

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1025 OF 2008

- 1) Subhash s/o Vithal Deshmukh,
Age-51 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 2) Tanaji s/o Vithalrao Deshmukh,
Age-36 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 3) Deelip s/o Vithalrao Deshmukh,
Age-49 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 4) Naga s/o Kisan Tate (Deceased),
LRs. Narayan Naga Tate,
Age-50 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 5) Ram s/o Tukaram Tate,
Age-51 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 6) Dattu s/o Nama Tate (Died),
LRs. Pandurang Datta Tate,
Age-46 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 7) Ram S/o Nama Bansode (Died)
L.Rs.
- 7-A) Sow. Muktabai w/o Kashinath Maske,
Age-45 years, Occu:Agriculture,
R/o-Sikandarpur, Tq. & Dist-Latur,

- 7-B) Sow. Rau w/o Shivaji Sarwade,
Age-30 years, Occu:Agriculture,
R/o-Sikandarpur, Tq. & Dist-Latur,
- 8) Padmakar S/o Dashrath Deshmukh,
Age-31 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 9) Datu S/o Dashrath Deshmukh,
Age-31 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 10) Hanmant S/o Baliram Deshmukh,
Age-51 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 11) Prabhakar S/o Dashrath Deshmukh,
Age-51 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 12) Gorakhsh Sanstha,
Through President,
Jagannath Sitaram Daga,
Age-66 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,
- 13) Jagannath Bapurao Deshmukh,
(Died) Through L.R.s
Pradeep Jagannath Deshmukh,
Age-33 years, Occu:Agriculture,
R/o-Katpur, Tq. & Dist-Latur,

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai,

- 2) The Commissioner,
Aurangabad Division,
Aurangabad,
- 3) The Collector,
Latur, Dist-Latur,
- 4) The Special Land Acquisition
(M.I.W.), Latur,
Tq. & Dist-Latur.

...RESPONDENTS

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Mr.A.B. Kale Advocate for Petitioners.

Mr.S.G. Sangle, A.G.P. for Respondents.

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**CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.**

DATE : 27TH MARCH, 2015

ORAL ORDER :

1. Mr. Kale, the learned counsel for the Petitioners submits that this Court in Writ Petition No.427 of 2006, vide Order dated 7th December 2006, had directed the Respondent Authorities to verify the benefits to be granted under Section 34 of the Land Acquisition Act pursuant to the Judgment of the Apex Court in a

case of **R.L. Jain vs. D.D.A. and others**, reported in 2004 A.I.R.(S.C.) 1904.

2. Mr. Kale, the learned counsel submits that the possession has been taken by the Respondent on 24th February 1995 and the notification under Section 4 of the Land Acquisition Act is dated 31st October 1996. The learned counsel submits that Petitioners are entitled for benefit under Section 34 of the Act from the date of notification under Section 4 of the Act till the amount of compensation is paid. According to the learned counsel, the Petitioners may not be entitled to the benefit under Section 34 of the Act prior to the date of notification under Section 4 of the Act.

2. The learned A.G.P. states that in view of the Judgment of the Apex Court in a case of **R.L. Jain vs. D.D.A. and others**, referred supra, the Petitioners may be entitled for benefit under

Section 34 of the Act from the date of notification under Section 4 till the date of payment of compensation, as possession has been taken by private negotiations prior to the notification under Section 4 of the Act.

3. The Apex Court in a case of **R.L. Jain vs. D.D.A. and others**, referred supra, has observed in Para Nos.16, 17 and 18 thus:-

"16. In this connection it will be apposite to refer to Sub-section (1A) of S. 23 of the Act which enjoins payment of an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4(1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. There are two decisions of this Court, wherein same controversy arose namely, whether the claimant would be entitled to additional sum at the rate of twelve per centum on the market value where possession has been taken over prior to publication of notification under Section 4(1). In *Special Tehsildar (LA) PWD Schemes, Vijaywada v. M.A. Jabbar*, AIR 1995 SC 762 which has been decided by a Bench of two Judges (K. Ramaswamy and Mrs. Sujata V. Manohar, JJ.) it was held that claimant would not be entitled to this additional sum for the period anterior to publication of notification

under Section 4(1). However in Assistant Commissioner, Gadag, Sub-Division, Gadag v. Mathapathi Basavanewwa & Others, AIR 1995 SC 2492 also decided by a two-Judge Bench (K. Ramaswamy and B.L. Hansaria, JJ.) it was held that even though notification under Section 4(1) was issued after taking possession of the acquired land the owners would be entitled to additional amount at twelve per cent. Per annum from the date of taking possession though notification under Section 4(1) was published later. For the reasons already indicated, we are of the opinion that the view taken in Special Tehsildar is legally correct and the view to the contrary taken in Assistant Commissioner, Gadag (supra), is not in accordance with law and is hereby overruled.

17. Shri Dave learned counsel for the appellant has also placed strong reliance on Satinder Singh v. Umrao Singh and another, AIR 1961 SC 908 wherein the question of payment of interest in the matter of award of compensation was considered by this Court. In this case the initial notification was issued under S. 4(1) of Land Acquisition Act, 1894 but the proceedings for acquisition were completed under East Punjab Act No. 48 of 1948. The High Court negatived the claim for interest on the ground that the 1948 Act made no provision for award of interest. After quoting with approval the following observations of Privy Council in Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission, AIR 1928 PC 287:

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

held as under :

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

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

18. In a case where the land owner is dispossessed prior to the issuance of preliminary notification under S. 4(1) of the Act the government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just

and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of S. 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."

4. Considering the submissions made by the learned counsel for the parties, We pass following order:

O R D E R

(A) The impugned order dated 25th May 2007 passed by the Special Land Acquisition Officer, Minor Irrigation, Latur, is quashed and set aside.

(B) The Respondents Authority shall calculate the benefit to the Petitioners under Section 34 of the Land Acquisition

Act from the date of notification under Section 4 of the Act till the date of compensation, and pay the same to the Petitioners.

(C) The Respondents Authority shall also calculate the rental compensation payable to the Petitioners as per the Government Resolution, as the possession has been taken prior to the notification under Section 4 of the Land Acquisition Act.

(D) The aforesaid calculation shall be made expeditiously, preferably within three months from the date of this order and the amount shall be paid to the Petitioners as arrived at, preferably within three months from the date of decision by Collector.

(E) Rule accordingly made absolute. No
costs.

[A.I.S.CHEEMA, J.]

asb/MAR15

[S.V. GANGAPURWALA, J.]