



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/97/2021

Phuntso Memba and 32 Ors.
S/O LT. TSERING PUMSHO PERMANENT RESIDENT OF LALI VILLAGE,
PO/PS TUTING UPPER SIANG DIST. AP. 2: SHRI LUKING PALLING

Age:

Occupation :

3: SHRI DILEN MEDO

Age:

Occupation :

4: SHRI KYAMIK JONGKEY

Age:

Occupation :

5: SHRI AMIN NITIK

Age:

Occupation :

6: SHRI ATEN MEDO

Age:

Occupation :

7: SHRI BANGGO TANGGU

Age:

Occupation :

8: SHRI BANSI YARO

Age:

Occupation :

9: SHRI GABO TONDRANG

Age:

Occupation :

10: SHRI GOGON TONDRANG

Age:

Occupation :

11: SMTI JIMIN NITIK

Age:

Occupation :

12: SHRI JIMIN TONDRANG

Age:

Occupation :

13: SHRI KABANG PEYANG

Age:

Occupation :

14: SHRI HAKOT YORDUNG

Age:

Occupation :

15: SHRIKILON TONDRANG

Age:

Occupation :

16: LAMPER TEDO

Age:

Occupation :

17: SHRI LEGONG TONDRANG

Age:

Occupation :

18: SHRI MOBI TONDRANG

Age:

Occupation :

19: SMTI NANYING NITIK

Age:

Occupation :

20: SHRI OTIK PANGKANG

Age:

Occupation :

21: SHRI YACHUNG NITIK

Age:

Occupation :

22: SHRI KESANG DORJEE

Age:

Occupation :

23: SHRI SANG DORJEE

Age:

Occupation :

24: SHRI DONDUP PARDEN

Age:

Occupation :

25: SHRI SAMTEN LAMA

Age:

Occupation :

26: SHRI PEMA CHUNDE

Age:

Occupation :

27: TSECHU NORBU

Age:

Occupation :

28: SHRI CHENGA DAWA

Age:

Occupation :

29: SHRI KEJANG JOMTSO

Age:

Occupation :

30: SHRI PEMA TSERING

Age:

Occupation :

31: SHRI TSEWANG LAMA

Age:

Occupation :

32: SHRI KARMA WANGCHUK

Age:

Occupation :

33: SMTI. KUNJANG LAMO

Age:

Occupation

VERSUS

The Secretary and 14 Ors.

THROUGH THE CABINET SECRETARY TO THE GOVT. OF INDIA, NEW
DELHI. 2:The Chief of Army Staff

Age: 0

Occupation :

3:The Director General Defence Estates

Age: 0

Occupation :

4:The General Officer Commanding in Chief

Age: 0

Occupation :

5:The General Officer Commanding

Age: 0

Occupation :

6:The Principal Director

Age: 0
Occupation :

7:The Director

Age: 0
Occupation :

8:The Defence Estates Officer

Age: 0
Occupation :

9:The Commanding Officer

Age: 0
Occupation :

10:THE STATE OF AP

Age: 0
Occupation :

11:The Secretary/Commissioner

Age: 0
Occupation :

12:The Director Land Management

Age: 0
Occupation :

13:The Deputy Commissioner

Age: 0
Occupation :

14:The Addl. Deputy Commissioner

Age: 0
Occupation :

15:The District Land Record and Settlement Officer

Age: 0
Occupation

Advocate for the Petitioner : Nikita Danggen

Advocate for the Respondent : R. H. Nabam, Addl. Advocate General
M. Kato, DSGI.

B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE
JUDGMENT & ORDER (CAV)

(14.05.2024)

Heard Ms. N. Danggen, learned counsel for the petitioners. Also heard Mr. M. Kato, learned DSGI for respondent Nos. 1 to 10 and Mr. R. H. Nabam, learned Addl. Advocate General for respondent Nos. 11, 14, 15 & 16. None appears for respondent Nos. 12 & 13.

2. By instituting this writ petition, the petitioners have prayed for a direction to the respondent authorities to provide 12% interest of the land compensation w.e.f. from the date of possession or notification on the market value of land and also for a direction to the respondent authorities to pay hire/rent charges/ damages from the date of the actual possession i.e. w.e.f. 1959, in accordance with sections 30 (3), 80 and 93 of the Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation and Resettlement) Act, 2013 (hereinafter referred to as LARR Act, 2013) Alternatively, the petitioners have prayed for declaration of the acquisition proceedings, initiated by the respondent authorities by issuing preliminary notification dated 03.06.2018, as illegal, on the ground of violation of fundamental and constitutional rights guaranteed under Article 21 and 300A of the Constitution of India.

3. The case of 33 petitioners, shorn of unnecessary details, is that they are permanent residents of Rishing, Kopu, Lali and Bona villages under Upper Siang District and are the owners of land measuring 108.08 Acres at Tuting area of Upper Siang District. It is projected that initially the

Indian Army had taken shelter in small plot of land in the year 1959 to 1962 and thereafter, left the place for long period and again came back in the year 1986 and occupied the present land. Since then, the said land is under the possession of Indian Army. As a result, the petitioner had suffered for non- payment of land compensation for almost four decades.

4. In the year 2009 vide Memo No. LM-50/2008, the authority issued a notification for acquisition of land. Thereafter, on 13.02.2010, a final notification was issued. However, the said acquisition proceedings got lapsed due to non-payment of compensation. In the year 2015, the petitioners have approached this Court by filing a writ petition which was registered as WP (C) No. 319 (AP) 2015. The said writ petition was disposed of vide order dated 12.08.2015 with a direction to the Chief Secretary, Govt. of Arunachal Pradesh, to look into the matter immediately with serious concern and to settle the same as expeditiously as possible in accordance with the law by taking into consideration the letter / communication dated 20.11.2014 issued by the Deputy Commissioner, Upper Siang District, within a period of 3 months.

5. The petitioners, after completion of 3 (three) months, when no action was taken even after direction of this court, again approached this Court by filing a writ petition being WP (C) 203 (AP) 2016, wherein, this Court had directed the Defence Estate Officer, Jorhat, Assam to issue appropriate communication to the Deputy Commissioner, Upper Siang District for initiating land acquisition proceedings within a period of 15 days. The respondent authorities had failed to comply with the direction of this Court. A Contempt Petition being Cont. Case (C) No. 26 (AP) 2017 was filed and thereafter, the said contempt petition was disposed of with a further direction to complete acquisition process within three months.

Again, the respondent authorities had failed to comply with the above order resulting in filing of another Contempt Petition being Cont. Case (C) No. 39 (AP) 2018. While Cont. Case (C) No. 39 (AP) 2018 was pending before this Court, the Govt. of Arunachal Pradesh had issued Notification vide Memo No. LM-124/ACQ/2018, dated 03.06.2018 and land acquisition award was made vide order No. YKLM-31/2019, 26.11.2019 by invoking urgency clause under section 40 (1) of LARR Act, 2013 and payment was made to the petitioners but it was found that the petitioners were paid only to the value of said land measuring around 108.08 Acres of land including only one year of interest without including statutory benefits of interest from the date of possession of the said land or notification.

6. The petitioners received remaining 20% of compensation of the land in the month of March, 2020. The 80% of the compensation amount was already paid in the year, 2019 prior to release of 20% in terms of section 40 of the LARR Act, 2013. It is contended that since the respondent authorities had failed to provide the statutory benefits of interest for past possession of the said land, the petitioners submitted representation on 27.07.2020 to the Addl. Deputy Commissioner, Deputy Commissioner, the Defence Estate Officer, Itanagar by stating that the petitioners have accepted the amount of land compensation albeit with protest against non-payment of interest accrued. The Defence Estate Officer, Itanagar, vide letter No. AC/57/TUTING/ACQ/VOL-VII/93, dated 22.12.2020 has rejected the said representation.

7. It is contended that the respondent authorities had given interest of past possession of land only for one year in violation of Sections 30 (3) and 80 of the LARR Act, 2013 as the petitioners are entitled for interest which is statutory benefits w.e.f. 2009, when the notification for the

acquisition had been issued.

8. It is contended that the petitioners were made to run from pillar to post since the year, 1986 and some of the petitioners' father expired in the meantime. Therefore, right to property of the petitioners cannot be taken away except in accordance with the law and since the statutory benefits have not been granted to the petitioners, said acquisition proceeding is not sustainable in the eye of law. Hence, this present writ petition.

9. Ms. N. Danggen, learned counsel for the petitioners, submits that the petitioners have approached the respondent authorities for grant of interest, a statutory benefits, of the past possession from the date of possession or notification, however, the Defence Estate Officer has illegally rejected the claim of the petitioners. She submits that the petitioners have also claimed not only interest as per the LARR Act, 2013 but have also claimed the rent from 1959 and it is undisputed that the Army authorities are in possession of the land of the petitioners since 1959 which is clearly evident from the stand of the respondent Nos. 1, 2 , 4 & 9 in writ petition being WP (c) 203 (AP) 2016, a proceedings connected with the present case. She submits that the army authorities have paid hire/rent charges to the land owners of Bona village which is a similarly situated case. Therefore, the petitioners would also be entitled for payment of hire/rent charges from the Army authorities for past possession of the land of the petitioners.

10. Ms. N. Danggen, learned counsel, submits that the respondent authorities had provided interest of past possession of the land only for one year which is totally unfair and in violation of Section 30 (3), 80 & 93 of the LARR Act, 2013. The petitioners are entitled for statutory benefits like interest w.e.f. 2009 when the notification for acquisition was issued

and not only for one year. Therefore, she submits that the respondent authorities may be directed to provide statutory benefits i.e. 12% interest w.e.f. from the date of possession or notification on the market value of the land in accordance with sections 30 (3) and 80 of the LARR Act, 2013 and hire/rent charges/damages as per section 93 of LARR Act, 2013 w.e.f. the actual possession i.e. 1959.

11. Ms. N. Danggen, learned counsel, has placed reliance of the following Judgements:-

(i) Union of India and Anr.-vs-Pushpavathi and Ors; reported in(2018) 3 SCC 28;

(ii) Chanabasappa -vs-Karnataka Neeravari Nigam Limited and Anr; reported in(2020) 11 SCC 370;

(iii) Special Land Acquisition Officer-vs-Karigowda and Ors; reported in (2010) 5 SCC 708;

(IV) Young Lai Association and Anr-vs-State of Mizoram and Ors; reported in2017 (4GLR) 134;

(v) State of Maharastra-vs- Kailash Shiva Rangari; reported in 2016 (3) MH.L.J 457.

12. On the other hand, Mr. M. Kato, learned DSGI, submits that the petitioners having not made any application for reference to the appropriate authority under Section 64 of LARR Act, 2013, the writ petition is not maintainable as the act provides for an alternative and efficacious remedy.

13. Mr. M. Kato, learned DSGI, while referring to the affidavit-in-opposition filed on behalf of respondent No. 1, 2, 4, 7, 8 & 9, submits that the Army authorities initiated the acquisition of land measuring 108.08 acres based on the "Land Transfer Agreement and No objection

certificate" issued by the rightful land owners. The petitioners have not submitted any supporting documents regarding possession of their land by army during 1959 to 1962 and in 1986. The notification issued vide Commissioner, Land Management, Govt. of Arunachal Pradesh dated 05.10.2009 and dated 13.02.2010 issued in LA Act 1894 for acquisition of land measuring 136.30 acres was issued without sanction of the appropriate Govt. and the same had lapsed and therefore, has no legality at this stage. In this connection, this Hon'ble High Court, vide order dated 27.01.2017 passed in WP (C) 203 (AP)2016 has also acknowledged the fact that the preliminary and the final notification issued vide 05.10,2009 and dated 13.02.2010 issued for acquisition of land measuring 136.30 acres as per LA Act, 1894 had lapsed.

14. Mr. Kato, learned DSGI, submits that in compliance to the Hon'ble High Court, order dated 27.01.2017 passed in WP (C) 203 (AP) 2016, the land acquisition proceedings of the land in question has been completed and payment of 100% compensation was made to the ex-land owners. The Deputy Commissioner, Upper Siang district, Yingkiong calculated /estimated the total compensation for an amount of Rs.9,71,02,746/- including 12% additional compensation i.e. Rs. 52,48,797/- as per the proviso of Section 30(3) of the LARR Act 2013. Based on the estimated cost of Rs.9,71,02,746/- assessed by the Deputy Commissioner, Govt. of India, Ministry of Defence vide letter No.201/646/A/ACQ/EC/ 10.05.2018 amended vide Corrigendum No. dated 29.11.2018 had accorded sanction for acquisition of land measuring 108.08 acres at Tuting, invoking urgency clause under section 40 of the LARR Act, 2013. The Deputy Commissioner, Upper Siang district, Yingkiong published notification under section 11 of the LARR Act 2013 on 03.06.2018 invoking urgency clause under section

40 of LARR Act, 2013. As per demand made by the Deputy Commissioner, Upper Siang district, Government of India, Ministry of Defence had deposited 80% of land compensation (including 12% addl. compensation) to the Deputy Commissioner, Upper Siang district, Yingkiong on dated 11.12.2018. Accordingly, the land measuring 108.08 acres at Tuting were taken over on 26.11.2019. Thereafter, the Deputy Commissioner, Upper Siang district vide their letter No. YKLM-31/2019 dated 10.02.2020 endorsing copy of the Award in respect of land measuring 108.08 acres at Tuting, requested DEO Itanagar to release balance 20% of land compensation. Accordingly, DEO Itanagar, vide Defence Cheque bearing No. 405962 dated 09.03.2020 deposited the balance 20% of land compensation to the office of Deputy Commissioner, Upper Siang district, Yingkiong, Arunachal Pradesh on 17.03.2020. As such, full 100% compensation as awarded by the Collector has been deposited including 12% addl. Compensation as per the proviso of Section 30(3) of RFCTLARR Act, 2013 and as such claims for further interest cannot be accepted.

15. Mr. Kato, learned DSGI, submits that the hiring process for land measuring 73.96 acres at Bona village, w.e.f. 2010 to 2020 were initiated as per willingness & No Objection Certificate received from the rightful land owners. But, in the instant case, no records like lease agreement/NOC regarding possession of land measuring 108.08 acres at Tuting by Indian Army since 1959 are available with this office. Therefore, the petitioners are not entitled for any hire/rent charges or damages.

16. Mr. R. H. Nabam, learned Addl. Advocate General, submits that the acquired land of the petitioners is actually agriculture land. As per the claims based on records the Indian Army occupied the land in the year, 1986 and the compensation was only paid in the year, 2019 with only one

year interest. He submits that since the first notification for the land acquisition was published in 2009, the petitioners are seeking 12% interest as per LARR Act, 2013 which may be considered by this Hon'ble Court in accordance with law.

17. Due consideration has been extended to the submissions of the learned counsel for the parties and the materials available on record.

18. The petitioners are the land owners of an area of 108.08 Acres of land at Tuting in Upper Siang District of Arunachal Pradesh. The acquisition proceeding was initiated in the year, 2009 under Land acquisition Act, 1894 (now repealed) by issuing a notification for acquisition of the land for Indian Army. The possession of the land, according to the petitioners, was taken in the year, 1959. It appears that the actual occupation of the land was in the year, 1986 as the respondent authorities have not seriously disputed the same except with vague response to that effect. The acquisition proceedings could not be completed as the same got lapsed on coming into force of LARR Act, 2013.

19. The land of the petitioners has been acquired finally under LARR Act, 2013 by an award dated 26.11.2019 for a total compensation amount of Rs.9,71,02,746/-. It is noticed that the land has been acquired by invoking the urgency clause under Section 40 (1) of the LARR Act, 2013. It is also noticed that additional compensation on the market value and solatium under Section 30 of LARR Act, 2013 have been provided to the petitioners.

20. The grievances of the petitioners, as noted herein above, are for providing statutory benefits i.e. 12% interest w.e.f. from the date of possession or notification on the market value of the land and hire/ rent charges/ damages under Section 30 (3), 80 and 93 of the LARR Act, 2013.

21. In order to appreciate and analyse the issue, it would be apposite to refer to the relevant provisions of LARR Act, 2013.

22. Section 30 provides which is produced herein below :-

“30...Award of solatium.—(1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a —Solatium amount equivalent to one hundred per cent. of the compensation amount.

Explanation.—For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

(3) In addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

23. Section 40 relates to power in case of urgency to acquire land in certain cases, which is reproduced herein below:-

“40...Special powers in case of urgency to acquire land in certain cases:

(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the

approval of Parliament: 24 Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall tender payment of eighty per cent. of the compensation for such land as estimated by him to the person interested entitled thereto.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), sub-section (2) or sub-section (3) are applicable, the appropriate Government may direct that any or all of the provisions of Chapter II to Chapter VI shall not apply, and, if it does so direct, a declaration may be made under section 19 in respect of the land at any time after the date of the publication of the preliminary notification under sub-section (1) of section 11.

(5) An additional compensation of seventy-five per cent. of the total compensation as determined under section 27, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section:

Provided that no additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interests of the State or relations with foreign States".

24. Section 80 provides as under:-

“80.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 cent. 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 cent. 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”.

25. Section 93 provides that completion of acquisition not compulsory, but compensation to be awarded when not completed, which is reproduced herein below :-

“93.Completion of acquisition not compulsory, but compensation to be awarded when not completed.”-(1) *The appropriate Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. (2) Whenever the appropriate Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land”.*

26. On a bare reading of the provisions of Section 30 (3), it provides that in addition to the value of land provided under Section 26, the Collector shall, in every case, award and amount calculated at the rate of 12% per annum on such market value for the period commencing and from the date of publication of the notification of the Social Impact Assessment Study under Sub section 2 of Section 4 in respect of such land till the date of award of taking possession of the land whichever is earlier.

27. Section 80 provides for 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 @ 9% per annum from the time of so taking possession until it shall have been so paid or deposited. It also provides that if such compensation or any part thereof is not paid or deposited within the period of one year from the date on which the possession is taken, interest @ 15% 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 expiry. On a reading of the above provisions, I am of the view that same would not be applied in the facts and circumstances of the present case inasmuch as, non-payment of compensation before taking possession of the land would not arise as the acquisition and award have been made when the army authorities were already under the possession. An Award was made on 26.11.2019 by paying 80% of compensation and the 20% payment was made in the month of March 2020 with an interest of one year in terms of the section 40 of LARR Act, 2013. However, since the first notification was issued in the year 2009 under the Land Acquisition Act, 1894 (which had lapsed), the petitioners may be entitled to the interest from 2009, only for the reason that the petitioners have been provided an interest for one year and no other.

28. Section 93 provides for a completion of acquisition which would not be compulsory, but the compensation to be awarded where not completed. It provides that the appropriate govt shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. It further provides that whenever the appropriate govt. withdraws from any such acquisition, the collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder and shall pay such amount to the persons interested together with or cost reasonably incurred by him in the prosecution of the proceedings under the Act relating to the said land. This provision seeks to provide that the appropriate govt can withdraw from the land acquisition before taking actual possession and the collector shall determine the amount of compensation due for damage suffered by the owner. Thus, this provision

also would not be applicable in the present case as the authority has not withdrawn the acquisition rather the acquisition has been completed invoking the urgency clause under Section 40 of the LARR Act for the Army authority by determining the compensation and payment has been made to the petitioners.

29. Now, reference may be made to the case laws relied by the learned counsel for the petitioners.

30. In the case of **Pushpavathi** (supra), the Hon'ble Supreme Court has held as under:-

“34. Similarly, the reference to the Court under Section 18 is made by the Collector only when there is a dispute as to the measurement of the land or to the amount of the compensation or as to the person(s) to whom the compensation is payable and lastly, regarding the apportionment of the compensation amongst the persons interested in claiming compensation.

35. In our considered opinion, the dispute relating to non-award of the interest to the landowners, whether under Section 28 or Section 34 is not a dispute, which falls under Sections 18 or/and 28-A(3) of the Act. In other words, a reference under Section 18 can only be made by the Collector in respect of those issues, which are specified under Section 18.

36. A dispute relating to non-award of interest payable to the landowners under Section 28 or/and Section 34 of the Act is not specified under Section 18 and hence it is not capable of being referred by the Collector to the civil court under Section 18 of the Act. It is also for the reason that payment of interest is statutory in character and being statutory, it is mandatory for payment once conditions specified under Sections 28 or/and 34 are fulfilled”.

31. In the case of **Chanabasappa** (Supra), the Hon'ble Supreme Court has held as under:-

“8. In R.L. Jain v. DDA⁴ this Court held that in a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4 of the Act, it is open to the landowner to recover the possession of his land by taking appropriate legal proceedings. Therefore, he is only entitled to get rent or damage for use and occupation for the period the Government retains

possession of the property. When possession is taken prior to issuance of preliminary notification, the Collector may also determine the rent or damages. This Court has observed thus: (SCC pp. 93-94, para 18)

“18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner 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 landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions 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 may be awarded.”

9. In *Siddappa Vasappa Kuri v. LAO*⁵ this Court has laid down: (SCC p. 144, para 6)

“6. It is, as we see it, clear from Section 23(1-A) that the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per centum per annum on the market value, is the date of publication of the Section 4 notification. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier. In the present case, possession of the land having been taken prior to the publication of the Section 4 notification, that terminal is not available. The only available terminal is the date of the award. The High Court, therefore, was in no error in holding that the appellants were entitled to the additional compensation under Section 23(1-A) for the period 8-3-1991 to 6-2-1993.”

10. In *LAO v. Karigowda*⁶ it was observed that no interest can be claimed for the period prior to the Section 4 notification. Where possession has been lost prior to initiation of the acquisition proceedings, the landowners can claim rent or damages before the Collector. Following observations have been made in *Karigowda*⁶: (SCC pp. 744-45, para 101)

“101. As is evident from the above dictum of the court, despite dispossession, the title continues to vest in the landowners and it is open for the landowners to take action in accordance with law. Once notification under Section 4(1) of the Act has been issued and the acquisition proceedings culminated into an award in terms of Section 11, then alone the land vests in the State free of

any encumbrance or restriction in terms of provisions of Section 16 of the Act. The court, in situations where possessions have been taken prior to issuance of notification under Section 4(1) of the Act, can direct the Collector to examine the extent of rent or damage that the owners of land would be entitled to, the provisions of Section 48 of the Act would come to aid and the court would also be justified in issuing appropriate direction. This was the unequivocal view expressed by the Court in R.L. Jain case⁴ as well. This legal question is no more open to controversy and stands settled by this Court. We would follow the view taken and accept the contention of the appellant State that the Reference Court as well as the High Court² could not have granted any interest under the provisions of the Act, for a date anterior to the issuance of notification under Section 4 of the Act. However, following the dictum of the Bench in R.L. Jain case⁴, we direct the Collector to examine the question of payment of rent/damages to the claimants, from the period when their respective lands were submerged under the backwater of the river, till the date of issuance of the notification under Section 4(1) of the Act, from which date, they would be entitled to the statutory benefits on the enhanced compensation."

32. In the case of **Karigowda** (Supra), the Hon'ble Supreme Court has held as under:-

"106. In view of the aforesaid discussion, we allow these appeals in part, with the following directions:

(i) The appeals filed by the State are partially allowed. In the peculiar facts and circumstances of the present case, the claimants would be entitled to get compensation at the rate of Rs 2,30,000 per acre for the wet/garden land and at the rate of Rs 1,53,400 per acre for the dry land.

(ii) The claimant landowners would be entitled to get statutory benefits on the enhanced compensation under Sections 23(1-A) and 23(2) of the Act and interest in terms of Section 28 of the Act.

(iii) Since the appeals filed by the State have been partially allowed by this Court, we hope that the Government shall grant compensation to all the interested persons whose lands have been acquired under the same notification and pay them compensation in terms of this judgment without any further delay.

(iv) Following the principle and the directions stated by this Court in R.L. Jain case²⁴, we grant liberty to the claimants to file applications before the competent authority (State Government/Collector concerned) to claim damages for their dispossession from the lands

owned by them as a result of submerging, till the date of issuance of Notification under Section 4 of the Act i.e. 4-4-2002. These applications may be filed within eight weeks from the date of pronouncement of this judgment. If such applications are filed we direct the competent authority to consider the same sympathetically and award such amounts to the claimants as may be payable in accordance with law expeditiously. We make it clear that the amounts, if already paid for this period, shall be adjusted.

(v) The direction of the High Court for payment of interest for the period prior to the issuance of the Notification under Section 4 of the Act i.e. 4-4-2002 is hereby set aside and ordered to be deleted.

(vi) The appeals are allowed to the above extent.

(vii) Parties to bear their own costs.

33. In the case of *Young Lai Association* (Supra), Division Bench of this Court has held as under:-

“16. Question for consideration is whether in the event of such failure on the part of the Collector in the discharge of statutory duty as per mandate of section 23(1 A) and (2) of the LA Act, 1894 read with section 15 of the said Act, what would be the remedy available to the affected person(s) interested. No doubt, he can avail the remedy of section 18 of the LA Act and seek a reference. But having regard to the objective of the two provisions coupled with the compulsory nature of land acquisition, to our mind, it would be highly unfair, unjust and untenable to restrict the aggrieved person(s) interested only to a remedy under section 18. Such an aggrieved person may approach the Collector concerned under section 13A of the LA Act, 1894 whereunder the Collector can correct clerical or arithmetical mistakes, etc., in making the award either on his own motion or on an application of any person interested or a local authority. We say this because awarding of interest under section 23(1A) and awarding of solatium under section 23(2) is statutorily mandated. It is automatic; once market value is determined, interest and solatium thereon has to be granted. There is no question of any long drawn argument or debate over the entitlement or on the quantum of interest and solatium because these are statutorily provided. Once the market value of land is determined by the Collector, he has to apply the formula provided under the aforesaid two provisions to arrive at

the quantum of interest and solatium. If there is omission on the part of the Collector to grant interest and solatium while making the award, it would be a mistake or an error apparent on the face of the record. Therefore, such an error or mistake would come within the ambit of section 13A of the LA Act, 1894, which can be corrected by the Collector himself.

19. Now coming to the next question as to whether such a claim can also be maintained in a writ petition, as already discussed above, claim of interest and solatium is a statutory right of the person interested and non-payment of such interest and solatium would be a failure on the part of the Collector to discharge statutory duty vested on him. If there is such failure on the part of the public authority in the discharge of statutory duty, certainly a writ court would be well within its jurisdiction to issue a writ of mandamus to compel the public authority to discharge his statutory duty. The fact that alternative remedy is available under sections 13A and 18 of the LA Act, 1894 would not debar the writ court from exercising such jurisdiction in an appropriate case".

34. In the case of **State of Maharashtra-vs- Kailash Shiva Rangari** (Supra), the Hon'ble Bombay High Court has held as under:-

"31. If the landowner is divested the possession of his land by the Collector or the State Government illegally or de hors the provisions of the said Act, it is open for him to recover such possession and claim rent and damages for the use and occupation for the period for which the State Government has illegally retained the possession of the land. To take care of such situation, certain administrative circulars have been issued by the State Government for payment of rental compensation, in accordance with which the claimants are paid for the period for which they are deprived of the benefits of the land till the notification is published under section 4(1) of the said Act. We are not concerned in this matter about the rental compensation or the damages to which the claimants are entitled, if the possession of the land is de hors the provisions of the Act.

"32. Keeping in view the entire scheme of the Land Acquisition Act and the ratio of the decisions of the Apex Court in the cases of R L. Jain and Lila Ghosh, cited supra, the position of law can be summarized as under:

(i) If the possession of the land under acquisition is taken under section 16 of the said Act i.e. after an award is made by the Collector under section 11 therein, the interest would be payable under section 34 from the date of passing of the award and we

are in agreement with such a view expressed by the Division Bench of this Court (S/Shri N. V. Dabholkar and M. G. Gaikwad, JJ.) in the case of State of Maharashtra and anr. vs. Rajendra Narayanrao Gaikwad, reported in 2007 MhLJ Online 2 2008(1) BCR 839.

(ii) The interest as provided under section 34 of the said Act shall start running from the date of possession, only if the possession is taken by the Collector in exercise of his powers under section 17 of the said Act which would obviously be after issuance of notice under section 9(1) of the said Act. If the possession is taken under section 17, the interest payable under section 34 of the said Act shall start running from the date of possession and not from the date of award.

(iii) Where the possession of the land under acquisition is taken prior to issuance of notification under section 4(1), then there would be no question of invoking the urgency clause under section 17 of the said Act and the interest under section 34 shall start running from the date of passing of the award.

(iv) The starting point for the purposes of calculating the amount of additional component under section 23(1-A) of the said Act at the rate of twelve per centum per annum is the date of publication of the notification under section 4 of the said Act, and the terminal point is either the date of the award or the date of taking possession, whichever is earlier.

(v) We hold that in none of the eventualities, the claimant shall be entitled to interest under section 34 of the said Act from the date of publication of the notification under section 4(1) of the said Act.

vi) There is no overlapping of the benefits under section 23(1-A) and section 34 of the said Act. The terminal points under section 23(1-A) are the starting points under section 34 of the said Act and both the provisions operate in different fields.

(vii) We express our full agreement with the view taken by the Division Bench of this Court in Lalitkumar Shah's case, cited supra, that in a case where possession is taken prior to issuance of notification under section 4(1) of the said Act, the interest under section 34 shall start running from the date of award only.

(viii) We also express our full agreement with the view taken by the Division Bench of this Court in Lalitkumar Shah's case, cited supra, that the decision of the Division Bench in the case of Jafarali Mithabhai Hirani and ors. vs. State of Maharashtra and ors.. reported in 2009(3) All MR 779, and the similar view taken in other matters is no longer a good law".

35. On careful consideration of the above judgements, this court finds that all the decisions are with regard to the provisions of Land Acquisition Act, 1894, therefore, cannot be applied fully in the facts and

circumstances of the present case. However, the laid down principles and propositions could be applied so far as the rent/damages are concerned.

36. Ms. Danggen, learned counsel for the petitioners, has vehemently urged that the Hon'ble Supreme Court in the case of **Chanabasappa** (Supra), held that under Section 48 of Land Acquisition Act, 1894, the land owners are entitled to rent/ damages. Since the section 93 of LARR Act, 2013 is *pari materia* with the section 48 of Land Acquisition, 1894, the petitioners are entitled for interest, hire/ rent charges/damages under Section 93 of LARR Act, 2013.

37. Having considered the above submission, this Court finds it too tenuous to accept as the section 93 of LARR Act, 2013 seeks to provide a liberty to withdraw the proceedings and before taking actual possession and the authority to determine the amount of compensation due for damage suffered by the owner. In the instant case, though the possession has been taken before the acquisition, there is no question of damages to be determined under Section 93 of LARR Act, 2013. However, the petitioners may be entitled for the hire/rent charges for the land which has been under the possession till the notification for acquisition was initiated which may be permissible in view of the principle laid down by the Hon'ble Supreme court in the cases (supra).

38. It is also taken note of the fact that the present acquisition has been made by invoking section 40 of LARR Act, 2013. As per the said provision, 80% compensation has been paid to the petitioners thereafter, additional compensation on market value under Section 30 (3) of the Act has also been provided to the petitioners. Now, the issue is as to whether the petitioners shall be entitled to 12% interest per annum on the market value for the period commencing from the date of publication of

notification of the Social Impact Assessment study under sub section 2 of section 4 in respect of the land till the date of award whichever is earlier.

39. In strict sense, since the acquisition has been made by invoking urgency clause under Section 40 of the LARR Act, 2013, in my view, the petitioners would not be entitled as it requires that the interest shall be from the date of publication of the notification of Social Impact Assessment study. There is nothing on record to show that any publication of notification of the Social Impact Assessment study under sub section 2 of section 4 in respect of the land has been made. However, considering that the land of the petitioners has been taken possession in the year 1986 (though petitioners claim to be since 1959), the petitioners would be entitled for interest from the date of first notification i.e. 2009, only on the reason that they have been provided interest for one year.

40. The learned DSGI has sought to dispute the date of possession by the Army authority and also has raised the issue of maintainability of the present writ petition. On consideration of the materials on record, the possession appears to be since 1986 and the grievance of the writ petitioners is for providing interest, hire/rent charges as well as damages which alleged to have not been provided to the petitioners in accordance with LARR Act, 2013. Therefore, the submissions cannot be accepted as the grounds of reference provided under Section 64 of LARR Act, 2013 are completely different. In such view of the matter, this Court is of the view that the writ petition is maintainable as the claims of the petitioners are other than grounds provided under Section 64 of LARR Act, 2013, although whether the petitioners are entitled to the relief sought for is different issue.

41. As held by the Hon'ble Supreme Court, the reference to the authority

under Section 64 is made by the Collector only when there is a dispute as to the measurement of the land or to the amount of the compensation or as to the person (s) to whom the compensation is payable as well as regarding the apportionment of the compensation amongst the persons interested in claiming compensation. The dispute in the present case relates to non-award of the interest to the landowners and claim of rent charges /damages. A reference under Section 64 of the LARR Act, 2013 can only be made by the Collector in respect of those issues which are specified thereunder. A dispute relating to non-award of interest payable to the landowners is not specified under Section 64 of the Act and hence it is not capable of being referred by the Collector to the authority.

42. The Hon'ble Supreme Court has held that in a case where the landowner is dispossessed prior to the issuance of preliminary notification, it is open to the landowner to recover the possession of his land by taking appropriate legal proceedings. Therefore, he is only entitled to get rent or damage for use and occupation for the period the Government retains possession of the property. When possession is taken prior to issuance of preliminary notification, the Collector may also determine the rent or damages.

It has been held in the above referred case, that in a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner 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, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property.

43. Reverting back to the present case, the grievances of the petitioners are for grant of statutory benefits, i.e., 12% percent interest on the market value of the land in accordance with Sections 30(3) and Section 80 and hire/rent charges/damages in terms of section 93 of the LARR Act, 2013. It is noticed that under section 30(3) it is provided that in addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent, per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment Study under sub-section (2) of section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. It is seen that the land measuring 108.08 acres at Tuting, was acquired for the Indian Army, invoking urgency clause under section -40 of LARR Act, 2013 and as such, no notification of the Social Impact Assessment Study was published by the Govt. of Arunachal Pradesh. Further, Govt. of India, Ministry of Defence has provided additional compensation on the market value with interest @ 12% only for one year to the petitioners under section 30(3) of LARR the Act 2013. Thus, the petitioners, in my considered view, would not be entitled for interest as claimed by them, however, would be entitled for interest from the date of first notification in the year 2009.

44. Regard being had to the claims by the petitioners under section 93 of

the LARR Act, 2013, this Court finds that section 93 of LARR Act, 2013 as noted above seeks to provide a liberty to withdraw the proceedings and before taking actual possession and the authority to determine the amount of compensation due for damage suffered by the owner. In the instant case, though the possession has been taken before the acquisition, in my view, question of damages to be determined would not arise under Section 93 of LARR Act, 2013. However, considering the peculiar fact of this present case, the petitioners may be entitled for the hire/rent charges for the land which has been under the possession till the notification for acquisition was initiated which may be permissible in view of the principle laid down by the Hon'ble Supreme court in the cases (supra).

45. In view of the discussions made herein above, this court is of the considered opinion that the petitioners are not entitled for the relief sought for in terms of the provisions of sections 30(3), 80 and section 93 of LARR Act, 2013. Thus, this court is not inclined to grant the same under the aforesaid provisions. However, in view of the principle of law laid down by the Hon'ble Supreme Court, this court direct the Deputy Commissioner/Collector to examine and consider the questions of payment of rent/damages to the petitioners from the period when their respective lands were taken possession, i.e. 1986, till the date of issuance of the notification in year 2009 and the interest from the first notification in 2009 till the award on the additional compensation only for the reason that the petitioners have been already provided interest for one year. Such exercise shall be completed within a period 3 (three) months from the date of receipt of copy of this order.

46. Writ petition stands disposed in terms above.

No order as to costs.

JUDGE

Comparing Assistant