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D.D.A.

V.

MAHENDER SINGH & ANR.

Civil Appeal No. 1751 of 2009

MARCH 20, 2009

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**[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.]**

C

Constitution of India, 1950 – Article 226 – Land Acquisition Act, 1894 – ss. 28 and 34 – Writ petition – Direction to pay statutory interest u/s. 34 of 1894 Act for acquisition of land in terms of award by High Court – Justification of – Held: There is no scope for direction to pay interest while exercising jurisdiction under Article 226, in a manner not contemplated either u/s. 28 or s. 34 – Thus, order of High Court set aside.

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The question which arose for consideration in these appeals was whether the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India was justified in directing the appellant-DDA and others to pay statutory interest u/s. 34 of the Land Acquisition Act, 1894 to the claimants for the acquisition of land in terms of the award.

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Allowing the appeals, the Court

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HELD: The Land Acquisition Act is a complete Code and lays down detailed procedure for acquisition of land, payment of compensation including solatium and additional market value. Under section 34 interest @ 9% from the date of taking over the possession till payment for the first year @ 15% for subsequent years is payable.

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Section 28 empowers the Court to award interest on the excess amount awarded over and above the amount awarded by the Collector. Apart from sections 28 and 34 which deal with payment of interest to persons entitled to

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receive compensation, there is no other provision envisaging payment of interest. Collector, Land Acquisition is liable to pay interest on statutory rates to such persons only when possession has been taken over before the payment of the entire compensation to them under section 34. While exercising jurisdiction under Article 226 of the Constitution there is no scope for direction to pay interest in a manner not contemplated by either section 28 or 34 of the Act. The impugned judgment of High Court are set aside. [Paras 5 , 7, 9 and 10] [790-G-H; 794-A-B; 793-C-D]

Net Ram and Anr. v. Union of India and Ors. 86 (2000) DLT 606; *Union of India v. Budh Singh* 1995 (6) SCC 233; *State of Himachal Pradesh v. Dharam Das* 1995 (5) SCC 683; *Union of India v. Dhanwanti Devi and Ors.* 1996 (5) SCC 44; *Ashok Nagar Plot Holders Association v. State of U.P.* 1997 (10) SCC 77 – referred to.

Case Law Reference

86 (2000) DLT 606	Referred to	Para 3
1995 (6) SCC 233	Referred to	Para 7
1996 (5) SCC 44	Referred to	Para 8
1997 (10) SCC 77	Referred to	Para 8

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1751 of 2009

From the Judgement and Order dated 25.05.2006 of the Hon'ble High Court of Delhi at New Delhi in W.P. (C) Nos. 22881 of 2005.

WITH

Civil Appeal No. 1752 of 2009

Civil Appeal No. 1753 of 2009

A. Sharma, ASG, Vishnu B. Saharaya (for Saharya & Co.), for the Appellants.

A Satpal Singh, N.S. Vashisht, Vishal, Kanchan Kaur Dhobi,
for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

B 1. Leave granted.

2. Challenge in these appeals is to the judgment of a
Division Bench of the Delhi High Court allowing the Writ
Petitions filed by respondents under Article 226 of the
C Constitution of India, 1950 (in short the 'Constitution'). Prayer
in the writ petitions was to direct the present appellant to make
payment of statutory interest under Section 34 of the Land
Acquisition Act, 1894 (in short the 'Act') for the acquisition of
the land in terms of the award No.3/1997-98 dated 10.12.1997.

D The appellant resisted the claim on the ground that such a prayer
cannot be accepted in the writ petitions. The High Court,
however, held that the writ applications were to be allowed.
Accordingly, it directed the respondents in the writ petitions
including the present appellant to pay the interest payable to
E the claimants in terms of Section 34 of the Act and pay costs of
Rs.10,000/- .

3. In support of the appeals, learned counsel for the
appellant submitted that the direction given by the High Court is
clearly contrary to a Full Bench judgment of the Delhi High Court
F in *Net Ram and Anr. v. Union of India* and Ors. (86 (2000) DLT
606).

4. Learned counsel for the respondents on the other hand
supported the judgment and submitted that in the background
of public accountability which has been highlighted by the High
G Court, the relief has been rightly granted.

5. The Act is a complete Code and lays down detailed
procedure for acquisition of land, payment of compensation
including solatium and additional market value. It is to be noted
H that under Section 34 interest @9% from the date of taking over

the possession till payment for the first year @15% for subsequent years is payable. Section 28 is the only other provision which deals with the award of interest. The said provision empowers the Court to award interest on the excess amount awarded over and above the amount awarded by the Collector.

6. Sections 28 and 34 read as follows:

"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.

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 15% per annum shall be payable from that 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."

7. There is no dispute that apart from Sections 28 and 34 which deal with payment of interest to persons entitled to receive compensation, there is no other provision envisaging payment of interest. Collector, Land Acquisition is liable to pay interest on statutory rates to such persons only when possession has been taken over before the payment of the entire compensation

A to them under Section 34. In *Union of India v. Budh Singh* (1995 (6) SCC 233,) this Court had the occasion to deal with Sections 28 and 34 and it was observed that these were the only provisions which deal with the payment of interest to land owners. While considering the scope and ambit of the Sections, this Court observed:

B “Thus, it could be seen that the statute covers the entire field of operation of the liability of the State to make payment of interest and entitlement thereof by the owner when land has been taken over and possession in consequence thereof, the land owner was deprived of the enjoyment thereof. Thus, it could be seen that the Court has no power to impose any condition to pay interest in excess of the rate and manner prescribed by the statute as well as for a period anterior to the publication of Section 4(1) notification under this Act.”

8. Similar view was expressed in *State of Himachal Pradesh v. Dharam Das* (1995 (5) SCC 683). It was held that when the statute provides for payment of interest to the land owners, a Court has no power to award interest in a manner other than the one prescribed by the statute. It was specifically observed that there is no other provision empowering the Court to award interest on equitable ground as equitable consideration has no role to play in determination of the compensation and the manner of awarding interest as enjoined under the Act. The same has to be administered in the manner laid in the Act and in no other way. As a concomitance, the equity jurisdiction of the court is taken out and the Act enjoins the Court to grant interest as per the statutory rates specified in the Act. A plea was taken in a case before this Court in a matter relating to Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968 which omitted provision for payment of solatium and interest, that in spite of the absence of the provision for solatium and interest in the said Act, the State was bound to pay solatium and interest to the land owners on equitable grounds. This Court negated the contention. It was

observed that there was no substance in the plea that by legislative omission to pay solatium the State enriches itself unjustly at the expense of the private party. (See *Union of India v. Dhanwanti Devi and Ors.* (1996 (5) SCC 44). In *Ashok Nagar Plot Holders Association v. State of U.P.* (1997 (10) SCC 77) this Court again observed that liability to pay interest to the claimant arises only in accordance with Section 34 of the Act. As the Act is a self-contained Code, common law principles of justice, equity and good conscience cannot be extended in awarding interest, contrary to or beyond provisions of the statute.

9. In view of what has been indicated above, the conclusion is irresistible that while exercising jurisdiction under Article 226 of the Constitution there is no scope for direction to pay interest in a manner not contemplated by either Section 28 or 34.

10. In view of the above the appeals deserve to be allowed which we direct. The impugned judgments of the High Court are set aside.

N.J.

Appeals allowed.