(2018) 02 CAL CK 0038

In the Calcutta High Court

Case No : C.O. No. 250 of 2018

STATE OF WEST BENGAL & ANR. APPELLANT

Vs

SUSHIL KUMAR FOMRA & ORS. RESPONDENT

Date of Decision : 22-02-2018

Acts Referred:

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3(1), 4, 4(1a), 7, 7(1), 7(2), 8
Land Acquisition Act, 1894 — Section 11, 23, 23(1), 23(1A), 23(2), 28, 34
Constitution of India, 1950 — Article 227

Citation : (2018) 02 CAL CK 0038

Hon'ble Judges : SABYASACHI BHATTACHARYYA, J

Bench : Single Bench

Advocate : Kishore Datta, Supratim Dhar, Dhananjay Nayak, Saktinath Mukherjee, Debayan Bera, Amiya Nath Mukherjee, Subhransu Ganguly, D. Chakraborty

Final Decision : Disposed Of

Judgement

The present application under Article 227 of the Constitution of India has been preferred by the State of West Bengal, through the first Land

Acquisition Collector, against an order passed by the Additional 4th Special L.A. Judge at Alipore, District: South 24-Parganas in L.R.A. Execution

No. 5 of 2013.

The brief facts of the case are as follows:

The State of West Bengal took possession of the land in question pursuant to a notification dated April 23, 1976, issued under Section 3(1) of the West

Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the 1948 Act). The property belonged to one Munnalal Fomra (since

deceased), the predecessor-in-interest of the present award holders/opposite parties. Such requisition was made for establishment of a sub-depot of

the Calcutta Transport Corporation. The total area covered by the said notification was 3 bighas 16 cottahs 8 chattaks 1.58 sq. ft, along with structure.

Subsequently, by a notification dated April 7, 1990 published under Section 4(1a) of the 1948 Act, such requisitioned property was acquired by the

State. The acquired property was evaluated at Rs.72,416/- per cottah and the Collector awarded such amount to the predecessor-in-interest of the

opposite parties. The value of the acquired structure was assessed at Rs.1,72,800/-.

The original award holders took out a reference to Court under Section 8 of the 1948 Act. Such reference being allowed by the 4th Additional Special

L.A. Judge, Alipore, the State of West Bengal preferred an appeal. The award holders also filed a cross-objection. A Division Bench of this Court, by

its judgment and order dated March 3, 2000, dismissed both the appeal and the cross-objection.

Against such order of this Court, the award holder/cross-objector preferred

Civil Appeal No. 2608 of 2001 before the Supreme Court. Such appeal was allowed, thereby setting aside the order of the Division Bench of this

Court to the extent that the cross-objection had been dismissed and the matter was remanded to this Court for disposal of the cross-objection on

merits in accordance with law after giving opportunity of hearing to both parties.

Upon remand, the matter was taken up for hearing and another Division Bench of this Court decided such cross-objection, bearing C.O.T. 1423 of

1995, arising out of F.A. No. 151 of 1998, by its judgment and order dated March 7, 2012.

By the said order, this Court held that the valuation of the acquired land and structure were to be assessed respectively at Rs. 3,50,000/- per cottah

and Rs.3,54,825/-.

75 per cent of the land value per cottah was awarded for 14 cottah of unacquired property at premises No. 84, A.J.C. Bose Road. The solatium

awarded by the L.A. Judge, at 30 per cent on the market value of the acquired land and structure, less the amount already paid by the L.A. Collector,

was held to be justified by this Court.

The interest awarded at the rate of 9 per cent per annum from April 7, 1990 for one year and thereafter at the rate of 15 per cent per annum till payment, less the amount paid, on the market value of the acquired land, including solatium thereon, was also affirmed by this Court.

9 per cent per annum over the amount awarded for injurious affectation of the unacquired portion of 14 cottahs of land from April 7, 1990 for one year

and thereafter at the rate of 15 per cent per annum till payment was granted by this Court.

The rent compensation awarded at the rate of 9 per cent per annum from date of taking possession, that is, April 26, 1976 to April 6, 1990, less the

amount already paid by the L.A. Collector, was also affirmed.

The cross-objectors were held to be entitled under Section 23 (1A) of the Land Acquisition Act, 1894 (hereinafter referred to as the 1894 Act) to 12

per cent per annum on the market value for the period from the date of taking possession till payment of award.

The cross-objection was allowed in part by modifying the judgment and order of the L.A. Judge to the above effect.

Civil Appeal No. 4769 of 2013 was preferred against the aforesaid judgment and order of this Court, which culminated in disposal of such appeal by

the Supreme Court vide order dated April 19, 2017. By such order, the judgment and order of this Court was modified to the limited extent that the

quantum of unacquired land, specified as 14 cottahs by this Court, was reduced to 4 cottahs.

Meanwhile, L.R.A. Execution No. 5 of 2013 was levied by the award holders/ opposite parties, who had been impleaded in the litigation upon being

substituted for the original award holder Munnalal Fomra, for execution of the award. In connection with such execution case, calculations as to the

correct figure relating to the awarded amount, as per the version of the opposite parties, were furnished by the opposite parties. The State/petitioner

failed to furnish its calculations within the time frame previously stipulated by the Executing Court. The State/petitioner approached this Court against

several orders passed in connection with the acceptance of such calculations, by filing several revisional applications, being C.O. No. 3518 of 2017,

C.O. No. 3519 of 2017, C.O. No. 3534 of 2017, C.O. No. 3485 of 2017 and C.O. No. 3520 of 2017. All the said revisional applications were disposed

of by this Court by a single order dated November 27, 2017, inter alia directing the Executing Court to decide the actual decretal dues upon giving both sides a short hearing on their respective calculations in that regard, if necessary by taking the aid of an expert. It was made clear in such order that

the aforesaid exercise would be completed by the Executing Court in its entirety as expeditiously as possible, without granting any unnecessary

adjournment to either party, not later than three weeks from the date of communication of such order to the Executing Court.

Pursuant to such order of this Court the Executing Court, vide Order No. 106 dated December 19, 2017, took up the matter for hearing the parties on

their respective calculations and held that the calculation of the decree-holder was in consonance with the orders of this Court and in accordance with

law. Accordingly, the calculation of the decree-holder was accepted, and that of the State was turned down. By the same order, an application filed

by the award holders for effecting necessary amendments to their execution application was also allowed.

Being aggrieved by such order dated December 19, 2017 passed by the Additional 4th Special L.A. Judge at Alipore in L.R.A. Execution No. 5 of

2013, whereby the calculations furnished by the award holders were accepted as correct by the executing court, the State of West Bengal has

preferred the present application under Article 227 of the Constitution of India.

The petitioner/State challenges the impugned order primarily on three scores.

First, it is pointed out that additional compensation on land value at the rate of 12 per cent from April 26, 1976 to June 19, 1990 (14 years, 1 month and

23 days) was held by the executing court to have been granted for an amount of Rs.4, 72, 35,999.48 p. According to the petitioner, such amount

should,upon deduction of Rs.17, 82,449.64 p granted on account of additional compensation for unacquired land, ought to have been assessed at Rs.4,

54, 53,549.84 p. It is argued by the petitioner that the award holders are not entitled to any additional compensation for unacquired land.

The second ground of challenge by the petitioner is that the Executing Court acted without jurisdiction in awarding Rs.1,01,66,088.89 p under the head

of interest on land value, structure value, along with solatium and for unacquired land, claimed at the rate of 9 per cent per annum from June 19, 1990

to June 18,

1991. The petitioner argues that such amount was granted under the provisos to Section 7(2) of the 1948 Act, and that no such amount could be awarded for unacquired land under the said provisions of law; moreover, the last decision of this Court, sitting in Division Bench, as affirmed by the

Supreme Court barring the quantum of unacquired land (which was modified from 14 cottahs to 4 cottahs), did not grant the rent compensation and

additional compensation components under the concerned head. As such, the petitioner/State argues that the actual amount awardable under the said

head could only be Rs.21, 57,972.27 p and an excess amount of Rs.80, 08,182.62 p was wrongfully held by the executing court to have been awarded

in favour of the opposite parties.

The third ground on which the petitioner mounts challenge to the impugned order is that interest on land value, structure value, solatium and for

unacquired land was attributed by the executing court to the award at the rate of 15 per cent per annum on the entire period from June 19, 1991 to

May 31, 2017, which was beyond jurisdiction of the Executing Court. Such amount, according to the petitioner, could only be granted at the rate of 9

per cent per annum on the amount of compensation under the award from the date of publication of notice under Section 4(1a) of the 1948 Act until

payment, and thereafter at the rate of 15 per cent per annum, payable on the amount of compensation or part thereof which was not paid or deposited

before the date of such expiry. The petitioner submits that an amount of Rs.73,52,83,060/- has been attributed under the said head, including an excess

of Rs.71,43,16,733.01 p for the extra period, between February 5, 1997 and May 31, 2017, whereas such amount ought to have been granted from

June 19, 1991 to February 5, 1997 only and not thereafter.

In this context, the petitioner relies on the relevant provisions of Sections 23 and 28 of the 1894 Act and Section 7 of the 1948 Act.

In reply, the opposite parties submit that no distinction could be made between acquired and unacquired, but affected, land while computing additional

compensation as well as interest on land. It is argued that there cannot, in law, be a distinction between land which was acquired and that which,

though not acquired, was affected, causing prejudice to the claimants. In this context, it is further argued that even the two relevant Acts, being the

1894 and 1948 Act makes a distinction between acquired and unacquired but affected land only in respect of the quantum of compensation, and not

vis-Ã -vis the grant of the other components of compensation or interest.

It is categorically submitted by the opposite parties that rental compensation and additional compensation even for the unacquired lands are inherent

within the contemplation of Section 23(1A) of the 1894 Act. As such, the said categories of compensation ought to be read into the award passed by

this Court on the crossobjection, bearing C.O.T. 1423 of 1995, dated March 7, 2012. The petitioner places portions of such judgment of the Division

Bench of this Court, as modified by the Supreme Court, in this context.

Even in respect of solatium as contemplated in Section 23(2) of the 1894 Act, the petitioner submits that such amount ought to take into its reference

frame unacquired, but affected, land of the claimants.

The petitioner points out to a set of calculations apparently produced by the petitioner/State before the Supreme Court which, according to the

petitioner, did not make any distinction between acquired and unacquired lands for the purpose of the present dispute. It is pointed out further from

such calculations that apparently interest as per the order of this Court was calculated for a period encompassing April 7, 1990 to June 6, 2013, and

therefore belied the contention of the State that the award holders are entitled to interest only up to February 5, 1997. It is relevant to mention here

that such calculations, dated March 4, 2013, apparently done by the Land Acquisition Collector, Kolkata, was used in connection with the present

dispute at an earlier stage.

The learned senior Advocate appearing for the petitioner places reliance on a judgment reported at (1994) 5 SCC 593 (K.S. Paripoornan vs. State of

Kerala and others), as well as the judgment reported at (2013) 1 SCC 353 (Tukaram Kana Joshi and others vs. Maharashtra Industrial Development

Corporation and others) to emphasise the proposition that the concept of additional compensation is to enable the affected claimants to purchase fresh

land at a subsequent point of time. Since, if the market value is frozen at the juncture when the land was acquired and due credit is not given to the

subsequent increment in valuation of land, it would unjustly prejudice the claimants. According to the said senior counsel, such corrective measure to

take care of the addition to market value ought to be extended not only to the acquired land but also to the unacquired but affected land. According to

him, there could not be any reasonable basis for distinction between two types of lands as far as such additional compensation is concerned.

The next judgment relied on by the opposite parties is reported at (2001) 7 SCC 211 (Sunder vs. Union of India). Placing reliance in particular on

paragraph nos. 19, 20 and 24 of the said report, it is submitted that the sums indicated in Sub-Sections (1A) and (2) of Section 23 of the 1894 Act are

only sequels or concomitant adjuncts of the determination of the total amount indicated in SubSection (1) of the said section. No judicial exercise is

required to quantify the said sums 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). It was further held in such report that, what the legislature intended was to make an aggregate amount under Section

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 of the

compensation into different components for the purpose of payment of interest in Section 34 was not for the contemplation of the legislature when that

section was framed or enacted.

The next judgment cited is reported at AIR 2010 SC 1754 (Haridwar Development Authority vs. Raghubir Singh). Relying in particular on paragraph

no.

13 of the said judgment, the opposite parties argue that Sections 34 and 28 of the Act of 1894 together cover the entire amount of compensation

awarded. The award of interest on the enhanced amount under Section 28 of the Act is the normal rule and the refusal of interest should be by

assigning special or specific reasons. Moreover, the interest payable in regard to the increase in compensation, which is awarded by the reference

Court or any appellate court, is awarded under Section 28 of the Act.

The opposite parties then cite the case reported at AIR 2012 SC 2721 (Mehrawal Khewaji Trust vs. State of Punjab) for the proposition that the

interest awardable under Section 28 of the Act of 1894 would include within its ambit both the market value and the statutory solatium and that in view

of the same, it is clear that the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium.

In paragraph no. 18 of the said judgment, it was further held that the claimants would be entitled for interest on solatium and additional market value if the award of the reference Court or that of the appellate Court does not specifically refer to the question of interest on solatium and additional market

value or where the claim had not been rejected wither expressly or impliedly.

This apart, the award holders/opposite parties argue that the petitionerâ??s argument as to the interest being payable till date of payment, that is

February 5, 1997, is fallacious since such payment did not indicate how much of such amount paid was allocated to the relevant heads and it may very

well be that the amount paid was meant for some other heads than those carrying interest.

As such, the opposite parties conclude that none of the objections of the petitioner-State to the calculations, furnished by the opposite parties and

accepted by the executing court below, are supported by law. There could not be any justification for withholding the additional compensation for

unacquired but affected land and for depriving the award holders from interest for the entire period claimed.

The petitioner-State, in answer, points out to the provisions of Section 23 of the Act of 1894 itself. It is submitted by the Advocate General, appearing

for the State, that the said section itself is very clear as to the scope of granting additional compensation as well as interest. It is submitted on behalf of

the State that the provisions of the said section clearly indicate that the term â?? market valueâ?? relates to only to the land acquired and not to any

unacquired land. Moreover, Section 7 of the Act of 1948 clearly stipulates the respective dates and rates of interest payable.

Even falling back upon Sections 28 and 34 of the Act of 1894, it is submitted, there cannot be any ambiguity as to the dates till which interest is

payable, and at what rate. The petitioner-State submits that the quantum of interest proposed by the State is perfectly in consonance with such

statutory dates whereas those sought to be projected by the award holders are de hors the statutory provisions.

In this context, the petitioner-State cites the judgment reported at (2011) 4 SCC 734 (State of Punjab vs. Amarjit Singh and another). Relying on such

judgment, the petitioner submits that, as held in paragraph no. 5 of such judgment, while market value and compensation are factors to be assessed

and determined by the Court, no such judicial exercise is involved in regard to additional amount payable under Section 23(1-A) and solatium payable under Section 23(2) as they are statutory benefits payable automatically at the rates specified in those sub-sections qua the market price. No reasons

need to be assigned for grant of additional amount or solatium. The petitioner submits that it is evident from the said report that all the said additional

amount, solatium and interest are ultimately relatable to the market value of the land acquired and have to be granted in conformity with the provisions

of Section 23 of the Act of 1894.

Thus the main questions, which fall for consideration in the instant matter are:

i) Whether the award holders are entitled to additional compensation for unacquired land;

ii) Whether the award holders are entitled to interest on rent compensation and additional compensation;

iii) Whether the award holders are entitled to interest on the market value of unacquired, but affected land;

iv) Whether the award holders are entitled to interest at the rate of 15 per cent per annum for the entire period between June 19, 1991 and May 31,

2017;

v) Whether the impugned order has been passed in consonance of the judgment and decree dated March 7, 2012 passed in C.O.T. 1423 of 1995,

arising out of F.A. 151 of 1998, as modified by the Supreme Court.

For arriving at any conclusion on any of the aforesaid questions, a perusal of the relevant provisions of law, as set forth below, is absolutely essential:

Land Acquisition Act, 1894:-

Section 23: Matters to be considered in determining compensation. â?" (1) In determining the amount of compensation to be awarded for land

acquired under this Act, the Court shall take into consideration â?" first, the market value of the land at the date of the publication of the notification

under section 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 interested 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 under

section 6 and the time of the Collector's taking possession of the land.

(1A) 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 under section 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.

Explanation. â?" In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the

land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(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.

Section 28: Collector may be directed to pay interest on excess compensation. â?" 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.

Section 34: Payment of interest. â?" 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.

Land (Requisition and Acquisition) Act, 1948:-

Section 4: Acquisition of land. â?" (1) Where any land has been requisitioned under section 3, the State Government may use or deal with such land

for any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient.

(Ia) The State Government may acquire any land requisitioned under section 3 by publishing a notice in the Official Gazette that such land is required

for a public purpose referred to in sub-section (1) of section 3.

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the

notice is so published, vest absolutely in the State Government free from all incumbrances and the period of requisition of such land shall end.

Section 7:Â Compensation. â?" (1) Wherever any land is acquired under section 4 there shall be paid to every person interested compensation the

amount of which shall be determined by the Collector in the manner and in accordance with the principles set out in sub-sections (1), (1A) and (2) of

section 23 of the Land Acquisition Act, 1894, so far as they may be applicable:

Provided that the market value referred to in clause first of sub-section (1) of section 23 of the said Act shall, in respect of any land acquired under

this Act, be deemed to be the market value of such land on the date of publication of the notice referred to in sub-section (1a) of section 4.

(2) (a) When the compensation has been determined under sub-section (1) the Collector shall make an award in accordance with the principles set out

in section 11 of the Land Acquisition Act, 1894, and the amount referred to in sub-sections (1), (1A) and (2) of section 23 of that Act shall also be

included in the award:

Provided that interest at rate of nine per centum per annum on the amount of compensation under the award from the date of the publication of the

notice under sub-section (1a) of section 4 until payment shall be included in the amount payable under the award:

Provided further that if such compensation or any part thereof is not paid or deposited within a period of one year from the date of publication of the

notice under sub-section (1a) of section 4, 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.

(aa) (i) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the

Collector and the persons interested in the land, whether they have respectively appeared before the Collector or not, of the true area and value of the

land, and the apportionment of the compensation among the persons interested;

(ii) the Collector shall give in the prescribed manner immediate notice of his award to such of the persons interested in the land as are not present

personally or by their representatives when the award is made.

(b) Upon an award being made under clause (a), the Collector shall proceed to make payment in accordance with the provisions of sections 31 to 33

of the Land Acquisition Act, 1894, so far as they may be applicable.

(3) Where any land is requisitioned under section 3, there shall be paid toevery person interested compensation, in respect of â?

(a) the requisition of such land; and

(b) any damage done during the period of requisition to such land other thanwhat may have been sustained by natural causes.

(4) The principle to be followed in determining compensation under sub-section

(3) shall be as follows, namely:-

(i) where the Collector and the person interested agree as to the compensation, the Collector shall make an award ordering payment of the agreed

compensation;

(ii) where the person interested cannot be traced or does not appear before theCollector when called upon to be present for the purpose of the

determination of the compensation, such amount shall be determined as compensation as appears reasonable to the Collector having regard to the

facts and circumstances of the case and the Collector shall make an award ordering payment of the compensation so determined.

(iii) where there is any disagreement between the Collector and the personinterested, the compensation payable shall be the amount determined by the

Court on reference made by the Collector under clause (b) of sub-section (1) of section 8.

Taking up the first question framed above for adjudication, it is amply clear from the language of Section 23 of the Act of 1894, that the said section

sets out the determinants for calculating the amount of compensation to be awarded for land acquired, and not unacquired land. The term â??market

valueâ? refers to that of the land acquired only. As is evident from the yardsticks set out in the said section for determining such market value the

damage sustained by the person interested by reason of the acquisition injuriously affecting his other property and for similar reasons, has be relegated

to the subsidiary position of merely one of the factors for calculating compensation for the land acquired.

On the other hand, the land acquired itself is the pivot on which the entire concept of compensation revolves.

Even apart from Sub-Section (1) of Section 23, the language of Sub-Sections (1A) and (2) of the same section clearly indicate that additional

compensation and solatium are also referable ultimately to the market value ofÂ the land acquired and have no nexus, even remote, with unacquired

land, be it affected or not.

The language of Sections 28 and 34 of the Act of 1894 also refer to â??compensationâ?? which, taken in the light of the cardinal provision, that is,

Section 23, is referable exclusively to â??land acquiredâ?? and does not contemplate unacquired land.

If we look into the provisions of Sections 4 as well as 7 of the Act of 1948, the language of both the said sections lead to the unwavering conclusion

that all amounts provided for therein relate to compensation for the land acquired. No interpretation subjecting unacquired land to the benevolence of additional compensation or interest is permissible from a literal interpretation of the said sections. Since such literal interpretation is shorn of ambiguity,

there cannot be any occasion to add words into the mouth of the legislature by bringing unacquired land within the fold of the provisions for additional

compensation and/or interest.

Therefore, the interpretation sought to be forwarded by the award holders/ opposite parties, extending additional compensation and/or the interest

component to unacquired land, is impermissible in law.

The judgments cited by the opposite parties, although laying down the basic rationale behind the grant of additional compensation and that the sums

indicated in Sub-Sections (1A) and (2) of Section 23 of the 1894 Act are only sequels or concomitant adjuncts of the determination of the total amount

indicated in SubSection (1) of the said section. However, none of the said judgments are relevant in the present context since those do not shed light

on the issues on hand, such as whether additional compensation and interest are payable on unacquired land too, as to, till what date interest under the

Act is payable. As such, the said citations are irrelevant As such, the first and third questions raised above are held in the negative.

Taking up the second question, as to interest on rent compensation and additional compensation, the provisions of Section 7(2) of the Act of 1948,

alongwith its provisos, and Sections 28 and 34 of the Act of 1894, have to be looked into.

All the said provisions speak of interest to be imposed on the amount of compensation under the award, which in turn relates back to Section 23 of the

Act of 1894, which stipulates that compensation is to be awarded for â??land acquiredâ??.

Section 7 of the Act of 1948 says that the amount of compensation will be determined by the Collector in the manner and in accordance with the

principles set out in Sub-Sections (1), (1A) and (2) of Section 23 of the Act of 1894, so far as they may be applicable, it is palpably clear that

â??compensationâ?? contemplates not only the market value of the land acquired but also additional compensation and solatium.

Hence, the two provisos to Section 7(2) of the Act of 1948 also refer to additional compensation and solatium when they provide for â??amount of

compensation under the awardâ?? and â??such compensationâ??.

This is so because the language of Sub-Sections (1A) and (2) of Section 23 of the Act of 1894 both begin with â??In addition to the market-value of

the land as above provided ....â?, thus referring to the first factor as stipulated inÂ SubSection (1) of the Section 23 for determining the amount

of compensation. Hence, Sub-Sections (1A) and (2) do not stipulate that the additional compensation and solatium contemplated therein are not part of

compensation itself. The said two sub-sections only add to the market value of the land and not to â??compensationâ??. This indicates that the term

â??compensationâ? is comprehensive and is comprised of all three components as envisaged in the three sub-sections of Section 23 and is not

restricted to Sub-Section (1) of the said Section.

Thus the award holders are entitled to interest on rent compensation and additional compensation. The second question, as such, is decided in the

affirmative.

The fourth question relates to whether the award holders are entitled to compensation for the period from June 19, 1991 (that is, the date of expiry of

one year after the date of publication of notice under Section 4 (1a) of the Act of 1948) to May 31, 2017 (that is, even after February 5, 1997, when

payment was made pursuant to this Courtâ??s order).

In order to decide such question, a plain reading of the two provisos to Section 7 (2) of the Act of 1948 is necessary. The first proviso stipulates

interest at the rate of nine per cent per annum on the amount of compensation under the award from the date of publication of the notice under sub-

section (1a) of Section 4 of the said Act until payment. The second proviso says that if such compensation or any part thereof is not paid or deposited

within a period of one year from the date of publication of the notice under sub-section (1a) of Section 4, interest at the rate of fifteen per cent 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.

One year from the date of publication of the notice under Section 4 (1a) of the Act of 1948 expired on June 18, 1991. As such, the entitlement of the

award holders thereafter would be at the rate of 15 per cent per annum, only until the date of payment. Since the date of payment relevant for the

present limited purpose was February 5, 1997, when the entire amount of

Rs.3,15,68,224.34 was paid to the award holders as per direction of this

Court, interest could not have been granted for any period after such date, that is, February 5, 1997. Thus the interest granted beyond February 5,

1997 and up to May 31, 2017 was beyond the jurisdiction of the executing court.

As a result, the fourth question has to be answered in the negative. The award holders are entitled to interest at the rate of 15 per cent per annum only

from June 19, 1991 to February 5, 1997, and not up to May 31, 2017 as granted by the executing court.

To answer the last question, the judgment and decree dated March 7, 2012 passed in C.O.T. 1423 of 1995, arising out of F.A. 151 of 1998, as

modified by the Supreme Court, has to be examined vis-Ã -vis the calculations accepted by the executing court in the impugned order. Such

comparison, of course, has to be limited to the objections raised by the petitioner-State in the present revision.

Since the said judgment, passed in C.O.T. 1423 of 1995, categorically provides for 9 per cent per annum over the amount awarded for injurious

affectation of the unacquired portion of 14 cottahs (modified by Supreme Court to 4 cottahs) of land from April 7, 1990 for one year and thereafter 15

per cent per annum till payment, and since such portion of the award has attained finality in view of the same not being further challenged, the

Executing Court was justified in accepting the calculations of the award holders on such score.

As to interest on the rent compensation and additional compensation components of the award, there is no reflection in the judgment of this Court as to

such interest having been granted. As such, even if the award holders were entitled to interest on that score, the same must be deemed to have been

turned down by this Court, which decision was affirmed by the Supreme Court. This Court, in

C.O.T. 1423 of 1995, reflected interest to the market value of the acquired land, including the solatium amount and did not take into consideration, for

the purpose of granting interest, the rent compensation and additional compensation. As such, the Executing Court could not have accepted such latter

part of the interest.

Lastly, since the judgment of this Court was unambiguous as to having granted interest on the market value of the land acquired along with structure,

solatium and unacquired land at the rate of 15 per cent from one year after April 7, 1990 up to the date of payment, only such portion of the award,

upto February 5, 1997, could be taken into account by the Executing Court while calculating the quantum of interest, and not up to May 31, 2017.

Hence, the amount calculated as interest on and from February 6, 1997 till May 31, 2017 should be deducted from the calculations as accepted by the

Executing Court.

Accordingly, the impugned order dated December 19, 2017, whereby the Executing Court accepted the calculations as to the award, as furnished by

the award holders, is modified to the following extent:

i) The quantum of Rs.17, 82,449.64 p (4, 72, 35,999.48 â?" 4, 54, 53,549.84), on account of additional compensation for unacquired land, will be

deducted from the total awarded amount.

ii) The amount of Rs.80, 08,116.62 p (1, 01, 66,088.89 â?" 21, 57,972.27), on account of interest on rent compensation and additional compensation,

will also be deducted from the total awarded amount.

iii) Interest on land value and structure, solatium and unacquired land granted at the rate of 15 per cent per annum, for the period between

February 6, 1997 and May 31, 2017, amounting to

Rs.71, 43, 16,733.01 p (73, 52, 83,060 â?" 2, 09, 66,326.99), will also be deducted from the total awarded amount.

The Executing Court, being the Additional 4th Special L.A. Judge at Alipore, shall accordingly calculate afresh the quantum of the total awarded

amount in terms of the aforesaid observations and come to a finding as to the exact amount due to the award holders in terms of such fresh

calculation.

Such exercise shall be completed within a fortnight from the date of communication of this order to the Executing Court.

It is made clear that, while undertaking such fresh calculation, no further hearing and/or opportunity of producing any further materials shall be given

to the parties, since the matter is being remanded only for the purpose of fresh calculations in terms of the observations made in this order.

C.O. No. 250 of 2018 is disposed of accordingly, without any order as to costs.

