

(2013) 02 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No. 753 of 2008 (LA-RES)

Sri M.V. Subba Rao and Sri M.M.G. Prasad

APPELLANT

Vs

Land Acquisition Officer/Lingasugur and Executive Engineer
No. 2

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 11(1), 18(1), 23(1), 23(1-A), 4

Citation : (2014) 2 KarLJ 684 : (2013) 4 KCCR 3402

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Y. Varadaraj and A.M. Nagaral, for the Appellant; Shivakumar Tengli, AGA, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This writ petition is filed by the Decree Holder challenging the order passed by the Executing Court upholding the objection of the Judgment Debtor that the Decree Holder is not entitled to payment of interest prior to the issue of notification u/s 4(1) of the Land Acquisition Act, 1894, which is hereinafter referred to as "the Act". The petitioners were the owners of land bearing Sy. No. 12(A) and 12(AA) measuring 2 acres 12 guntas of Singapore Village in Sindhanoor Taluk, Raichur District. The said land was notified for acquisition for the construction of Ayacut Road from RG Road to Kakkargol Village. A preliminary notification came to be issued on 26.04.1993. Award came to be passed on 15.02.1995 by the Land Acquisition Officer, fixing the market value of the acquired land at Rs. 15,000-00 per acre. The petitioners protested and sought for reference u/s 18(1) of the Act. The matter was referred to the Civil Court. It was numbered as LAC 60/03 on the file of the Additional Civil Judge, Sr. Dvn, Raichur. The reference was allowed. After enquiry, the market value was enhanced to Rs. 73,000-00 per acre. The Reference Court also granted all statutory benefits and also held that the claimants are entitled to interest at

9% for the period of one year from the date of taking possession, i.e., 06.11.1960 and thereafter 15% till the date of payment as per Section 28 of the Land Acquisition Act. Thereafter the petitioners filed Execution Petition in E.P. No. 16/2005 for execution of the award dated 06.09.2004 in LAC No. 60/2003. It was renumbered as E.P. No. 409/06 before the Civil Judge, Sr. Division, Lingsugur. It is also on record that Government decided not to file any appeal against LAC 60/2003. Accordingly the Government withdrew the sanction for filing the appeal against the order, as per the Government order dated 01.03.2007, which is produced at Annexure-D. The Execution Petition came to be dismissed for default. One more Execution Petition came to be filed in E.P. No. 9/2007. Along with the Execution Petition, Decree Holder have filed a calculation memo claiming a sum of Rs. 68,61,092-00. In the Execution case, a warrant came to be issued. Thereafter, a sum of 46,63,205-00 came to be deposited, after deducting income tax at source in a sum of Rs. 5,88,152-00, i.e., totally a sum of Rs. 52,51,357-00. They undertook to pay the balance amount of Rs. 14,93,934-00 within a short period. Subsequently, the petitioners filed a fresh memo of calculation reflecting the balance amount payable by the respondents as Rs. 17,01,097-00 as on 18.08.2007. At that stage, the respondents filed objection in the Execution Petition contending that in the light of the latest judgment of the Hon'ble Supreme Court of India, the petitioners are not entitled to interest for the period anterior to notification u/s 4(1) of the Act, on the ground that possession of land was taken earlier to the notification. The matter was heard. It was contended on behalf of the Decree Holder that decree had attained finality and the Executing Court cannot go behind the decree and therefore the objection filed by the Judgment Debtor is untenable and that it requires to be rejected. However, the Executing Court considering the rival contentions, took note of the judgment of the Apex Court in R.L. Jain's case, and came to the conclusion that the Decree Holder is not entitled to interest from the date of taking possession, i.e., 06.11.1960 up to 26.04.1993, the date of Section 4(1) notification. It closed the Execution Petition on the ground that the decree is fully satisfied, reserving liberty to the Judgment Debtor to take steps to recover the excess amount paid. Aggrieved by the said order of the Executing Court, the present writ petition is filed.

2. The learned Counsel appearing for the petitioners assailing the impugned order contends that, it is settled law that once a decree has attained finality, the Execution Court cannot go behind the decree. The decree which is passed has become final. Even if it is illegal and erroneous, the same is to be corrected by preferring an appeal. The Executing Court has no jurisdiction to correct such errors. In fact, the judgment and award passed by the Reference Court was anterior to the judgment of the Apex Court in R.L. Jain's case. Therefore the judgment and decree passed in this case is correct and legal. Merely because a subsequent judgment renders the said judgment illegal, that is not a ground to refuse to execute the decree. In support of his contention, he relied on several judgments of the Apex Court.

3. Per contra, the learned Government Advocate submitted that it is not a case of irregularity or illegality in passing the decree. It is a case of want of jurisdiction in the Court to pass a decree. If under the statute, the Reference Court had no jurisdiction to grant interest prior to the date of Section 4(1) notification, the Court had no jurisdiction to grant interest. That portion of the decree is one without jurisdiction. Objection regarding want of jurisdiction can be taken at the stage of Execution proceedings also. Therefore, it is not a case where the Executing Court is going behind the decree. It is a case where the Executing Court has declined to enforce the decree on the ground that it is a decree passed by the Court without jurisdiction and therefore unenforceable. Therefore he submits that the Executing Court committed no illegality in passing the impugned order calling for interference.

4. In the light of the aforesaid facts and rival contentions, the point that arises for consideration in this writ petition is as under:

Whether the order granting interest from the date of taking possession till the date of Section 4(1) notification is one without jurisdiction or it is a mere illegality?.

5. Before we advert to several judgments relied upon, in order to determine whether the decree is one without jurisdiction or not, what is to be seen is the statutory provisions and the power vested in the Reference Court and the interpretation placed by the Apex Court on those statutory provisions.

6. The payment of interest under the Land Acquisition Act is dealt with under two provisions. First provision is Section 28. It reads as under:

28. Collector may be directed to pay interest on excess compensation.-

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

2 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 Minimal, 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.

Second provision is Section 34. It reads thus:

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 off 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 or 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.

7. In Section 28, the Collector shall pay interest on excess compensation determined by the Court 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. Again in the proviso, if the aforesaid amount is not paid within 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.

8. In Section 34, when the amount of 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. Again the proviso provides for payment of interest at fifteen per centum per annum, if the compensation is not paid within a period of one year from the date of on which possession is taken.

9. The common thread which runs through in these two provisions is, interest is payable at the rates mentioned in those provisions for the period commencing on and from the date of the publication of the notification u/s 4 sub-section (1) of the Act, in respect of such lands to the date of the award of the Collector or from the date of or from the time of taking possession of the land. In so far as payment of interest from the date of publication of notification u/s 4(1) of the Act is concerned, it poses no problem because the date is definite as published in the official gazette. The problem arises when it has to be calculated from the date of or from the time of taking possession of the land. How and when possession is to be taken is stipulated in the Act. If possession is not taken in accordance with the provisions of the Act and possession is taken de hors the Act, the problem arises. This aspect has been dealt with by the Apex Court in several of its judgments.

10. The Judgment of the Apex Court in the case of Union of India (UOI) Vs. Budh Singh and Others, where after analysis of the provisions of the Act, the Apex Court has held as under:

The parameter for initiation of the proceedings is the publication of the notification u/s 4(1) of the Act in the State Gazette or in an appropriate case in District Gazette as per the local amendments. But the condition precedent is publication of the notification u/s 4(1) in the appropriate gazette. That would give legitimacy to the State to take possession of the land in accordance with the

provisions of the Act. Any possession otherwise would not be considered to be possession taken under the Act.

11. The Apex Court in the case of Smt. Lila Ghosh (Dead) through LR Shri Tapas Chandra Roy Vs. The State of West Bengal, has held as under:

A plain reading of Section 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 proceeding. 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 u/s 34 or Section 28. In our new 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 u/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 Section 17. As in cases u/s 17 compensation is payable interest may run from the date possession was taken.

12. The Apex Court in the case of Assistant Commissioner, Gadag Sub-Division, Gadag Vs. Mathapathi Basavannekha and others, , interpreting the very same provisions i.e., Section 23(1-A) went into the question whether the claimants are entitled to the benefit of Section 23(1-A) of the Act from 23.01.1971, the date on which possession was taken. Answering the said question at para 4, it has been held as under:

4. The object of introducing Section 23(1-A) is to mitigate the hardship caused to the owner of the land, who has been deprived of the enjoyment of the land by taking possession from him and using it for the public purpose, because of considerable delay in making the award and offering payment thereof. To obviate such hardship, Section 23(1-A) was introduced and the Legislature envisaged that the owner of the land is entitled to 12 per cent annum additional amount on the market value for a period commencing on and from the date of the publication of the notification under s. 4(1) of the Act in respect of such land up to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. At times, after publication of the notification under s. 4(1), by invoking power of urgency under s. 17(4), possession is taken before making the award. The additional amount at 12% per annum was intended to be paid as compensation from the date of taking possession.

5. But strict construction leads to unjust result, hardship to the owner and defeats legislative object. Take a case like one in hand. Possession was taken long before publication of the notification. In the meanwhile the owner was deprived of enjoyment of his property. In other words, if the possession is taken earlier and notification is issued later but the award is subsequently made, the owner or the claimant is entitled to the compensation from the date of taking possession

till date of the award, though possession was taken before the notification under s. 4(1) was published. The expression "whichever is earlier" has to be construed in that backdrop and the claimant would be entitled to additional amount from the date of taking possession.

13. Faced with such a divergent view, the Apex Court in the case of R.L. Jain (D) by Lrs. Vs. DDA and Others, , went into the entire scheme of the Act and held as under:

11. 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 to 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. Part II of the Act deals with acquisition and the heading of Section 4 is "Publication of preliminary notification and powers of officers thereupon". Sub-section (1) of Section 4 provides that whenever it appears to the appropriate government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Sub-section (2) provides that thereupon it shall be lawful for any officer either generally or specially authorised by such Government in this behalf and for his servants and workmen, to enter upon and survey and take levels of any land in such locality, to dig or bore in the sub-soil and to do all other acts necessary to ascertain whether the land is adapted for such purpose etc. This provision shows that the officers and servants and workmen of the government get the lawful authority to enter upon and survey the land and to do other works only after the preliminary notification u/s 4(1) has been published. Section 5A enables a person interested in any land which has been notified u/s 4(1) to file objection against the acquisition of the land and also for hearing of the objection by the Collector. If the State Government is satisfied, after considering the report, that any particular land is needed for public purposes or for a company, it can make a declaration to that effect u/s 6 of the Act and the said declaration has to be published in the Official Gazette and in two daily newspapers and public notice of the substance of such declaration has to be given in the locality. Thereafter the Collector is required to issue notice to persons interested u/s 9(1) of the Act stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him. Section 11 provides for making of an award by the Collector of the compensation which should be allowed for the land. Section 16 provides that when the Collector

has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. This provision shows that possession of the land can be taken only after the Collector has made an award u/s 11. Section 17 is in the nature of an exception to Section 16 and it provides that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. The urgency provision contained in Section 17(1) can be invoked and possession can be taken over only after publication of notification u/s 9(1) which itself can be done after publication of notification under Sections 4(1) and 6 of the Act. Even here in view of sub-section (3-A) the Collector has to tender 80 per cent of the estimated amount of compensation to the persons interested entitled thereto before taking over possession. 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 be *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. Section 34 of the Act, on the basis whereof the appellant laid claim for interest, reads as under:

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.

12. The expression "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" should not be read in isolation divorced from its context. The words "such possession" and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. "Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification u/s 4(1) and other amounts like statutory sum under

sub-section (1-A) and solatium under Subsection (2) of Section 23. The heading of Part II of the Act is Acquisition and there is a sub-heading "Taking Possession" which contains Sections 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Sections 16 or 17 of the Act. These are the only two Sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification u/s 4(1) it would not be in accordance with Sections 16 or 17 and will be without any authority of law and consequently cannot be recognised for the purposes of the Act. For the parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Sections 16 or 17 of the Act. The words "so taking possession" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification u/s 4(1) of the Act which is de hors the provisions of the Act.

14. After laying down the said law, the Apex Court referred to the aforesaid two judgments namely M.A. Jabbar and Mathapathi Basavannekwa, at para 16 has held as under:

16. In this connection it will be apposite to refer to Sub-section (1A) of Section 23 of the Act which enjoins payment of 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(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. There are two decisions of this Court, wherein same controversy arose namely, whether the claimant would be entitled to additional sum at the rate of twelve per centum on the market value where possession has been taken over prior to publication of notification u/s 4(1). In Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, which has been decided by a Bench of two Judges (K. Ramaswamy and Mrs. Sujata V. Manohar, JJ.) it was held that claimant would not be entitled to this additional sum for the period anterior to publication of notification u/s 4(1). However in Assistant Commissioner, Gadag Sub-Division, Gadag Vs. Mathapathi Basavannekwa and others, also decided by a two-Judge Bench (K. Ramaswamy and B.L. Hansaria, JJ.) it was held that even though notification u/s 4(1) was issued after taking possession of the acquired land the owners would be entitled to additional amount at twelve per cent per annum from the date of taking possession though notification u/s 4(1) was published later. For the reasons already indicated, we are of the opinion that the view taken in Special Tehsildar is legally correct and the view to the contrary taken in Assistant Commissioner, Gadag (supra), is not in accordance with law and is hereby overruled.

17. Shri Dave learned counsel for the appellant has also placed strong reliance

on Satinder Singh and Others Vs. Amrao Singh and Others, wherein the question of payment of interest in the matter of award of compensation was considered by this Court. In this case the initial notification was issued u/s 4(1) of Land Acquisition Act, 1894 but the proceedings for acquisition were completed under East Punjab Act No. 48 of 1948. The High Court negated the claim for interest on the ground that the 1948 Act made no provision for award of interest After quoting with approval the following observations of Privy Council in AIR 1928 287 (Privy Council) :

upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest upon the principal sum awarded from the date when possession was taken, unless the statute clearly shows a contrary intention.

the bench held as under:

.....When a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily he is not making claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation.

The normal rule, therefore, is that if on account of acquisition of land a person is deprived of possession of his property he should be paid compensation immediately and if the same is not paid to him forthwith he would be entitled to interest thereon from the date of dispossession till the date of payment thereof. But here the land has been acquired only after the preliminary notification was issued on 9.9.1992 as earlier acquisition proceedings were declared to be null and void in the suit instituted by the land owner himself and consequently he was not entitled to compensation or interest thereon for the anterior period

18. 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 maybe awarded.

15. The Land Acquisition Act makes a complete provision for acquiring title over

the land, taking possession thereof and for payment of compensation. Acquisition means, acquiring property not by voluntary agreement but by authority of the Act of the Parliament. Property is acquired against the wishes of the land owners by virtue of the compulsory powers conferred on the State under the Act. In cases of acquisition the property is taken by the State permanently and the title to the property vest in the State. u/s 16 of the Act, when the Collector has made award u/s 11, he may take possession of the land, which thereupon vest absolutely in the Government, free from all encumbrances. Therefore the Collector can take possession of the land only after he has made an award u/s 11 of the Act. Section 17 of the Act is in the nature of an exception to Section 16. It provides that in cases of urgency, the possession of the land could be taken by the Collector even before an award has been made. Such a possession can be taken on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1). After taking such possession, such lands shall thereupon vest absolutely in the Government free from all encumbrances. However, in view of Sub-Section (3)(A), the Collector has to tender 80% of the estimated amount of compensation to the persons interested entitled thereto. Therefore the scheme of the Act does not contemplate taking over possession prior to issuance of the notification u/s 4(1) of the Act and if possession is taken prior to the said notification, it will be de hors the Act. Therefore these provisions in unmistakable terms show that publication of notification u/s 4(1) of the Act is sine qua non for any proceedings under the Act. Any possession taken otherwise could not be considered to be possession taken under the Act.

16. The heading of Part II of the Act, is acquisition and there is sub-heading, Taking Possession, which contains Sections 16 and 17 of the Act. The words, "so taking possession" therefore means, taking possession in accordance with Sections 16 and 17 of the Act. In the entire scheme of the Act, Sections 16 and 17 are the only two provisions in the Act which specifically deal with taking possession of the acquired land. Such a stage would be reached only after publication of the notification u/s 4(1) and Section 9(1) of the Act. If possession is taken prior to the issuance of notification u/s 4(1) of the Act, it would not be in accordance with Sections 16 and 17 of the Act and will be without authority of law and consequently, cannot be recognized for the purposes of the Act. Therefore, the words "so taking possession" can in no circumstances mean, such dispossession of the owner of the land which has been done prior to publication of the notification u/s 4(1) of the Act, which is de hors the provisions of the Act. Therefore, while computing interest payable u/s 28 and u/s 34 of the Act, if the interest is to be calculated from the date of taking possession, it necessarily follows that such possession is taken u/s 16 or u/s 17 of the Act, which is invariably subsequent to the date of preliminary notification u/s 4(1) of the Act, Sections 28 and 34 has no application to a case of taking possession prior to the notification u/s 4(1) of the Act. No interest is payable u/s 28 and Section 34 of the Act for the period anterior to notification u/s 4(1) even if actual possession is taken prior to that date.

AWARD - VOID - OR - ILLEGAL

17. Next the question for consideration is, if the Reference Court awards interest prior to the date of notification u/s 4(1) of the Act, on the ground that possession is taken even before initiation of acquisition proceedings such an award is void and unenforceable. It is contended that once the award is passed and it has become final, the Executing Court cannot go behind the award, the same is not open to challenge in the execution proceedings. In support of the said contention, reliance is placed on the following judgments:

18. The Apex Court in the case of State of Punjab and others Vs. Mohinder Singh Randhawa and another, , which is the relevant portion in the said judgment has held as under:

We find on reference to the appellate decree of the High Court that it directed payment of the sum of money u/s 23(1A) of the Act. In the absence of any challenge to the appellate decree in further proceedings, in execution this is not open to challenge.

19. In the said case, there is no reference to any payment of interest ordered without power or jurisdiction. Once an order is passed u/s 23(1A) and it is not challenged, all that has been said is the State cannot raise any objection at the execution side.

20. In Jaya Chandra Mohapatra Vs. Land Acquisition Officer, Rayagada, , the question was whether once an amendment of the decree is allowed, whether objection to the amendment can be taken on the execution side. In that context, the Apex Court held as under:

12. in this case the aforementioned order dated 08.10.1996 has attained finality by reason whereof the original decree stood amended. The Executing Court in view of the decision in Bai Shakriben (supra) itself could not have gone behind the decree. The Executing Court thus proceeded to pass the impugned judgment on a wrong premise. The Executing Court keeping in view its limited jurisdiction could not have gone into the question as to whether the Reference Court was correct in passing the order dated 8.10.1996 amending the decree or not. The Executing Court did not have any jurisdiction to go into the said question. A decree passed by a competent Court of law can be suitably amended. A decree, so amended on an application filed by the claimant for review thereof becomes final. As the State was aggrieved by and dissatisfied therewith, it could have taken the matter by filing an appropriate application before the High Court. But keeping in view of the fact that the said order was allowed to attain finality, the Court could not have permitted that State to re-agitate the said question before the Executing Court by filing an application u/s 47 of the CPC or otherwise. IN a case of this nature, the principle of estoppel by records shall come into play.

21. Therefore, the question which arose for consideration in the said case is once

an application for amendment of the decree is allowed whether the Executing Court could find fault with such amendment. It is not a case where the Executing Court was deciding the question whether the orders passed without jurisdiction could be executed or not.

22. In the case of Bhawarlal Bhandari Vs. M/s. Universal Heavy Mechanical Lifting Enterprises, the question that arose for consideration was a decree in an arbitration case which has attained finality was sought to be objected to at the stage of execution on the ground that the award decree was barred by limitation and was not entitled to be enforced. In that context the Apex Court has held as under:

This is not a case in which the award decree on the face of it was shown to be without jurisdiction. Even if the decree was passed beyond the period of limitation, it would be an error of law or at the highest a wrong decision which can be corrected in appellate proceedings and not by the executing Court which was bound by such decree. It is not the case of the respondent that the Court, which passed the decree was lacking inherent jurisdiction to pass such a decree. This becomes all the more so when the respondent did not think it fit to file objection against the award which was sought to be made rule of the Court.

23. The Apex Court in the case of Food Corporation of India Vs. S.N. Nagarkar, , dealing with a notional promotion, has held as under:

.....In execution proceedings, the appellant cannot go beyond the order passed by the Court in the writ petition and, therefore, what has to be considered is whether the High Court was right in holding that in terms of the order of the Court dated 6th May, 1994 passed in Civil Writ Petition No. 4983 of 1993, the respondent is entitled to the arrears of pay and allowances with effect from the date of promotions. If the answer is in the affirmative, the question whether such relief ought to have been granted cannot be agitated in execution proceeding. We find considerable force in the submission urged on behalf of the respondent. In these proceedings it is not permissible to go beyond the order of the learned Judge dated 6th May, 1994 passed in Civil Writ Petition No. 4983 of 1993. The execution application giving rise to the instant appeal was filed for implementing the order dated 6th May, 1994 and in such proceeding, it was not open to the appellant either to contend that the judgment and order dated 6th May, 1994 was erroneous or that it required modification. The judgment and order aforesaid having attained finality, has to be implemented without questioning its correctness.....

24. These are all cases of erroneous decisions rendered by the Courts and not without jurisdiction. An order of a Court without jurisdiction stands on a different footing.

25. The Apex Court in the case of Kiran Singh and Others Vs. Chaman Paswan and Others, , has held as under:

6. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether, it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

26. The Apex Court in the case of Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, had held as under:

6. A Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is till binding between the parties.

7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a persons who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceedings if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.

The Apex Court relied on the judgment of Privy Council in the case of AIR 1933 61 (Privy Council) , where the Judicial Committee held as under:

Where a decree was passed upon an award made under the provisions of the Indian Arbitration Act, 1899, an objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act, 1899, there is no provision for making a decree upon an award, was competent That was a case in which the decree was on the face of the record without jurisdiction.

27. The Supreme Court in the case of Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and Others, held as under:

21. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court

without jurisdiction would be coram non judice being a nullity, the same ordinarily should not be given effect to.

28. From the aforesaid statements of law declared by the Apex Court, it is clear that a decree without jurisdiction stands on a different footing when compared to an erroneous decree, illegal decree and decree which is contrary to law. If the decree is erroneous, illegal and contrary to law, the said defect is to be set right by preferring an appeal. Otherwise, the party to the decree is bound by the said decree. Having not challenged the said decree, in a manner known to law, if the decree has attained finality and when such a decree is sought to be executed, it is not open to the judgment debtor in such proceedings to challenge the enforceability of the decree on the ground that it is erroneous, illegal and contrary to law. It is in that context, it has been held consistently that the Executing Court cannot go behind the decree and sit in judgment over the decree as if it is an Appellate Court. But if the decree sought to be executed is one without jurisdiction, or passed by a Court which has no jurisdiction, then in law the said decree is void and non est. The enforcement of decree presupposes the existence of the decree, which is legal and valid. If a decree is void in law it does not exist. It cannot be enforced. It is in this context, the Apex Court in the case of Kiran Singh's case has categorically held a decree passed by a Court without jurisdiction is a nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. Any order passed by a Court without jurisdiction would be CORAM NON JUDICE being a nullity. The same cannot be given effect to. The principles of estoppel, waiver, acquiescence, or res judicata, which are procedural in nature would have no application when the order is passed by a Court which had no authority or jurisdiction, i.e., to a case of inherent lack of jurisdiction.

29. In this background, we have to look at the facts of this case. The order of the reference Court reads as under:

The claimants are entitled to enhanced market value of the acquired land at the rate of Rs. 73,000/- in place of Rs. 15,000/- awarded by the Land Acquisition Officer in respect of the land in Sy. Nos. 12/A and 12/AA measuring 2 acres 12 guntas situated at Singapur village, Taluka Sindhanoor.

The claimants are also entitled to solatium at 30% on the market value and additional market value of 12% on the market value of the land from the date of taking possession till the date of the award, as per Section 23(1) of the Land Acquisition Act.

The claimants are entitled to interest at 9% for the period of one year from the date of taking possession i.e., 06.11.1960 and thereafter 15% till the date of payment as per Section 28 of the Land Acquisition Act.

30. In the instant case, it is not in dispute that possession is taken on

06.11.1960. The preliminary notification u/s 4(1) was issued on 26.04.1993. The total amount claimed in the execution petition is Rs. 46,63,205/-. It would be interesting to know that the amount of compensation is Rs. 73,000/- per acre and the total extent of land is hardly 2 acres 12 guntas. The acquisition proceedings are initiated after 33 years. It is in this background, when we look at the law laid down by the Apex Court, the Reference Court's power to grant interest flows from Sections 28 and 34 of the Land Acquisition Act. As held by the Apex Court in R.L. JAIN's case, the interest is payable either from the date of Section 4(1) notification or from the date of taking possession subsequent to Section 4(1) Notification. Possession can be taken under the Act either u/s 16 or u/s 17. There is no provision in the Act for taking possession prior to issue of Section 4(1) notification. If possession is taken prior to Section 4(1) notification, it is not referable to the Act and Sections 28 and 34 of the Act has no application to such taking possession prior to Section 4(1) notification. It is a case of inherent lack of jurisdiction in the Reference Court to award interest, prior to the date of 4(1) notification, as the act is not attracted at all. The power to award interest is vested in the Reference Court and for such exercise of power the Act should be applicable. If the Act has no application to an event anterior to the issue of notification u/s 4(1) of the Act, any award of interest for the said period or such an act would be one without the authority and jurisdiction. Therefore, the reference court has no jurisdiction to award interest under any of these provisions for the period anterior to Section 4(1) notification. If such an award is passed it is de hors the Act. In other words, it is one without the authority of law, one without jurisdiction and therefore, that portion of the award passed by the Land Acquisition Officer is void, non est and unenforceable. Therefore, the objection on the execution side that the decree holder is not entitled to any interest from the date of taking possession i.e., 06.11.1960 till the date of Section 4(1) notification i.e., 26.04.1993 is well taken and rightly upheld by the Executing Court. The Executing Court is not sitting in judgment over the award passed by the reference Court. It is not a case where anything requires to be examined in respect of the objections raised and decided at the trial. The decree to that extent on the face of the record is without jurisdiction. It is claimed that possession is taken on 06.11.1960. It is also not in dispute that Section 4(1) notification is dated 26.04.1993. The short question is whether during that period the Court has jurisdiction to award interest. The fact that the reference Court had no jurisdiction to grant interest during that period is apparent on the face of the record and therefore, the Executing Court was justified in upholding the objection and closing the execution petition as the decree holder has been paid much more than what he is entitled to under the Act.

31. Before parting with the case, it is necessary to place on record these disturbing trends noticed in the Circuit Bench at Gulbarga. After constitution of the Circuit Bench a new type of litigation has commenced. Writ petitions are filed before this Court seeking a writ of mandamus directing the authorities to initiate acquisition proceedings and pay compensation under the provisions of the Land

Acquisition Act, 1894. The case pleaded is right to property is constitutional right. The lands are taken away for formation of roads, for irrigation projects, for construction of tanks and for upgrading ayacut roads. Majority of these roads are formed during Nizam's period and when it was a part of State of Hyderabad. After re-organization of the States on linguistic basis, a portion of Hyderabad State comprising Gulbarga, Bidar and Raichur Districts came to the fold of the State of Karnataka. From 1956 till the constitution of the Circuit Bench, there was no litigation seeking such directions to acquire lands and pay compensation. It is only after formation of this Circuit Bench at Gulbarga numerous writ petitions are filed seeking such directions and many are successful in that. It is in pursuance of the directions issued by this Court, acquisition proceedings are initiated in respect of the lands which are in possession of the Government for more than a century and awards are passed granting interest from the date of taking possession as in this case. The reason given by the State is that the Court has issued writ of mandamus to initiate acquisition proceedings, they are bound by the writ and they are initiating acquisition proceedings. In many of the cases, no land is acquired. Existing cart roads are upgraded, tanks are constructed decades back, roads are formed at least five to six decades back. But still acquisition proceedings are initiated, compensation is paid and interest is calculated from the date of taking possession. There is a clear collusion between the officials and the parties and for want of proper assistance in this Court unknowingly, the Court also has passed orders in favour of these claimants. Now the District Administration has opened its eyes. They have started verifying the records and in many cases, they have issued directions to the effect that notwithstanding issue of Section 4(1) notification and award is passed the amount of compensation shall not be disbursed till this fraud is totally unearthed. Those endorsements are challenged in writ petitions. Some of those cases are also pending before us. The present case appears to be one such case. If the possession is taken on 16.11.1960, for 33 years, owners have not moved their little finger. The preliminary notification is issued only on 26.04.1993. This conduct is very difficult to digest. As in this case, the Special Land Acquisition Officer awarded Rs. 15,000/- per acre, which is the market value according to him on 26.04.1993. On a reference, the reference Court has enhanced it to Rs. 73,000/- by its award dated 06.09.2004. The extent of land acquired is 2 acres 12 guntas. Award of the Land Acquisition Officer is dated 15.02.1995. The reference Court has awarded interest from 16.11.1960 i.e., 33 years anterior to the preliminary notification. To demonstrate the collusion on the part of the officials, we have to see the averments made in the writ petition. In the writ petition it is averred when an Execution petition is filed, the Assistant Commissioner, Lingasugur enquired from the State Government in terms of his letter dated 25.11.2006 as per Annexure-D, whether the Government has decided to prefer appeal before the Hon'ble High Court of Karnataka, Bangalore, so as to enable him to take further action for depositing decretal amount by indenting the acquiring body. The said letter is dated 25.11.2006. Annexure-C is said to be the reply dated 22.02.2007 informing him that the Government has

decided not to prefer an appeal in the above case and therefore, appeal need not be filed. Annexure-D is the proceedings of the Government of Karnataka, which shows sanction was accorded on 07.10.2006 to prefer appeal before District Judge's Court, Raichur against the judgment/order and decree of the Civil Judge's Court, Raichur in LAC No. 60/2003. However, by the order dated 01.03.2007, the said Government order dated 07.10.2006 according sanction to prefer appeal has been withdrawn. It demonstrates that the Government initially took a decision to prefer an appeal and then it has withdrawn the said sanction and a sum of Rs. 46,63,205/- has been deposited in the Executing Court after deducting Rs. 5,88,152/- towards income tax at source, thus in all a sum of Rs. 52,51,357/- is paid. The balance payable was Rs. 14,93,934/-. It is at that stage, the Government opened its eyes and filed its objections. This is not a solitary case. It is only a tip of the iceberg. The public money is siphoned off through judicial process. In that view of the matter, I am of the view that a comprehensive enquiry is to be conducted by an independent agency to unearth the fraud in these land acquisition cases. In fact, in another matter involving the same issues, I have directed the Government Advocate to secure the particulars of number of ayacut roads formed and in how many cases, they have withheld the payment after preliminary notification and final notification is issued. But I feel it is necessary to appoint an independent agency to go into this fraud where the public money is siphoned off under the cover of the orders passed by the reference Court and in some cases by this Court also. Therefore, I hereby direct a copy of this order be sent to the Lokayukta of the State of Karnataka, to investigate and hold inquiry and take appropriate action, if it is found that the officials of various departments have colluded with the claimants and have siphoned off the public money.

Accordingly, the writ petition is dismissed.

Parties to bear their own costs.