

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.94 of 2024

1. Sri Sibayan Ch. Das, S/o Lt. Mati Lal Das
2. Smt. Shipra Das, W/o Sri Sibayan Ch. Das
Both are residents of Konaban, P.S. Madhupur, District- Sepahijala Tripura
.....Petitioner(s);

Versus

1. The In-Charge HR-ER, Tripura Asset ONGC, Badharghat, West Tripura, Pin-799001
2. The Land Acquisition Collector, West Tripura, Agartala, Pin-799001
.....Respondent(s).

CRP No.95 of 2024

1. Sri Shyam Lal Das, S/o Lt. Mati Lal Das
2. Smt. Sabita Das, W/o Sri Shyam Lal Das
Both are residents of Konaban, P.S. Madhupur, District- Sepahijala Tripura
(Both the petitioners are represented by Sri Sibayan Chandra Das, the constituted Attorney by dint of registered Power of Attorney vide No.I-2934 dated 23.09.1996).
.....Petitioner(s);

Versus

1. The In-Charge HR-ER, Tripura Asset ONGC, Badharghat, West Tripura, Pin-799001
2. The Land Acquisition Collector, West Tripura, Agartala, Pin-799001
.....Respondent(s).

For Petitioner(s) : Mrs. Sujata Deb (Gupta), Advocate,
Ms. Rumpa Dey, Advocate.

For Respondent(s) : Mr. Soumen Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

24/01/2025

Heard Mrs. Sujata Deb (Gupta), learned counsel for the petitioners
and Mr. Soumen Saha, learned counsel for the respondent-ONGC.

2. CRP No.95/2024 is also taken along with CRP No.94/2024 as they raise common issues in relation to the grant of interest over the enhanced compensation granted by learned Land Acquisition Court for damage to the trees of the claimant in a temporary acquisition made under Section 35 of the

Land Acquisition Act, 1894 [hereinafter referred to as “Act of 1894”] which is under Part VI of the Act of 1894. Section 35 under Part VI of the Act of 1894 under the heading “Temporary Occupation of Land” is extracted hereunder for proper appreciation:

“35. Temporary occupation of waste or arable land, procedure when difference as to compensation exists. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the appropriate Government] that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such terms as it shall think fit, not exceeding three years from commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof, for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.”

The principle as governing grant of compensation under Section 35 for temporary occupation of land has been laid down in the case of *Brij Behari Sahai v. State of Uttar Pradesh* reported in (1986) 3 SCC 564 *inter alia* holding as under:

“4. It is a fact that the High Court referred to Section 23(2) of the Act while fixing the quantum of compensation. We are of the view that Part VI of the Land Acquisition Act contains a complete code by itself so far as temporary occupation is concerned and provisions of Section 23 are not attracted. Parts III, IV and V of the Act are connected with acquisition covered by Part II. Part VI on the other hand deals with temporary occupation of the land. In acquisition in exercise of the right of *eminent domain* title of the owner is extinguished and the property vests in the State. On the other hand, when temporary occupation is taken under Part VI of the Act the title remains untouched. It is the possession of the property which alone is taken over. Reference may be made to the proviso in Section 36(2) of the Act which contemplates that in a case where possession alone has been taken under Section 35 but the land becomes permanently unfit to be used for the purposes for which it was used immediately before possession was taken, it is open to the owner of the property to require the appropriate government to take steps for acquisition of the land. This itself is indicative of the position that when possession had been taken under Section 35 of the Act it was not a case of acquisition under Part II thereof.

5. We agree with the view indicated in *Tan Bug Taim v. Collector of Bombay*, that temporary occupation of land provided In Part VI is distinct from, and is not included in, acquisition of land. We have already pointed out that clause “secondly” in Section 23(1) of the Act is not applicable to temporary occupation covered by Section 35 of the Act. Statutory solatium as provided in Section 23(2) of the Act does not apply to a case of damage covered by clause

“secondly” in Section 23(1) itself. “Market value” occurs in the first clause of Section 23(1) of the Act and sub-section (2) of Section 23 refers to market value. Solatium has reference to market value and the mandate to pay solatium is only in respect of market value. Compensation under Section 35 of the Act has no reference to market value and the actual loss sustained by the persons interested in the land is intended to be compensated. In that view of the matter, to a case of compensation under Section 35 of the Act the provisions of Section 23(2) of the Act cannot be applied. The claimant is thus not entitled to any solatium on the compensation determined by the High Court in this case.”

3. Both the revision petitions relate to the same petitioners. The temporary acquisition in both the revision petitions was undertaken for the purposes of the respondent-ONGC pursuant to the notification dated 12.12.2008 for construction of drill site and Waste Pit for the location RODF under Bishalgarh Sub-Division. The claimants/petitioners, being aggrieved with the award of compensation for use of land and for felling of rubber trees, sought reference before the learned LA Collector claiming enhanced compensation. On reference made by the LA Collector under Section 18, Misc. (L.A.) 51 of 2012 and Misc. (L.A.) 52 of 2012 were instituted before the learned LA Judge, Sepahijala District, Bishalgarh. The learned LA Judge enhanced the compensation vide award dated 07.12.2019 which were made the subject matter of LA Appeal No.27 of 2021 and LA Appeal No.26 of 2021 respectively. The learned Appellate Court held that the reference made under Section 18 of the Act of 1894 was *ex facie* erroneous since the matters pertained to Section 35(3) of the Act of 1894. Accordingly, without expressing any opinion with regard to fixation of the amount of compensation, the award dated 07.12.2019 in both the LA cases were set aside and the matters were remanded to the learned Court to decide the reference afresh treating them to be under Section 35(3) of the Act of 1894 on the basis of the evidence and materials available on record. Thereafter, both the Misc. (L.A.) 51 of 2012 and

Misc. (L.A.) 52 of 2012 have been decided by the judgments dated 03.02.2024 [Annexure-2 in both the revision petitions] whereby the learned Court held that the claimants are entitled for enhancement of award to the extent of cost of damaged rubber trees calculated at the rate of Rs.1500/- per tree multiplied by the number of trees i.e. 320 nos. in Misc. (L.A.) 51 of 2012 and 480 nos. in the second case being Misc. (L.A.) 52 of 2012 amounting to enhanced compensation of Rs.4,80,000/- and Rs.7,20,000/- in the two reference cases. The learned LA Court awarded 6% interest per annum on the said amounts till realization of the whole amount following the principle under Section 34 of the Civil Procedure Code, 1908. The award of compensation for the use of land was not disputed before the learned LA Court on remand. Before the satisfaction of the decree/award, the respondent-ONGC preferred Civil Misc.03 of 2024 and Civil Misc.02 of 2024 respectively in Misc. (L.A.) 51 of 2012 and Misc. (L.A.) 52 of 2012 which have been disposed of by the impugned orders dated 03.04.2024 respectively impugned in both the civil revision petitions.

4. The respondents had sought review of the award on the question of the date from which the interest on the awarded amount is to be calculated. The learned LA Court, in both the cases, held that since nothing is specifically mentioned giving retrospective effect of imposing such interest, it must be treated that the interest on the awarded amount shall be calculated from the date of judgment i.e. 03.02.2024. The claimants have preferred the instant revision petitions under Article 227 of the Constitution of India assailing the impugned orders passed in Civil Misc.03 of 2024 and Civil. Misc.02 of 2024 arising out of Misc. (L.A.) 51 of 2012 and Misc. (L.A.) 52 of 2012 respectively. It is the

case of the claimants that the award of interest has not been computed in the correct manner as per the provisions of Section 34 of the CPC. Though an argument was made initially that the computation of the interest amount on the enhanced compensation ought to have been from the date of the notification of the temporary acquisition, but in view of the ratio rendered by the Apex Court in the case of **Brij Behari Sahai** (supra), which has also been referred to in LA Appeal No.27 of 2021 and LA Appeal No.26 of 2021 in the same litigation by this Court, that plea has not been pressed. The same has been opposed by learned counsel for the respondent-ONGC. A plea of maintainability of the instant revision petitions has been taken on his behalf relying upon a decision of the Apex Court in the case of **Shalini Shyam Shetty and Another v. Rajendra Shankar Patil** reported in (2010) 8 SCC 329. The said judgment lays down the distinction between the relative nature, scope, ambit, application and evaluation of the power under Article 226 and 227 of the Constitution of India. In the objection petition, the respondents have also taken a plea that there is no provision for grant of interest under Section 35 of the Act of 1894. Learned counsel for the respondent-ONGC has also argued that the date of institution of the suit within the meaning of Section 34 of the CPC for granting interest on the enhanced compensation awarded under Section 35(3) of the Act of 1894 should be computed from the date on which the Appellate Court i.e. this Court remanded the matter for fresh consideration treating the reference as made under Section 35(3) under Part VI of the Act of 1894, and not from the date of the reference originally made under Section 18 of the Act of 1894 in the year 2012.

5. I have considered the submission of learned counsel for the parties and taken note of the relevant materials necessary for determination of the legal issue at hand.

In the background of the facts noted above, it would be appropriate to refer to Section 34 of the CPC which is applicable to the case of the parties. Be it also noted that the award dated 03.02.2024 passed under Section 35(3) of the Act of 1894 upon remand by this Court in LA Appeal No.27 of 2021 and LA Appeal No.26 of 2021 has awarded enhanced compensation for cost of damage to the rubber trees pursuant to the temporary acquisition in favour of the petitioners and interest at the rate of 6% per annum in terms of Section 34 of the CPC. The application of Section 34 of the CPC for grant of interest in a claim for enhanced compensation in reference made under Section 35(3) of the Act of 1894 has not been challenged by any of the parties before this Court. As such, the issue relating to application of Section 34 for grant of interest is no longer opened to be questioned in the present revision petitions. The only question which, therefore, survives for determination is the date from which interest over such enhanced compensation for damage to the trees is to be computed. Section 34 of the CPC is quoted hereunder:

“34. Interest.-(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, 56[with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

⁵⁷[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest

or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I. In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II. For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest 58 [on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.”

6. As per Section 34(1) of the CPC, the Court while passing a decree for payment of money, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree. This exercise has been undertaken by the learned LA Court by granting 6% interest on the enhanced compensation for damage to the trees till its realization, but the learned Court did not clarify in the original award dated 03.02.2024 as to the date from which such interest is to be computed; though Section 34(1) of CPC clearly provides that such interest as may be deemed reasonable to be paid on the principal sum adjudged shall be from the date of the suit to the date of the decree. The second part of Section 34(1) of the CPC provides that in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit may be granted by the Court as may be deemed reasonable from the date of the decree to the date of payment or to such earlier date as the Court thinks fit. This question is not open for consideration in the instant cases since the learned LA Court in its award dated 03.02.2024 has not granted any interest on such principal amount for any period prior to the institution of the suit or the reference. Sub-Section 2 of Section 34 of the CPC makes it all the more clear that where such a decree is silent with respect to the payment of further interest on such principal sum from the date of

the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie. As such, the only issue before this Court is the date from which such interest at the rate of 6% per annum is to be computed on the principal sum adjudged i.e. the enhanced compensation awarded by the learned LA Judge for the damage to the trees in both the LA cases.

7. In view of the language used in first part of Section 34 of the CPC, the amount of interest should be computed on the enhanced compensation for damage to the trees from the date of the suit that means the date on which the reference was made. The reference was originally made in the year 2012 as the number of LA cases also show i.e. Misc. (L.A.) 51 of 2012 and Misc. (L.A.) 52 of 2012. The contention of the respondent that the interest of 6% per annum as awarded by the learned LA Court in the award passed on remand should be computed from the date on which the learned Appellate Court remanded the matter for treating the reference afresh under Section 35(3) of the Act of 1894 is not worth acceptance for two reasons – (i) the erroneous reference made under Section 18 of the Act of 1894 by the LA Collector in the year 2012 should not be to the prejudice of the claimants whose trees have been damaged due to the temporary acquisition made by a notification issued under Part VI of the Act of 1894 by the LA Collector and (ii) the claimants, in the process of the journey of litigation because of such erroneous reference made under Section 18 of the Act of 1894, should not be made to suffer the value of the money to be earned on such enhanced compensation calculated from the date of the reference in view of the principle laid down in first part of Section 34 of the

CPC which specifically states that such interest as may be deemed reasonable by the learned Court would be paid on the principal sum adjudged from the date of the suit to the date of the decree. As such, the impugned orders dated 03.04.2024 passed in Civil Misc.03 of 2024 and Civil Misc.02 of 2024 which have directed computation of interest on the awarded amount from the date of judgment i.e. 03.02.2024 passed in Misc. (L.A.) 51 of 2012 and Misc. (L.A.) 52 of 2012 are not correct. The impugned orders are accordingly set aside. The interest on the enhanced compensation awarded under both the awards in the reference cases under Misc. (L.A.) 51 of 2012 and Misc. (L.A.) 52 of 2012 under Section 35(3) of the Act of 1894 shall be computed from the date of institution of the reference as originally done in the year 2012 till realization.

8. The revision petitions are accordingly allowed and disposed of on the aforesaid terms.

(APARESH KUMAR SINGH), CJ

Pijush/

MUNNA SAHA

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