

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 7230 of 2022

Chandan Lal and Others
... Petitioner(s)

Versus

The State of Haryana and Others
... Respondent(s)

2. Civil Writ Petition No. 7869 of 2022

High Sea Foods Limited
... Petitioner(s)

Versus

State of Haryana and Others
... Respondent(s)

3. Civil Writ Petition No. 8387 of 2022

Rohit Dean and Others
... Petitioner(s)

Versus

State of Haryana and Others
... Respondent(s)

4. Civil Writ Petition No. 9110 of 2021

Shanti Devi and Others
... Petitioner(s)

Versus

The State of Haryana and Others
... Respondent(s)

AND

5. Civil Writ Petition No. 8667 of 2022

M/s Gopala Agri Farms Pvt. Ltd.

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

DATE OF DECISION: 28.04.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Shailendra Jain, Senior Advocate
with Mr. Satyendra Chauhan, Advocate
for the petitioners (In CWP-7230-2022, CWP-8387-2022
and CWP-9110-2021).

Mr. Jaivir Singh Chandail, Advocate
for the petitioner (In CWP-7869-2022).

Mr. Suman Jain, Advocate
for the petitioner (In CWP-8667-2022).

Mr. Shivendra Swaroop, Assistant Advocate General,
Haryana and Mr. Harsh Vardhan, Assistant Advocate
General, Haryana, for the respondent No.1 and 2
(In CWP-7230-2022).

Mr. Harsh Vardhan, Assistant Advocate
General, Haryana, for the respondent No.1, 3 and 4.
(In CWP-7869-2022), respondent No.1 and 2
(In CWP-9110-2021) and respondent No.1 and 3
(In CWP-8667-2022).

Mr. Ankur Mittal and Ms. Kushaldeep Kaur Advocates
for the respondent No.3-HSIIDC (In CWP-7230-2022).

Mr. Ankur Mittal, Ms. Vasundhra Asija and Mr. Shivam
Garg, Advocates, for the respondent No.2-HSIIDC
(In CWP-7869-2022).

Anil Kshetarpal, J.

1. By this order, Civil Writ Petition No. 7230, 7869, 8387 and
8667 of 2022 and 9110 of 2021, involving the identical issue, shall stand

2. Civil Writ Petition No. 7230 of 2022 was heard on 08.04.2022, whereas Civil Writ Petition No. 7869 of 2022 was heard on 20.04.2022. Similarly, Civil Writ Petitions bearing No. 8387 of 2022 and 9110 of 2021 were heard on 25.04.2022 and Civil Writ Petition No. 8667 of 2022 was heard on 27.04.2022. On a careful study of all the writ petitions, it is evident that the point in issue, is common. In fact, the substantive order, subject matter of challenge in all the writ petitions is also common.

3. In the considered opinion of this Bench, the interesting question, which arises for adjudication, is as to whether the amount of interest as envisaged under Section 34 of the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”) is payable from the date of actual physical possession or from the date of award, passed by the Land Acquisition Collector (hereinafter referred to as “the LAC”) under Section 11 of the 1894 Act.

4. As already noticed, the facts are identical, therefore, being noticed from Civil Writ Petition No. 7230 of 2022. In order to acquire the land for developing Chaudhary Devi Lal Industrial Model Township, more than 3500 acres of land, located in villages Fazalwas, Kukrola, Kharkhari, Bas Lambi, Mukalwas, Seharavan and Fakharpur, Tehsil Manesar and District Gurugram, was sought to be acquired by issuing notification under Section 4 of the 1894 Act on 14.12.2006. The declaration under Section 6 of the 1894 was issued on 10.01.2008. However, the declaration was beyond the time prescribed, therefore, on the challenge laid before the High Court by the landowners, the State agreed to initiate the proceedings afresh. On

the petitioners was sought to be acquired for the same purpose. The declaration published under Section 6 of the 1894 Act was issued on 22.04.2009.

5. Some litigation related to the similar case was pending before the Supreme Court. In Special Leave Petition(C) No. 11019 of 2011 (State of Haryana v. Gurcharan Kaur), vide order dated 19.04.2011, the State was permitted to pronounce the award. In another Writ Petition (Civil) No. 113 of 2011, filed by the Fertile India Protection Movement and Sarpanches of all the concerned villages in the Supreme Court under Article 32 of the Constitution of India, the interim relief was granted in terms of the prayer made in para 12 (a) of the Special Leave Petition, on 25.04.2011. The prayer made in the interlocutory application as well as the prayer made in para 12(a) of the memorandum of Special Leave Petition and the order passed on 25.04.2011 are extracted as under:

“Prayer 12(a)

Grant ex-parte ad-interim stay of the further proceedings pertaining to taking possession of the land notified by the respondent authority for acquisition vide notification dated 25.04.2008 and 22.04.2009 and 11.01.2011 and/or to maintain status quo pertaining to the said lands”.

XXXX XXXX XXXX XXXX XXXX

...Grant ex parte ad interim stay of the further proceedings pertaining to taking possession of the land notified by the respondent authority for acquisition vide notification dated 25.04.2008 and 22.04.2009 and 10.01.2011 and/or maintain

status quo pertaining to the said lands”.

XXXX XXXX XXXX XXXX XXXX

...By way of ad interim relief, the prayer claimed in paragraph 12(a) of the memorandum of special leave petition is granted till further orders”.

6. The Land Acquisition Collector pronounced the award under Section 11 of the 1894 Act on 21.04.2011. The interim order dated 25.04.2011 continued to operate. It would be noted here that the Daily Diary Report (Rapat Roznamcha) of the award as well as the delivery of possession had been entered in the record of the Patwari on 21.04.2011 i.e. the date of pronouncement of the award.

7. The writ petition remained pending before the Supreme Court for quite some time. On 06.08.2014, the Supreme Court while transferring the matter to the High Court directed it to be heard along with Civil Writ Petition No. 2251 of 2006. The High Court, on receipt of the matter from the Supreme Court, assigned Civil Writ Petition No. 18940 of 2014 in the matter. The High Court disposed of the matter on 02.12.2019. Thereafter, the assessed compensation was paid to the landowners.

8. The petitioners claim that they are entitled to the interest in terms of Section 34 of the 1894 Act from the date of the award 01.04.2011 till its payment. Per contra, it is the stand of the State that the actual physical possession of the land could not be taken on account of interim protection granted by the Court vide order dated 25.04.2011 and the landowners continued to cultivate the land as is evident from the revenue record, therefore, the landowners are not entitled to any interest under

Section 34 of the 1894 Act from the date of award.

9. On 08.04.2022, during the preliminary hearing, the learned counsel representing the State of Haryana and Mr. Ankur Mittal, Advocate, for the HSIIDC entered appearance and prayed for the final hearing of the case. Prima facie, in the opinion of this Court, as the disputed question of fact with regard to the date of delivery of possession are required to be adjudicated, the petitioners should be relegated to the remedy of the Civil Court. However, on the insistence of the learned counsel representing the parties, this Court has proceeded to hear the matter, at length, while granting an opportunity to both the parties to file short synopsis along with a gist of their arguments. The learned senior counsel representing the petitioners has not only filed the synopsis along with the gist of arguments, but has also forwarded his additional submissions. Mr. Ankur Mittal, Advocate, the learned counsel representing the respondents has also handed over his written submissions.

10. It is clarified that this Court is deciding the legal question involved in the case while keeping the controversy with regard to the date of delivery of actual possession open for adjudication before the appropriate forum. The petitioners shall be at liberty to avail an alternative remedy to prove as to on which date the delivery of actual physical possession of the acquired land was taken by the State of HSIIDC.

11. For deciding the aforesaid question, it becomes important to take note of the various provisions of the 1894 Act. Hence, Section 11, 11A, 16, 17, 28, 31 and 34 of the 1894 Act are extracted as under:-

fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

- (i) the true area of the land;*
- (ii) the compensation which in his opinion should be allowed for the land; and*
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him:*

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this

behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.

11A. Period shall be which an award within made.-*The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:*

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation -In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

12 to 15 XXXX XXXX XXXX

16. Power to take possession.-*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.*

17. Special powers in case of urgency.-(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 fifteen days from the publication of the notice mentioned in section 9, sub-section 1). take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.*

(2) *Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river -side or ghat station, or of providing convenient connection with or accesses to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system*

pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon [vest absolutely in the Government free from all encumbrances:

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 so to do, 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) In every case under either of the preceding sub-sections the Collector shall at that time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and from any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

3(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to

the provisions of sub-section (3)-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the person interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3B) The amount paid or deposited under section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the [appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification] under section 4, sub-section (1).

18 to 27 XXXX XXXX XXXX

28. Collector may be directed to pay interest on excess compensation.- *If 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 or 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.

29 to 30 XXXX XXXX XXXX

31. Payment of compensation or deposit of same in Court.-

(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute

as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

32 and 33 XXXX XXXX XXXX

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 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”.

12. The LAC, by passing the impugned order, has rejected the claim of the petitioners to award interest from the date of award till its payment while observing that because of the interim protection granted by the Supreme Court, there was no actual physical delivery of possession of the acquired land by the landowners.

13. The learned counsel representing the petitioners have submitted that the beneficiary agency has not produced any material to prove that the LAC tendered the payment to the landowners. Further, in absence of exigency, as envisaged under Section 31 of the 1894 Act, the LAC was required to tender the amount to the landowners or deposit the amount with

forwarded. Moreover, it is proved on the file that actual physical possession of the land was taken over on the date of award as would be evident from the reading of the Daily Diary Reports of the villages, namely Fazalwas, Kakrola and other villages. The acquired land vested in the State free from all encumbrances from the date of the award. The Haryana State Industrial and Infrastructure Development Corporation (hereinafter referred to as “the HSIIDC”) may have been restrained from the development of the land, however, it would not affect the rights of the owners to receive the amount along with interest. Furthermore, the Supreme Court passed the interim order on 25.04.2011, whereas the land acquisition proceedings were concluded on 21.04.2011, therefore, it does not affect the rights of the petitioners. It is erroneous on the part of the HSIIDC to contend that the possession of the acquired land remained with the landowners. The petitioners did not file any writ petition. It is also contended that the possession of the property may be with the henchmen of the officials of the HSIIDC who had encroached upon the acquired land, therefore, the landowners cannot be deprived of the interest. In the additional submissions, it has been submitted that the HSIIDC has only transferred merely ₹200/- crores (two hundred crores) to the LAC, though the total liability as per the award was ₹904/- crores. In the end, it has been contended that the State of Haryana and the officials of the HSIIDC have failed to take any action against the encroachers under the Public Premises Act, 1972 (hereinafter referred to as “the 1972 Act”).

14. Per contra, the learned counsel representing the HSIIDC has submitted that Section 34 of the 1894 Act is dependent upon the date of

delivery of possession of the acquired land. He submits that Section 34 of the 1894 Act has no connection with the date of award. While drawing the attention of the Court to para 297 of the five Judges Bench judgment in *Indore Development Authority v. Manohar Lal and Others (2020) 8 SCC 12*, he contends that the interest shall be payable only from the date of the delivery of possession and once the landowners through their representatives have chosen to take recourse to the litigation and have obtained interim orders preventing the authority to take possession, then they cannot claim interest. It has been pointed out that the petitioners themselves may not have filed the writ petitions, however, the writ petitions were filed by the Sarpanches of all the villages in a representative capacity along with Fertile Land Protection Movement. It has been contended that the landowners never filed any application before the Supreme Court or the High Court for clarification of the order or surrendering possession to the State or the HSIIDC.

15. Having heard the learned counsel representing the parties, at length and on careful examination of the assertions made in the writ petitions and also the written synopsis submitted by the learned counsels, this Court is of the considered view that there is no substance in the present writ petitions on account of the following reasons:-

- i) It is evident, on the careful reading of Section 34 of the 1894 Act, as extracted above, that *sine qua non* for applicability of the provision is delivery of possession of the acquired land and it has no connection with the date of award passed by the LAC under Section 11 of the

1894 Act. The language employed by the statute in Section 34 of the 1894 Act is crystal clear. There is no scope for any ambiguity. Section 34 of the 1894 Act talks of the date of taking possession of the acquired land and not the date of award.

- ii) Section 16 of the 1894 Act, no doubt, enables the Collector to take possession of the land acquired. However, the expression employed is 'may'. Ordinarily, with the pronouncement of the award, the possession is taken over by the State of beneficiary agency by making an entry in the Rapat Roznamcha (Daily Diary Report). But such situation is not universally applicable, particularly when there is a specific order passed by the Supreme Court restraining the delivery of possession.
- iii) Section 17 of the 1894 Act is applicable in case of an emergency. The State Government or the acquiring authority can invoke the urgency provisions and take over possession from the landowners before pronouncement of the award. In such situation, the landowners are entitled to the interest from the date of possession and not from the date of award, which may be announced after a long time. On a careful reading of Section 17(1) of the 1894 Act, it is evident that in case of urgency, the appropriate Government may direct the Collector to take possession on expiration of 15 days

from the date of publication of the notice mentioned in Section 9(1) of the 1894 Act. Sub Section 2 to Section 17 of the 1894 Act deals with the cases of acute urgency. It provides that the appropriate Government or the railway administration, as the case may be, can take over the possession, immediately, after publication of notice under Section 17(1) of the 1894 Act with the previous sanction of the appropriate Government. Unequivocally, Sub-Section 3 and 3-A mandate the Collector to tender the payment representing the compensation for standing crops or trees or any other damages sustained by them along with 80% of the compensation for such land as estimated by him to the persons interested and entitled thereto. Thus, the legislature, in its wisdom, being conscious of the fact that the date of delivery of possession may not be same as the date of award, provided that the interest under Section 34 of the 1894 Act shall be payable from the date of taking over the possession of the property.

- iii) This matter can be examined from another perspective. On a careful reading of Section 11 and 11-A of the 1894 Act, it is evident that the Act envisages pronouncement of the award within the time prescribed. However, it does not set the time limit for taking the possession. Thus, it can be inferred that the date of award is not necessarily

the date of delivery of possession.

- iv) Moreover, on a careful reading of Section 28 of the 1894 Act, it is evident that it also provides that the amount of interest shall be payable from the date of taking possession and not from the date of award. In fact, there are two different provisions for payment of interest. Section 28 of the 1894 Act enables the Court to award interest. Whenever the Court assesses the market value of the acquired land, in excess of the amount assessed by the Collector, it may direct the Collector to pay interest on such excess @ 9% per annum from the date on which he took possession to the date of payment of such excess amount. If such period exceeds one year from the date of taking possession, the interest @ 15% per annum shall be payable from the date of expiry of a period of one year.

16. Thus, the scheme of the 1894 Act is crystal clear. There is no ambiguity in the provisions of the 1894 Act.

17. Both the learned counsels representing the parties placed reliance on the judgment passed by the Supreme Court in *Indore Development Authority's case (supra)*. This Court has respectfully read the judgment passed by the five Judges Bench. A larger Bench of the Supreme Court, before proceeding to decide the case, framed the questions in para 4 and 5, which are extracted as under:

4. *Later, in Indore Development Authority v Shyam Verma & Ors (SLP No. 9798 of 2016) considered it appropriate to*

refer the matter to Hon'ble the Chief Justice of India to refer the issues to be resolved by a larger Bench at the earliest. Yet again in State of Haryana v Maharana Pratap Charitable Trust (Regd) & Anr (CA No.4835 of 2015) referred the matter to Hon'ble the Chief Justice of India to constitute an appropriate Bench for consideration of the larger issue. These batch appeals were referred to a five Judge Bench, which after hearing counsel, framed the following questions, which arise for consideration:

“1. What is the meaning of the expression paid'/tender' in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013') and Section 31 of the Land Acquisition Act, LA (Act of 1894')? Whether non-deposit of compensation in court under section 31(2) of the Act of 1894 results into lapse of acquisition under section 24(2) of the Act of 2013. What are the consequences of non-deposit in Court especially when compensation has been tendered and refused under section 31(1) of the Act of 1894 and section 24(2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?

2. Whether the word or' should be read as conjunctive or disjunctive in Section 24(2) of the Act of 2013?

3. *What is the true effect of the proviso, does it form part of sub-Section (2) or main Section 24 of the Act of 2013?*

4. *What is mode of taking possession under the Land Acquisition Act and true meaning of expression the physical possession of the land has not been taken occurring in Section 24(2) of the Act of 2013?*

5. *Whether the period covered by an interim order of a Court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24(2) of the Act of 2013?*

6. *Whether Section 24 of the Act of 2013 revives barred and stale claims? In addition, question of per incuriam and other incidental questions also to be gone into”.*

5. *Question nos.1 to 3 are interconnected and concern the correct interpretation of Section 24(2) of the Act of 2013. Following questions are required to be gone into to interpret the provisions of Section 24(2) of the Act of 2013:*

(i) *Whether the word “or” in Section 24(2) of the Act of 2013 used in between possession has not been taken or compensation has not been paid to be read as “and”?*

(ii) *Whether proviso to Section 24(2) of the Act of 2013 has to be construed as part thereof or proviso to Section 24(1)(b)?*

(iii) *What meaning is to be given to the word "paid" used in*

Section 24(2) and "deposited" used in the proviso to Section 24(2)?

(iv) What are the consequences of payment not made?

(v) What are the consequences of the amount not deposited?

(vi) What is the effect of a person refusing to accept the compensation?"

18. In the considered opinion of the Court, the reliance placed by the learned counsel representing the parties on the aforesaid judgment, is misplaced because while deciding the aforesaid case, the Court answered the questions, which were framed. The answer to the aforesaid questions is the *ratio decidendi* of the aforesaid judgment. On a careful reading of the judgment, with highest respect, the question, which arises for adjudication before this Court, was never debated, discussed and directly answered. It is well settled that unless the issue is discussed, debated and answered, the observation, if any, made by the Court, while deciding a case, cannot be treated as the *ratio decidendi*. A reliance in this regard can be placed on another five Judges Bench of the Supreme Court in ***Krishena Kumar and Others v. Union of India and Others (1990) 4 SCC 207***. The Supreme Court declared as under:-

“In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise

to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury, (4th Edn., Vol. 26, para 573):

"The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi."

19. The next judgment relied upon by the learned counsel representing the petitioners is ***Gayabai Digambar Puri (Died) through LRs v. The Executive Engineer and Others Law Finder Doc. Id # 1931520***. In the aforesaid case, the Supreme Court, after relying upon its previous judgment passed in ***R.L.Jain (D) by LRs v. D.D.A. and Others (2004) 4***

SCC 79 held that the interest under Section 34 of the 1894 Act is payable from the date of taking possession and not from the date of award. In that judgment as well as in *R.L.Jain's case (supra)*, the Court was dealing with the cases involving invocation of urgency provision under Section 17 of the 1894 Act. In the considered view of this Bench, the aforesaid judgment to some extent rather goes against the petitioners, but certainly does not help them.

20. The next judgment relied upon by the learned counsel representing the petitioners is in *Union of India and Another v. Pushpavathi and Others (2018) 3 SCC 28*. In the aforesaid case, the Court examined the matter in the context of the interest payable on the date of award under Section 28-A of the 1894 Act. The LAC did not pay the amount, although, held the landowners to be entitled to enhanced amount of compensation. In that context, the Supreme Court held that the interest is payable from the date of the award. However, in that case, there was no controversy with regard to the date of delivery of the actual physical possession.

21. In *IVO Agnelo Santimano Fernandes and Others v. Government of Goa and Another (2011) 4 SCC (Civil) 268* the amount was not deposited in the Court, but in the revenue account. Hence, the Court held that the liability to pay interest under Section 34 of the 1894 Act continues from the date of the award. In that case also, the controversy was also not with regard to the date of delivery of the possession. In *Sunder v. Union of India (2001) 7 SCC 211*, another five Judges Bench, the Supreme Court decided the entitlement of the liability to pay interest on the amount of

solatium. After interpreting Section 28 of the 1894 Act, the five Judges Bench held that the interest shall not only be payable on the market value, but it will also include the amount of solatium as envisaged under Section 23(2) of the 1894 Act.

22. In *Narinder Kumar and Others v. State of Haryana* Law Finder Doc Id # 1507282, in the very first paragraph, the coordinate Bench noticed that the date of award and date of taking possession is on 10.01.2007, whereas the amount of compensation was awarded by the LAC on 20.08.2010, i.e. after a period of 3 years and 8 months of the award. In that context, it was held that the interest is payable as per Section 34 of the 1894 Act.

23. Now, this Bench proceeds to analyze the arguments advanced by the learned counsel representing the petitioners. With respect to the first argument, it would be noted that question of tender of the payment of compensation is not relevant in the present case because the landowners, in representative capacity, filed the writ petition in the Supreme Court. Hence, Section 31 of the 1894 Act will also not be applicable. As regards the argument that as per the Daily Diary Report (Rapat Roznamcha), the possession of the land was taken, the same being disputed question of fact, is left open to be decided by the appropriate forum.

24. The next argument of the learned counsel that title of the acquired land stood transferred in favour of the State on announcement of the award may be correct. However, that is not the question which arises for determination. At the cost of repetition, Section 34 of the 1894 Act is dependent upon the delivery of possession and not on the announcement of

the award or transfer of the property. The argument of the learned counsel that because of interim order, the HSIIDC may not have been able to develop the land, rather leads the Court to draw an inference that the possession of the acquired land had never taken place.

25. As regards the argument of learned counsel representing the petitioners that as the acquisition proceedings were concluded before the interim order was passed, therefore, it has no effect, is also required to be noticed and rejected because the petitioners never made any representation that they have delivered the possession during all these years or applied for vacation of the interim order.

26. As regards the argument of the learned counsel representing the petitioners that henchmen of the officials of the HSIIDC had encroached upon the land, the aforesaid issue can only be examined after leading the sufficient evidence.

27. Similarly, there is no substance in the argument with regard to transfer of ₹200/- crores out of the liability of ₹904/- crores approximately. At the cost of repetition, it is noticed that Section 34 of the 1894 Act is dependent upon the delivery of possession or taking over of the possession by the acquiring agency of the State. Hence, the failure to tender the amount/payment would be an entirely different matter. In the context of the present case, the aforesaid situation is not relevant particularly when this case poses a different kind of challenge where the representative of the landowners filed a writ petition and did not permit the delivery of possession to the acquiring agency of the State.

that in none of the judgments, referred to above, the Court has addressed the issue which arises for determination before this Court in the present set of writ petitions.

29. It would be noted here that the disputed questions of facts are involved in the present case. On the one hand, the landowners claimed that they were dispossessed on the date of the award, whereas on the other hand, the State of Haryana and the HSIIDC claim that in view of the interim order passed by the Supreme Court, the physical possession of the acquired land was never taken. Such being a question of fact is required to be decided on the appreciation of evidence. This judgment is only deciding a legal issue while leaving it open to the parties to avail their alternative remedy.

30. With the observations made above, all the writ petitions are disposed of.

**(Anil Kshetarpal)
Judge**

April 28, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No