

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision 4th September, 2018**

+ **LA.APP. 321/2007**

UNION OF INDIA

..... Appellant

Through: Mr. Sanjay Kumar Pathak, Ms. K. Kaomudi Kiran Pathak, Mr. Sunil Kumar Jha, Mr. Shashi Kant Maurya, Mr. M.S. Akhtar and Mr. Kushal Raj Tater, Advs.

Versus

VIJAY SINGH CHAUHAN & ORS.

..... Respondents

Through: Mr. Deepak K. Thakur, Adv. for R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 54 of the Land Acquisition Act, 1894 impugns the judgment and decree dated 20th December, 2006 in LAC No.337/1/2006 (Old LAC No.201/03) of the Court of Additional District Judge (LAC) on a reference under Section 18 of the Act.

2. The appeal came up first before this Court on 2nd November, 2007, when notice thereof was ordered to be issued and till further orders, the disbursement of additional amount in terms of Section 23(1A) of the Act for the period from 11th April, 1983 to 14th December, 1995 was stayed. The appeal was admitted for hearing on 17th July, 2008 and the ad-interim order made absolute till the decision of the appeal.

3. The respondents No.1 to 8 land owners applied for vacation of the stay and during the course of hearing of the said application drew attention

of the counsel for the appellant Union of India (UOI) to the order dated 7th March, 2014 of this Court in LA.APP. No.156/2013 titled ***Union of India Vs. Ombir & Ors.*** arising from LAC No.10/1/06 titled ***Ombir & Ors. Vs. Union of India & Anr.*** Vide order dated 21st May, 2013, the application of the respondents No.1 to 8 land owners for vacation of stay was dismissed but the disputed amount was ordered to be kept in a fixed deposit earning interest. The respondents No.1 to 8 land owners thereafter applied for early hearing and which was allowed.

4. The counsel for the appellant UOI and the counsel for the respondents No.1 to 4 land owners have been heard. None appears for respondents No.5 to 8 land owners and a perusal of the order sheet shows that the said respondents No.5 to 8 land owners have not been appearing for long, though the counsel who initially entered appearance was appearing for all the respondents No.1 to 8 land owners.

5. The counsel for the appellant UOI has contended that the dispute subject matter of this appeal is in a narrow ambit. It is argued, (i) that the land of the respondents No.1 to 8 in Village Dhaka, Delhi was acquired; (ii) that the Notification under Section 4 of the Act was issued on 4th September, 1967; (iii) that the Notification under Section 6 of the Act was issued on 6th March, 1968; (iv) however the acquisition was challenged by the land owners by filing Writ Petitions and in which Writ Petitions, the acquisition proceedings remained stayed from 11th April, 1983 to 14th December, 1995; (v) that ultimately the challenge to the acquisition proceedings was dismissed by this Court in the judgment reported as

Roshnara Begum Vs. Union of India (1996) 61 DLT 206 pronounced on 14th December, 1995; (vi) that the land owners thereafter preferred Special Leave Petitions to the Supreme Court which were dismissed vide judgment reported in ***Murari Vs. Union of India*** (1997) 1 SCC 15 pronounced on 1st November, 1996; (vii) that thereafter, the award under Section 11 of the Act was pronounced on 11th December, 1997; (viii) that the award does not include the component of interest under Section 23(1A) of the Act for the period from 11th April, 1983 to 14th December, 1995 in terms of Explanation to Section 23(1A) of the Act; (ix) that the respondents No.1 to 8 land owners, on 11th April, 2002 sought a reference under Section 18 of the Act limited to the aspect of denial of interest under Section 23(1A) of the Act for the period from 11th April, 1983 to 14th December, 1995; (x) that the learned Additional District Judge, in the impugned order has held the respondents No.1 to 8 land owners entitled to such interest; (xi) that aggrieved therefrom, this appeal has been preferred by the appellant UOI.

6. I have enquired from the counsel for the respondents No.1 to 4 land owners, whether the respondents No.1 to 8 land owners had also challenged the acquisition proceedings and which challenge resulted in the acquisition proceedings remaining stayed from 11th April, 1983 to 14th December, 1995.

7. The counsel for the respondents No.1 to 4 land owners replies in the affirmative.

8. The Additional District Judge, in the impugned judgment, has reasoned that (i) though acquisition proceedings of the land in question were challenged vide W.P.(C) No.149/1983 and W.P.(C) No.212/1983 and there was an interim order therein directing maintenance of *status quo* but there was no order restraining the Land Acquisition Collector (LAC) to announce the award; (ii) there is also no evidence that the petitioners challenging the acquisition proceedings moved any application to stop the LAC from announcing the award; (iii) it was thus open to the LAC to announce the award within the reasonable time; (iv) however, the “LAC, by his own wrong act, has no power to disallow the interest for the period from 11.04.1983 to 14.12.1995”; (v) this Court, in judgment dated 19th September, 1979 in RFA No.294/1979 titled ***Union of India Vs. M/s The Birla Cotton Spinning & Weaving Mills Ltd.*** has *inter alia* held as under:

“This appeal by the Union of India is limited to the question of interest. The additional District Judge has awarded interest at the rate of 6% per annum to the owner of the acquired land under s. 28 of the Land Acquisition Act, 1894 (the Act) from the date of taking possession of the land to the date of payment of the enhanced compensation.

It is now contended that the Judge ought not to have awarded interest because the appellant had himself obtained stay of proceedings. This is the sole point in the appeal.

The important point to consider is that the enhanced amount finally ordered by the court lay with the Government all the time. When this is so the court can order the Government to pay interest under s. 28 of the Act. The government had obtained possession of the land from the

owner. The owner did not seek stay of dispossession. He asked stay of reference proceedings because he had questioned the validity of the acquisition itself in writ proceedings. The stay sought by him was not opposed by the Union of India. That it was so, appears from the order of the Additional District Judge dated February, 1, 1964.

The stay of proceedings did not in any manner injuriously affect the Government. They had the land with them as well as the money to which, on enhancement the owner became entitled.

It is then said that the owner stalled the proceedings. Of this the Government cannot complain. They agreed to the stay of proceedings when the owner moved the court. They did not say that they will not pay interest during the period of stay of proceedings. If this had been put forward as a condition the court would have imposed condition, as is sometimes done. Nothing of the kind was said or done. The Government retained with them the money and the possession of the land. How are they hurt by delay? Interest which is part of the compensation cannot be denied to the expropriated owner. The taker of the land must pay interest if he has taken possession of the land under s. 16 or 17 of the Act.

On these facts, I am not prepared to interfere with the discretion of the court below. For these reasons the appeal is dismissed in limine.”;

and, (vi) this Court, in judgment dated 5th October, 2001 in RFAs No.83/1987 & 84/1987 titled **Union of India Vs. Rajiv Gupta** and in RFAs No.85/1987 & 86/1987 titled **Union of India Vs. Pramod Gupta** has held that payment of interest is a statutory right of a party under Sections 28 and

34 of the Act and the Court has no discretion in this regard; even the statement made by the land owner forgoing interest cannot be taken as waiver of this right. It was thus held that the respondents no.1 to 8 land owners were entitled to interest.

9. Both, the counsel for the appellant UOI and the counsel for the respondents No.1 to 4 land owners, have contended that the dispute subject matter of the present appeal is covered by judgments of the Supreme Court. However, while the counsel for the appellant UOI places reliance on *Union of India Vs. Pramod Gupta* (2005) 12 SCC 1 setting aside the judgment of this Court in RFAs No.85/1987 and 86/1987 titled *Union of India Vs. Pramod Gupta* aforesaid, the counsel for the respondents No.1 to 4 land owners claims the dispute to be covered by *Ratti Ram Vs. Union of India* (2016) 11 SCC 110.

10. However both, *Pramod Gupta* as pronounced by the Supreme Court, by which the appellant UOI claims the matter to be covered, as well as *Ratti Ram* supra, by which the counsel for respondents No.1 to 4 land owners claims the matter to be covered, are not with respect to Section 23(1A) of the Act. Both the said judgments concern Sections 28 and 34 of the Act.

11. I have considered the controversy and wondered, whether what has been held qua Sections 28 & 34, would apply qua Section 23(1A) also.

12. Section 23 (inclusive of sub-section (1A)), 28 and 34 of the Act are as under:

“23. Matters to be considered in determining compensation.—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

- 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.—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.”

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:*

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.

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 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”

13. Section 23(1A) was inserted into the Act and Sections 28 & 34 were amended, vide Amendment Act of the year 1984.

14. While Section 23(1A) as aforesaid provides for payment of an amount, in addition to the market-value of the land, calculated at the rate of 12% per annum on such market value, for the period commencing from the date of publication of the Notification under Section 4, to the date, of the award or of taking possession, whichever is earlier, Section 28 empowers

the Court hearing a Reference under Section 18 of the Act to, while awarding compensation in excess of that awarded by the Collector, order for payment of interest @9% per annum on the excess compensation, from the date of taking over possession to the date of payment of excess compensation and Section 34 provides for payment of interest @9% per annum for one year and @15% per annum with effect from expiry of one year, if the compensation is not paid or deposited, on or before taking possession of land.

15. As would immediately be obvious from the above, while the explanation to Section 23(1A) provides for exclusion of the period during which the proceedings for acquisition of land were held up on account of any stay or injunction by the order of any Court, in computing the amount referred to in Sub-Section (1A), neither Section 28 nor Section 34, though providing for payment of interest for the period mentioned therein, provide for any such exclusion. However the reason therefor also is obvious once one examines the Scheme of the Act. Section 4 provides for publication of preliminary notification of the likely need for acquisition of land and issuance of which notification empowers the appropriate government to enter upon such land and to survey the same and do other acts thereon to satisfy itself of the land fulfilling the likely need. Section 5A of the Act empowers the persons interested in the land, with respect to which notification under Section 4 has been issued, to object to the acquisition of the land and for consideration of such objections and decision thereon. Once upon the aforesaid exercise being completed, the appropriate

government is satisfied of the need of the land, Section 6 requires for a declaration to be made. Thereafter Section 7 provides for the appropriate government to direct the Collector to take order for acquisition of the land and Section 8 empowers the Collector to measure and mark the land and under Section 9 invite claims for compensation of land. The Collector thereafter, pursuant to making enquiry under Section 11, is required to make the award determining the compensation payable with respect to the land and which award is conferred finality vide Section 12 of the Act. Section 16 provides that when the Collector has made an award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the government free from all encumbrances. Section 18 enables the persons having interest in the land which has been acquired and not satisfied by the compensation determined by the Collector, to seek a reference to the Court i.e. the District Judge and Section 23 finally requires the Court to re-determine the compensation. Though Section 23 and which includes Sub-Section (1A) thereof introduced by way of Amendment Act of the year 1984, provides only for matters to be considered by the Court in deciding the Reference, but Section 15 while providing for the matters to be considered and neglected by the Collector while determining compensation, provides that the Collector shall also be guided by the provisions contained in Section 23. Thus the Collector, while determining the compensation, is required to include therein the amount under Sub-Section (1A) of Section 23 calculated at the rate of 12% per annum from the date of publication of the notification under Section 4 to the date of the award or the date of taking over possession whichever is earlier. The amount under Section 23(1A) is

thus included in the compensation determined by the Collector as well. Thereafter, Section 28 provides that if the Court deciding the Reference under Section 18 enhances the compensation from that determined by the Collector, interest on such enhancement shall be payable at the rate of 9% per annum from the date of taking over possession of the land to the date of payment of such enhancement. Finally, Section 34 envisages payment or deposit of compensation for acquisition on the date of taking possession and provides that where it is not paid or deposited on or before the date of taking over possession of the land, interest at 9% and 15% per annum as aforesaid, from the time of taking possession till the date of payment or deposit shall be paid.

16. The aforesaid Scheme of the Act would show that Section 23(1A) and Sections 28 and 34 of the Act are dealing with distinct situations and what may have been held with respect to Section 28 of the Act will not necessarily be good law qua Section 23(1A). Rather, interestingly, while the amount provided to be paid under Sections 28 and 34 of the Act is statutorily described as interest, the amount payable under Section 23(1A) of the Act is not referred to as interest but is part of compensation. For this reason only, there was no need for an explanation, as in Section 23(1A), in Section 28 of the Act.

17. There were often long delays between issuance of a notification under Section 4 and making of award with respect to the land. While on the one hand, during the said delays, the land owner, owing to the uncertainty caused by the issuance of notification under Section 4 of the Act, was

unable to reap full benefits of the land owing to fear of the same being acquired, on the other hand compensation once determined on making of the award was the market value of the land on the date of publication of Section 4 notification. The land owner, owing to delays attributable to Collector, in making of the award, was thus deprived even of the market value on the date of making of the award and on which date the land owner became entitled to compensation. It was to compensate the land owners therefor that Section 23(1A) was introduced, providing for inclusion in the compensation of an amount computed at the rate of 12% per annum of the market value for the period commencing from the date of notification under Section 4 of the Act to the date of making of the award. Presumably, the increase in market value was deemed to be @ 12% per annum. However, since the purport of Section 23(1A) was to compensate the land owner for delays of Collector in making the award, vide explanation thereto, the delays in making of the award attributable to the land owner, by holding up or interfering in the process of making of the award, by obtaining an order from the Court, were excluded. It was thus statutorily presumed that if the acquisition proceedings were held up on account of any stay or injunction by order of Court, it would result in the Collector being unable to make the award. Supreme Court in *S. Sundaram Pillai Vs. V.R. Pattabiraman* (1985) 1 SCC 591 though interpreting Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, dealing with the object of an explanation to a statutory provision as a principle of interpretation of statutes *inter alia* held that an explanation cannot in anyway interfere with or change an enactment but where some gap is left which is relevant for the purpose of explanation,

in order to suppress the mischief and advance the object of the Act, it can help or assist the Court in interpreting the true purport and intendment of the Act.

18. Once, in the challenge including by the respondents no.1 to 8 to the proceedings for acquisition of land, there was an order directing maintenance of *status quo*, the appellant was required to stay its hands with respect to the proceedings commenced for acquisition of land and not do anything whatsoever in furtherance thereof. The learned Additional District Judge is thus clearly in error in reasoning in the impugned judgment that the LAC could have proceeded to make the award. Making of the said award was stayed at the instance of the respondents no.1 to 8 land owners.

19. The reasoning of the learned Additional District Judge, that there was no bar on the Collector announcing the award, is faulty for another reason. Under Section 16 of the Act, the Collector, immediately on announcing the award, becomes entitled to take possession and liable to disburse compensation. The learned Additional District Judge also in the impugned order has not held that the appellant, inspite of the order of *status quo*, was entitled to take possession. The need of the appellant of the land for public purpose would not have been fulfilled merely by the Collector of the appellant making the award and without the appellant being entitled to take possession of the land. The appellant, as a prudent person, could not thus be expected to make an award, making it liable for payment of compensation, without being entitled to take possession of the land.

20. The question, is not *res integra* Section 11A, also introduced vide amendment of 1984, provides that if an award is not made within two years from the date of Section 6 declaration, the proceedings for acquisition shall lapse. It has a similar explanation, as in Section 23(1A). Supreme Court, in **Govt of T.N. Vs. Vasantha Bai** 1995 Supp. (2) SCC 423 has held (i) the delay in making the award deprives the owner of the enjoyment of his property or to deal with the land whose possession has been taken, and delay in making the award, would subject the owner of the land to untold hardship; (ii) with a view to relieve hardship to the owner or person interested in the land and to remedy the lapses on the part of the Land Acquisition Officer in making the award, Section 11A was enacted which enjoins making of award expeditiously; outer limit of two years from the last of the dates of publications, envisaged in Section 6 of the Act was fixed; if he fails to do so, all the acquisition proceedings stand lapsed and the owner of the land or person interested in the land is made free to deal with the land as an unencumbered land; (iii) cognizant of the fact that the acquisition proceedings are questioned in a court of law, the parliament enacted explanation to Section 11-A, declaring that the period during which action or proceedings taken in pursuance of the declaration under Section 6 is stayed by an order of the court, the same "shall be excluded"; (iv) question is, whether stay of dispossession is a stay of proceedings under the Land Acquisition Act so as to disable the Land Acquisition Officer to make the award; (v) in order to get the benefit of the said provision, what is required is that the land owner who seeks the benefit must not have obtained any order from a court restraining any action or proceeding in

pursuance of the declaration under Section 6 of the Act so that the explanation covers only the cases of those landholders who do not obtain any order from a court which would delay or prevent the making of the award or taking possession of the land acquired; (vi) in other words, the entire period occupied by the order of stay made by the court shall be excluded; (vii) no useful purpose would be served by making an award if there is a stay of dispossession or stay of notifications under section 4 and 6 of the Act; (viii) if any action is taken by the authorities to pre-empt the challenge pending in the court, it would be stigmatized either as undue haste or action to overreach the court's judicial process; therefore, the period during which the order of dispossession granted by the High Court operated, should be excluded in computation of the period under Section 11A of the Act.

21. The Full Bench of this Court also in ***Roshanara Begum*** supra in the same context held that where the orders regarding status quo have been obtained or the stay of dispossession has been obtained, obviously the period in which such stay remains in operation is to be excluded while computing the period of two years under Section 11A and that acquisition proceedings cannot be quashed in such cases where the awards have not been made and stay granted by the court is still in operation because the period in which the stay remained in operation has to be excluded while computing the period of two years. It was held that the benefit accrued covers only those cases of land holders who do not obtain any order from a court which would delay or prevent making of the award or taking

possession of the land. *Ashok Kumar Vs. Union of India* MANU/DE/1413/2003 (DB) further holds held that where large area is sought to be acquired and some of the land holders have approached the Court and obtained stay order, then the land Acquisition Officer is prevented by order of the court from taking further steps in pursuance of declaration and the Land Acquisition Officer cannot be held responsible for delaying the proceedings and the acquisition proceedings would not lapse. It was further held that even if some have obtained the stay or status quo as to possession etc., it would not be proper and reasonable to hold that except the land holders who got the proceedings stayed, the Land Acquisition Officer should have completed the acquisition proceedings; one has to read the language of the Explanation; reading the language, it becomes clear that period during which any action or proceedings to be taken in pursuance of the said declaration is stayed by an order of the Court then such period is to be excluded; when large area is sought to be acquired and belonging to various persons having different property numbers, even if one has approached the Court and has obtained stay of proceedings, the Land Acquisition Officer would not be in a position to complete the acquisition proceedings. Supreme Court in *Bailamma Vs. Poornaprajna House Building Cooperative Society* (2006) 2 SCC 416, rejected the contention of the land owners therein that explanation to Section 11A had a narrow operation so as to apply to only those cases where an order of injunction or stay has been obtained by the landowner. It was held that (i) Section 11A was enacted with a view to prevent inordinate delay being made by the Land Acquisition Officer in making the award; (ii) delay in making the

award subjected the owner of the land to untold hardship; (iii) the emphasis was on the Collector making his award within the period prescribed; (iv) however the legislature was also aware of the reality of the situation and was not oblivious of the fact that in many cases acquisition proceedings were stalled by stay orders obtained from courts of law by interested parties; (v) the explanation to Section 11A is in the widest terms which do not limit its operation to cases where an order of stay is obtained by landowner alone; (vi) one can conceive of cases where apart from landowners others may be interested in stalling the acquisition proceedings by an order of stay, for instance it may be that on account of development of that area some persons in the vicinity may be adversely affected, or it may be for any reason that persons in the locality are adversely affected by the project for which acquisition is being made; (vii) once an order of stay is obtained and the Government and the Collector are prevented from taking any further action to the declaration, they cannot be faulted for the delay, the period during which the order of stay operates must be excluded; and, (viii) in a sense, operation of the order of stay provides a justification for the delay in taking further steps in the acquisition proceeding for which the authorities are not to blame. Mention may also be made of the dicta of the Full Bench of this Court in ***Balak Ram Gupta Vs. Union of India*** AIR 1987 Del 239, in the context of explanation added vide the Amendment Act of the year 1984 to Section 6(1) of the Act providing for exclusion of the period during which any action or proceedings taken in pursuance to notification under Section 4 of the Act, was stayed by an order of the Court. It was held (i) that the Amendment Act had a twin object in view; (ii) one

was beneficial to the land owners viz. to curtail the period for a Section 6 declaration from three years to one year; (iii) the other equally important object was to remove certain hurdles faced by the State i.e. inability to issue a Section 6 declaration because of stay orders; (iv) there is no justification for confirming or restricting the scope of the explanation.

22. What has been held qua explanation, to Section 6 and Section 11A of the Land Acquisition Act, applies equally to explanation to Section 23(1A). Rather the scope of explanation to Section 23(1A) is wider because of use of the words 'on account of any stay or injunction by the order of any court'. The word 'any' is missing in the explanation to Section 6(1) as well as in the explanation to Section 11A.

23. In contrast, Sections 28 and 34 are concerned with payment of interest on compensation as determined in terms of Section 23 (including sub section (1A) thereof) post the stage of the acquisition proceedings being held up by a challenge being made thereto. While Section 34 is concerned with payment of interest on compensation for the delay if any in payment or deposit thereof, before taking possession of land, Section 28 is concerned with payment of interest on enhanced compensation if any awarded on a reference under Section 18 of the Act. At that stage, I reiterate, there is ordinarily no possibility of payment of or deposit of compensation or enhanced compensation being held up for reasons attributable to the land owner or persons having interest in land and there was as such no need to provide for explanation as in Section 11A and in Section 23(1A) of the Act. Moreover, the legislature in its wisdom has provided for exclusion of the

period during which the proceedings for acquisition are held up on account of any stay or injunction by the order of any Court while computing the amount due under Section 23(1A). The legislature in its wisdom has chosen not to provide for exclusion of any period while computing the interest under Section 28 and/or under Section 34 of the Act. Merely because the legislature has not provided for exclusion of any period under Sections 28 and 34 of the Act, is no ground to not give force to the explanation to Section 23(1A) where the legislature has so provided.

24. For the aforesaid reasons what has been held in *The Birla Cotton Spinning & Weaving Mills Ltd.* supra (which is not available) qua Section 28 of the Act does not apply to the present case qua Section 23(1A) of the Act. Moreover, in that case, the possession of the land had already been taken and it was for this reason only that since the government was in possession of the land and also had the enhanced compensation in their pocket, that it was held that, they could not dispute the liability for interest on the enhancement, under Section 28 of the Act. In the present case as aforesaid, the respondents no.1 to 8 land owners remained in possession of the land. I may also add that the judgment of the Division Bench of this Court in *Rajiv Gupta* supra, reported as 96 (2002) DLT 225 was also expressly overruled by Full Bench of this Court in *Chander Vs. Union of India* (2005) 83 DRJ 481.

25. I have thus asked both the counsels, as to how the judgments of the Supreme Court in *Pramod Kumar* and *Ratti Ram* supra on Section 28 of

the Act would have application to the present case under Section 23(1A) of the Act.

26. Neither counsel has been able to refute.

27. The only argument of the counsel for the respondents No.1 to 4 land owners is that the Reference Court, in *Ombir* supra pertaining to other land acquired vide the same Notification and Award, has following the impugned judgment awarded interest for the period from 11th April, 1983 to 14th December, 1995 to Ombir and others and LA.APP. No.156/2013 filed by the appellant UOI thereagainst was dismissed on 17th November, 2014 as a consequence of dismissal of the application for condonation of delay in filing the appeal. It is argued that on the principle of parity, precedent and consistency of judgments, this appeal should also be dismissed.

28. The counsel for the appellant UOI in response, has relied on para 17 of *State of Maharashtra Vs. Digambar* (1995) 4 SCC 683 laying down that merely because the Supreme Court, in exercise of powers under Section 136 had refused to entertain a petition, is no ground for the Supreme Court to not entertain another petition, even if raising the same grounds as urged in the earlier petition which was not entertained.

29. As far as the reliance by the counsel for the respondents No.1 to 4 land owners on dismissal of the appeal of the appellant UOI against the judgment of the Reference Court in *Ombir* supra is concerned, Supreme Court recently in *Jayant Verma Vs. Union of India* (2018) 4 SCC 743 has held as under:

“Where a matter is not argued at all by the respondent, and the judgment is one of reversal, it would be hazardous to state that the law can be declared on an ex parte appraisal of the facts and the law, as demonstrated before the Supreme Court by the appellant’s counsel alone. That apart, where there is a detailed judgment of the High Court dealing with several authorities, and it is reversed in a cryptic fashion without dealing with any of them, the per incuriam doctrine kicks in, and the judgment loses binding force, because of the manner in which it deals with the proposition of law in question. Also, the ratio decidendi of a judgment is the principle of law adopted having regard to the line of reasoning of the Judge which alone binds in future cases. Such principle can only be laid down after a discussion of the relevant provisions and the case law on the subject. If only one side is heard and a judgment is reversed, without any line of reasoning, and certain conclusions alone are arrived at, without any reference to any case law, it would be difficult to hold that such a judgment would be binding.”

30. From a reading of the aforesaid, it is quite clear that merely because the time barred appeal of the appellant UOI in ***Ombir*** supra has not been entertained would not constitute a binding precedent or will not invite the principle of parity or consistency of judgments, for this Court to hesitate from setting aside of the impugned judgment which has no basis in facts or in law to stand and which is found to be clearly erroneous. I may add, that in ***Raja Mechanical Company Private Limited Vs. Commissioner of Central Excise, Delhi- I*** (2012) 12 SCC 613 it has been reiterated that where the High Court rejected the earlier Revision Petition, not on merits but only on ground of delay, the order of rejection cannot be said to be in

affirmance of the order impugned in the Revision Petition and the principle of merger does not apply.

31. The appeal thus succeeds and is allowed; the impugned judgment and decree to the extent holding the appellant UOI liable for interest under Section 23(1A) of the Act with effect from 11th April, 1983 to 14th December, 1995 is set aside.

No costs.

Decree sheet be prepared.

SEPTEMBER 04, 2018

‘bs/gsr’..

(Corrected and released on 11th October, 2018).

RAJIV SAHAI ENDLAW, J.