and disbursement of compensation to the claimants should be the Hallmark of all the functionaries doing public duties under the provision of the Land Acquisition Act.

15. In the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , the Supreme Court held as under :

It is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Therefore, once the State or an instrumentality of the State is a party, it has an obligation in law to act fairly, justly and reasonably to a contract which is the requirement of Article 14 of the Constitution.

Unless the action challenged in the writ petition pertains to the discharge of a public function or public duty by an authority, the courts will not entertain a writ petition which does not involve the performance of the said public function or public duty.

16. State actions causing loss are actionable under public law and this is as a result of innovation to a new tool with the court, which are the protectors of civil

liberty of the citizens and would ensure protection against devastating results of State Action. The principles of public accountability and transparency in State action even in the cases of appointment, which essentially must not lack bonafide was enforced by the Supreme Court in the case of Center for Public Interest Litigation and Another Vs. Union of India (UOI) and Another, .

17. Adverting to the facts of the present case in the back drop of principle of public or statutory duty and accountability of public officers, we are constrained to say that authorities have not been able to place any justification on record for non payment of the awarded compensation to the petitioners. Non-disclosure of any sufficient reason obviously would hold them responsible for the consequences flowing from the default in discharge of their public and statutory obligations. The Notification u/s 4 was issued on 27th January, 2003 while declaration u/s 6 was issued on 23rd January, 2004 i.e. after a lapse of nearly one year. The award was made by the Collector ECHO is on. on 22nd August, 2005 being Award No. 15/2005-06/DC(N-W) after a lapse of nearly 1 year and 8 months. The possession of the land was taken on or before 14th September, 2005 but the compensation of the petitioners have not been paid even till filing of the present writ petition. The petitioners had filed their objections u/s 18 of the Land Acquisition Act on 14th September, 2005 itself. In other words, the petitioners had filed application for payment of their compensation and their application for further enhancement in accordance with Section 18 of the Act but despite filing of such applications, copies of which have been filed on record, they have not been paid compensation till date. The respondents have not even deposited the said compensation before the Reference Court. There is no justification whatsoever on record as to why the compensation has not been paid for the last more than 8 months. Two important aspects of the matter, which create avoidable liabilities on the public exchequer are, who would be responsible for not acting within a reasonable time and furthermore, who would pay the interest in terms of Section 34 and even u/s 23(1-A). Should this liability be fastened upon the common Income Tax payer, who contributes towards the public exchequer or should it be the liability of the officers/officials, who are in charge of the acquisition proceedings and do not deal with the files for months together. Timely disbursement of compensation is the obligation of the authorities and no reason whatsoever either by filing a counter affidavit or by production of record has been shown as to why even after taking possession in September, 2005, the compensation has not been disbursed for 8 months. It is a matter, which should invite attention of all concerned.

The disputes mainly are interdependent or are resulting from inaction of the authorities. Reference in this regard can be made to Civil Writ Petition Nos. 933/88, 1161/88, 6372/06, 4739-43/06, 22895/05, 5663/05, 11206/05, 6609-48/06, 4070-73/06 and 22881/05. The petitioners had submitted the applications complete in all respects with affidavits etc. on 14.6.05 itself but no records have been produced before us to show that the petitioners were called upon to make up in deficiency if at all noticed by the respondents in fact that is

not even so stated in the affidavits filed in this Court by the respondents.

12. With greatest respect, we may notice that the judgment of a Division Bench of this Court in the case of Sh. Rattan Singh (*supra*) has made certain observations which strictly cannot be construed as decision on the matter in issue before the court. Even on facts, the case was different inasmuch as there the matter had already been adjudicated upon and judgment pronounced by the High Court on 14.9.1984 granting solarium @ 15% and interest @ 6% per annum. Then, an application had been filed claiming grant of solarium @ 30% in view of the amended provisions which came into force by the Amending Act No. 68 of 1984. This application was dismissed by the court. As such, the main controversy before the Bench was not the one which arises for consideration before us in the present case. Secondly, the judgment of the Supreme Court on the point in issue in the present case which we have referred above was not brought to the notice of their Lordships and the observations of the Bench that Section 28 applies in a case of possession taken after the Collector has made the award and Section 34 applies where the possession of the land under acquisition has been taken before an award has been made, are the observations of general nature and do not become a binding precedent on the true application of principles of ratio decidendi. Even otherwise these observations are, in no way, in contradiction to what we have stated.

13. The bare reading of the provisions of Sections 28 and 34 of the Act shows that the pre-requisite for application of the former is determination of compensation by the Collector which if found to be inadequate by the court, then the court would direct the Collector to pay interest on such excess amount at the prescribed rate. While in the latter, the only ingredient is non-payment or non-deposit of the compensation on or before taking possession of the land which ECHO is on. would accrue the liability of payment of interest at the prescribed rates. In a case where the Government may take possession of the acquired lands by invoking the provisions of Section 17 of the Act even before making of an award and does not tender or pay the requisite compensation, the liability to pay interest at the rate of 9% or 15%, as the case may be, from the date of possession would accrue in favor of the claimants and against the Government. The provisions of Section 34 of the Act, thus, have a wider application than the provisions of Section 28 of the Act which, in any case, are complimentary to each other. The purpose of both the Sections is to provide benefit to the claimants once the possession of the land has been taken whether an award has been made or not. But where the possession has been taken in accordance with the provisions of the Act, the claim for interest u/s 34 is ex-lege in contra-distinction to ex contractu or ex-more. The liability to pay interest arises wherever the possession is taken by the authorities and compensation payable in accordance with the provisions of the Act has not been paid or deposited. The legislative intent of enforcing this liability against the authorities where even an award has been made, is clear from the fact that on the enhanced amount given by the court, the authorities would still be liable to pay interest at the prescribed rate if

the possession of the land has been taken. Thus, pronouncement of award as contemplated u/s 11 forms no exception to the liability created by the Statute.

14. The liability to pay interest, is on the amount of such compensation i.e. the compensation determined, again within the limitations of the Act. Compensation is an aggregate amount of compensation including solarium. The authorities have to pay the interest and incur the liability on both these elements u/s 23(2), 26, 28 or 34 of the Act, as the case may be. This aspect has been finally settled by a Constitutional Bench of the Supreme Court in the case of *Sunder Vs. Union of India*, .

15. In the case of *Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others*, , while examining the scope and provisions of Section 28 of the Act, the court observed that the interest under the unamended provisions of the Act was payable @ 6% per annum from the date the possession was taken till realisation.

16. The provisions of Section 34 of the Act clearly contemplate responsibility of the State to pay the prescribed rate of interest directly relatable to the time taken i.e. from the time the possession of the acquired lands is taken till the payment. The authorities could avoid this liability by paying the compensation to the claimants or even depositing the same in court. There can be no excuse on the part of the respondents in not depositing the amount in the court of competent jurisdiction. The authorities can hardly be heard to argue that the claimants did not come forward to take their payments of compensation and the authorities also did not deposit the same as per the scheme of the Act. Retention of money by the Land and Building Department or the beneficiary for whose benefit the land was acquired would be no compliance to the provisions of the Act. The liability is absolute in terms and does not admit any ambiguity or created exceptions by the respondents because of their own default. The possession may be taken even prior to making of the award but in accordance with the provisions of the Act and in that event the claimants would be entitled to interest on the amount of compensation which is not paid or deposited on or before taking the possession. The interest has to be calculated from the date of taking of possession of the land by the Collector until the amount is paid or deposited. This has been the consistent view taken by various pronouncements of the High Court as well as the Supreme Court of India. Reference can be made to the judgment in the case of *Collector Vs. Mahabir Prasad Santuka and Others*, and *The Revenue Divisional Officer, Guntur Vs. Vasireddy Rama Bhanu Bhupal and Others*, . Even in the case of *Swift v. Board of Trade* (1925) A.C. 520 , Lord Cave L.C. speaking for ECHO is on. himself stated it is now well-established that on a contract for sale and purchase of land it is the practice to require the purchaser to pay interest on his purchase money from the date they took the possession. This general principle has been adopted by the Legislature and incorporated in the language of Section 34 of the Act. Besides this being a statutory liability the claim of the claimants would even be acceptable on the

principles of equity and good conscience. The might of the State must be exercised in conformity with the rule of law and accepted norms of administrative functioning which would clearly reflect the fairness in State action. As already noticed, the DDA had taken up the plea that interest u/s 34 of the Act is not payable, while according to the other respondents the entitlement of the claimants was not seriously disputed. This difference of opinion, even if existed bonafidely, could be no excuse for delaying the payment of compensation to the claimants. The same could have been resolved by meetings and if it was not so possible, by reference to the concerned Ministry and in any event to the special committee constituted by the Government in furtherance to the directions of the Supreme Court in the case of Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another, and Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, In both these judgments it was made obligatory upon the various departments of the Union of India to ensure that unnecessary litigation inter se Departments is not generated and the Committee constituted should look into the matter and resolve the disputes, if any. This in any case cannot be a genuine reason for delaying the payments for a period of 5 years as the possession was taken in the year 1998 and the partial payments were made in August 2005. It is not expected of the authorities or the various departments of the government to act with such callousness. The decision-making process in the government machinery should not only be fair, bonafide and transparent but should also be expedient, particularly when any delay in implementation of such decisions (i.e. payment of compensation to the claimants) would cause a very heavy liability, which if taken on its cumulative effect may run into crores and crores of rupees. This liability can easily be avoided by payment of the awarded compensation to the claimants and/or by depositing the same in court, without prejudice to the rights and contentions of the parties including that of the department itself. We are unable to find any reason, much less a plausible Explanation for this heavy liability created by non-payment of the compensation to the claimants for a period of more than 5 years and in our opinion the public exchequer is unnecessarily being burdened with this huge liability of payment of interest u/s 34 of the Act. This liability could easily be avoided and the public funds diverted for more appropriate use in the larger public interest. Admittedly, we are the largest democracy in the world with dense population and larger part of our population is below the poverty line. In considerable parts of our country including the capital of the country, people do not get water to drink, food to eat and shelter over their heads. The above narrated facts clearly demonstrate that the state of affairs prevalent in the State administration to say the least exhibit travesty of fairness in State actions. It is wastage of public funds resulting from inaction and callous attitude of the officers/officials of the Government. We do express that this judgment would evoke authorities concerned to examine various exhibits as indicated in the judgment and direct its various wings to work in the right direction and public interest.

17. Reverting back to the facts of the present case, we have already mentioned that there is no justification as to why the payment of the compensation payable to the claimants in terms of the Act was not made to them for more than 5 years i.e. from 1998 to 2003. Even when the payments were made in the year 2003, still complete payment was not released to the claimants, compelling them to file the present petition. It may also be noticed at the ECHO is on. cost of repetition that despite a specific direction of a Division Bench of this Court in the case of Hari Chand (supra) dated 20th August, 2004, the respondents have failed to act. Even in those proceedings, no such issue was raised and it is now after a lapse of more than two years from the date of that order that this inter-departmental controversy is sought to be explained as a reasonable impediment in the way of the authorities concerned to disburse the awarded compensation to the claimants. We have no hesitation in rejecting the same. In fact, we would in no uncertain terms deprecate such functioning of the Govt. departments which vest the public at large with civil consequences and creates avoidable liabilities on the public exchequer.

18. In view of our above discussion, we allow this writ petition and direct the respondents to pay interest to the petitioners in terms of the provisions of Section 34 of the Act within a period of one month from the date of pronouncement of this order.