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**(2007) 01 AHC CK 0057**  
**In the Allahabad High Court**

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| Shyam Praksh Agarwal and Others etc. | APPELLANT  |
| Vs                                   |            |
| State of U.P. and Others etc.        | RESPONDENT |

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**Date of Decision :** 16-01-2007

**Acts Referred:**

Land Acquisition Act, 1894 — Section 11, 16, 18, 23, 26

**Citation :** AIR 2007 All 107

**Hon'ble Judges :** Sabhajeet Yadav, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Sabhajeet Yadav, J.—These two connected appeals have been filed u/s 54 of Land Acquisition Act against the judgment and decree dated 22-5-2000 and 2-6-2000 respectively passed by Presiding Officer U.P. Avas Evam Vikas Parishad Tribunal/Additional District Judge, Lucknow in Misc. Case No. 66 of 1999, Smt. Madhuri Sharan represented by Legal Representatives v. State of U.P. and Ors. in a reference u/s 18 of Land Acquisition Act.

2. It appears that the State of U.P. has acquired certain land for Tal Katora street Scheme for housing development through Avas Evam Vikas Parishad and for that purpose notifications under Sections 357 and 363 of Uttar Pradesh Nagar Mahapalika Adhiniyam 1959 were made on 20-10-1962 and 20-2-67 respectively. The possession over the land was taken on 13-12-1977 and Special Land Acquisition Officer has made award for the compensation to the land owners on 31-3-1986 wherein the market value of land was determined @ .50 paise per square feet. In a reference u/s 18 of the Land Acquisition Act 1894 (hereinafter referred to as Act) the tribunal has enhanced the compensation and market value of the land from 50 paise to Rs. 1.25 per square feet and also awarded 30% solatium on the market value of land along with 12% additional compensation of the market value of land from the date of notification u/s 357 of Nagar Mahapalika Act i.e. 20-10-1992 to the date of taking over possession of land i.e. 13/31- 12-1977 but denied the interest on solatium and additional

compensation so awarded hence one of the aforesaid appeals has been filed by claimant being Appeal No. 11 of 2000 for enhancement of compensation and payment of interest on solatium and additional compensation and U.P. Avas Evam Vikas Parishad has filed Appeal No. 26 of 2003 against the same judgment and decree for reduction of compensation awarded to the claimant since both the appeals have been filed against the same judgment and decree passed by Tribunal, therefore both appeals shall be decided together by this common and same judgment.

3. I have heard Sri M.A. Khan, learned senior Counsel assisted by Sri Manish Kumar for the claimants appellants and Sri R.K. Mehrotra for the respondents in Appeal No. 11 of 2000 and in Appeal No. 26 of 2003 Sri R.K. Mehrotra for the appellant U.P. Avas Evam Vikas Parishad and Sri M.A. Khan, learned Senior Counsel assisted by Sri Manish Kumar for the respondents and also perused the records.

4. The thrust of the submission of learned senior Counsel Sri M.A. Khan in support of claimants appeal is that while deciding the reference the Court below has committed serious illegality in excluding the amount of solatium and additional compensation for the purpose of grant of interest on the award, whereas besides the market value determined u/s 23(1) at the date of publication of notification u/s 4 Sub-section (1) of Act, the Court is required to take into consideration various factors referred under aforesaid sub-section and in addition to market value of the land so determined the Court is further required to award compensation on the amount calculated @ 12% per annum on such market value for the period commencing on and from the date of publication of notification u/s 4 Sub-section (1) in respect of such land to the date of award of the Collector or to the date of taking over possession of the land whichever is earlier and further under Sub-section (2) of Section 23 in addition to market value of the land the Court shall in every case award a sum of 30% of such market value in consideration of compulsory nature of acquisition which is commonly known as solatium. Thus the award comprises compensation of market value as determined u/s 23(1) and additional compensation u/s 23(1A) and solatium u/s 23(2) of the Act therefore the interest u/s 34 and Section 28 of the Act is payable not only on the amount of compensation of market value of the land comprising award but also on additional compensation as well as solatium too. In support of his contention he has placed reliance upon a Constitution Bench decision rendered by Hon"ble Apex Court in *Sunder Vs. Union of India*, Learned Counsel for the claimants-appellants did not seriously dispute the rate on which market value has been determined by the Court. Contrary to it, Sri R.K. Mehrotra, learned Counsel appearing for U.P. Avas Evam Vikas Parishad did not seriously dispute the proposition of law laid down by the Apex Court in aforesaid decision but has contended that the market value determined by the Court below is excessive, that is why U.P. Avas Evam Vikas Parishad has filed appeal against the judgment and decree passed by Court below.

5. Thus, having regard to the rival submission of the learned Counsel for the parties a short question arises for consideration in this case is as to whether the State is liable to pay interest on the amount of solatium and additional compensation besides the market value of land or the interest is admissible/ payable only on the market value of the land forming part of compensation.

6. The aforesaid question has been dealt with by the Constitution Bench of Hon"ble Apex Court in quite detail in the case of *Sunder Vs. Union of India*, The pertinent observations made by Apex Court in paras 12 to 16, 19, 23 and 24 of the decision are as under:

12. Section 11 of the Act enjoins on the Collector the statutory duty to conduct an enquiry into the value of the land on the date of publication of the notification u/s 4(1) of the Act and to make an award for the "compensation" which in his opinion should be allowed for the land. Section 31 of the Act casts an obligation on the Collector that after making the award u/s 11, he shall tender payment of "the compensation awarded by him" to the persons entitled to it according to the award. This means that law does not relish any delay in making the payment once the award is made. Thus, making the award shall normally follow payment of compensation as expeditiously as possible.

13. Section 16 empowers the Collector to take possession of the land after making the award u/s 11. When possession is so taken the land shall vest absolutely in the Government free from all encumbrances. This is the statutory operation which is clearly envisaged in Section 16 itself. But in the absence of a legal insistence that the amount awarded should necessarily be paid before taking possession of the land, it could happen, perhaps quite often, that there would be some interregnum between the date of taking possession and making payment of the awarded sum.

14. Question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession of the land. It is inequitable that the person who is deprived of the possession of the land on account of acquisition proceedings is not given the amount which law demands to be paid to him; any delay thereafter would only be to his detriment. There must be a provision to buffet such inquiry. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made in Section 34 of the Act. That section is extracted below:

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

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest

at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

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

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

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.

16. Thus interest has to accrue as per Section 34 and Section 28 of the Act on the compensation awarded, whether it is as per the award initially passed by the Collector or by the Court later. What is meant by "the compensation" awarded? Both sides cited different definitions for the word "compensation" as contained in different lexicographies. In words and phrases (Permanent Edn.) different connotations of the word "compensation" have been delineated. One of them relates to the law of eminent domain, where compensation means recompense in value, a quid pro quo, and must be in money. Another is relating to the property taken for public use. Then it is the fair market value at the time of taking it. From the constitutional perspective the word "compensation" for the property taken was understood as the just equivalent of the value of the property. But when compensation is regarded as a statutory obligation the aforecited definitions need not detract the Court in fathoming the real import of it. The exercise can be done with the aid of the provisions in the statutes. So what the Court, in the context of land acquisition, has to decide is how the Act has designed the compensation vis-a-vis the liability to pay interest. In this context we have to read Section 23 of the Act. It is extracted below:

23. Matters to be considered in determining compensation.

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration--

first, the market value of the land at the date of the publication of the notification u/s 4 Sub-section (1);

secondly, the damage sustained by the person Interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interest is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land.

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

(2) In addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition.

19. Section 26 does not say that the award would contain only amounts granted under Sub-section (1) of Section 23. The special mention of that sub-section in Section 26 is only for the purpose of directing that the grounds or reasons for awarding the amount under each of the clauses in the sub-section shall be specified in the award. It is unnecessary to mention any reason or ground in any award as to why the sums indicated in Sub-section (1-A) and Sub-section (2) of Section 23 of the Act were granted, because they are only the sequels or concomitant adjuncts of the determination of the total amount indicated in Sub-section (1). No judicial exercise is required to quantify the sums mentioned in Sub-section (1-A) or Sub-section (2) because the section itself specifies the percentage to be worked out for the purpose of adding to the total amount arrived at under Sub-section (1). Otherwise Section 26 is not intended to show that the compensation awarded would be bereft of the additional amount and the solatium envisaged under Sub-section (1-A) or Sub-section (2). This can be clearly discerned from the commencing words of Section 26 itself. They are "Every award under this Part shall be in writing signed by the Judge." What is

referred to therein is Part III of the Act which comprises of a fasciculus of twelve provisions starting with Section 18 and ending with Section 28A of the Act. There can be no doubt that all the three heads specified in the three sub-sections in Section 23 are the sums to be "awarded by the Court". Hence the words "every award under this Part" cannot be treated as the award after delinking the amounts awarded under Sub-section (1-A) or Sub-section (2) of Section 23.

23. In deciding the question as to what amount would bear interest u/s 34 of the Act, a peep into Section 31(1) of the Act would be advantageous. That Sub-section says:

31. (1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next Sub-section.

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

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

7. Thus in view of the aforesaid settled legal position there can be no scope for doubt to hold that all three heads specified in three sub-sections of Section 23 viz. (1) market value of the land at the date of the publication of notification u/s 4(1) along with other components if any u/s 23(1)(2) 12% additional compensation on market value as computed u/s 23(1-A) and (3) 30% on such

market value in consideration of compulsory nature of acquisition which is commonly known as solatium u/s 23(2) of the Act, are sums to be awarded by the Court, hence every award under Part III of the Act can not be treated as award after delinking or excluding the amounts awarded under Sub-section 23(1-A) and/or Sub-section 23(2) of the Act. The compensation awarded would include not only the total sum arrived at as per Sub-section (1) of Section 23 of the Act but remaining sub-sections thereof as well. Therefore, the expression "awarded amount" u/s 34 would mean the amount of compensation worked out in accordance with the provisions contained in Section 23 including all sub-sections thereof without splitting up the compensation into different components for the purpose of payment of interest under the aforesaid Section 34 of the Act. Accordingly once it is held that the additional compensation and solatium provided under Sub-section (1-A) and Sub-section (2) of Section 23 of the Act forms an integral and statutory part of the compensation awarded to a land owner then interest u/s 28 and 34 of the Act is payable on the whole amount of the compensation so awarded and not merely on the market value of the land. In other words the interest is payable on the market value of the land and additional compensation as computed thereon, inasmuch as solatium in the manner provided u/s 34 and Section 28 of the Act.

8. Now coming to the facts of the case again, it is not in dispute that the market value of land acquired has been determined by the Court @ Rs. 1.25 per square ft. and the Court below has also awarded 30% solatium on the market value of the land along with 12% additional compensation on the market value of land from the date of notification u/s 357 of Nagar Mahapalika Act i.e. 20-10-1962 to the date of taking over possession of the land i.e. till 31-12-1977 but denied the interest on solatium and additional compensation so awarded. Thus, in view of law laid down herein above, I am of considered opinion that denial of interest and payment thereof indicated in the manner u/s 34 and Section 28 of the Act on all the components of the award including solatium and additional compensation is wholly erroneous and contrary to the law laid down by Hon''ble Apex Court. The Court below ought to have directed the payment of interest according to the provisions of aforesaid sections on amount of additional compensation and solatium as well, therefore, the aforesaid part of the impugned judgment and decree of the Court below cannot be sustained, accordingly the same is set aside. As a result of which, the appellants-land owners of Appeal No. 11 of 2000 are also entitled for payment of interest on additional compensation and solatium @ 9% per annum from the date on which the possession of the land was taken over i.e. w.e.f. 13/31-12-1977 till the date of expiry of period of one year and thereafter the interest @ 15% per annum from the date of expiry of said period of one year to the date of such payment is made or to the date of such amount of compensation was deposited whichever is earlier.

9. Learned Counsel appearing for U.P. Avas Evam Vikas Parishad could not point out any reasonable ground so as to enable the Court to interfere in the determination of market value of the land in question by the Tribunal/Court

below and to reduce the same from Rs. 1.25 per sq. ft. to any such amount suggested by the learned Counsel appearing for appellant in Appeal No. 26 of 2003, therefore, there appears no merits in the appeal filed on behalf of U.P. Avas Evam Vikas Parishad, hence the same is liable to be dismissed.

10. In view of observations and directions made herein before, the First Appeal No. 11 of 2000 Shyam Prakash Agarwal and Ors. v. State of U.P. and Ors. is allowed to the extent indicated herein before and the impugned Judgment and decree passed by tribunal stands modified to that extent, whereas the first appeal No. 26 of 2003 U.P. Avas Evam Vikas Parishad v. Smt. Kiran Devi and Ors. fails and is dismissed.

11. There shall be no order as to costs.