

R.L. Jain (D) By Lrs vs Dda & Ors on 12 March, 2004

Author: G.P. Mathur

Bench: S. Rajendra Babu, Ar Lakshmanan, G.P. Mathur

CASE NO.:

Appeal (civil) 5515 of 1997

PETITIONER:

R.L. Jain (D) by LRs.

RESPONDENT:

DDA & Ors.

DATE OF JUDGMENT: 12/03/2004

BENCH:

S. Rajendra Babu , Dr. AR Lakshmanan & G.P. Mathur.

JUDGMENT:

JUDGMENT G.P. MATHUR, J.

In view of conflict of opinion in two decisions of this Court, namely, *Shri Vijay Cotton & Oil Mills v. State of Gujarat* 1991(1) SCC 262 and *Union of India v. Budh Singh & Ors.* 1995 (9) SCC 233, the appeal has been placed for hearing before this larger Bench and the question in issue is whether in a case where possession is taken before the issuance of notification under Section 4(1) of the Land Acquisition Act, the claimant (owner of land) is entitled to interest for such anterior period in accordance with Section 34 of the said Act.

2. The relevant facts may be noticed in brief. The Chief Commissioner, Delhi, on behalf of the Delhi Administration, issued a preliminary notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") on 13.11.1959 for acquisition of a large area of 34070 acres of land including 1 bigha 11 biswa area in khasra no.223 of village Kharera for the planned development of Delhi. This was followed by a declaration under Section 6 of the Act, which was published in the Gazette on 11.10.1961. The dispute in the present appeal relates to aforesaid plot bearing khasra no.223. Being an evacuee property, the said plot was notified for being sold in public auction by the Ministry of Rehabilitation and it appears that in the auction notice it was mentioned that the same shall be out of the purview of the notification issued on 13.11.1959 under Section 4(1) of the Act for acquisition of the land. The original appellant R.L. Jain purchased the said plot in the auction held on 8.4.1960 and a sale certificate was issued in his favour on 31.8.1961. In pursuance of the notifications issued under Sections 4(1) and 6 of the Act, the possession of plot no.223 was taken over by the Collector on 10.11.1961 and was handed over to the Delhi Development Authority (for short "the DDA"). The plot was included in Award No.1245 made by the Collector on 30.12.1961 and compensation amount was determined. R.L. Jain received the compensation amount under protest

and sought reference to the Court since he was dissatisfied with the amount of the compensation offered and paid to him. The Collector thereafter made a reference to the Court under Section 18 of the Act..

3. After considerable period of time, R.L. Jain filed Suit No.154 of 1965 impleading Union of India as the sole defendant seeking a declaration that the proceedings taken for acquisition of plot bearing no.223 of village Kharera, which had been purchased by him in public auction, were illegal as it was stipulated in the auction notice that the said plot was not included in the preliminary notification issued under Section 4(1) of the Act which was published on 13.11.1959. After contest, the Sub-Judge First Class, Delhi passed a decree on 12.4.1967 that the acquisition proceedings including notification dated 11.10.1961 issued under Section 6 of the Act with regard to the plot in dispute are null and void. The Union of India preferred an appeal being RCA No.59 of 1968 but the same was dismissed by Senior Subordinate Judge, Delhi (with enhanced appellate powers) on 13.1.1969 and the judgment and decree dated 12.4.1967 of the Subordinate Judge was affirmed. The matter rested there as it was not carried in second appeal before the High Court.

4. As mentioned earlier in pursuance of the notifications issued under Sections 4(1) and 6 of the Act, the possession of the plot in dispute had been taken over by the Collector on 10.11.1961 and was handed over to the DDA which commenced construction on the acquired land. R.L. Jain then filed Suit No.421 of 1967 against Union of India and DDA for permanent injunction restraining them from making any construction over the disputed plot and from disposing of the same in any manner. During the pendency of the suit an undertaking was given by the DDA that no construction would be raised on the plot in dispute. However, the DDA proceeded with the constructions and consequently the plaint was amended and relief of mandatory injunction for removal of the construction was sought. The Sub- Judge, Delhi decided the suit on 19.1.1980 and passed a decree for demolition of the construction and the possession. The appeal (RCA No.465 of 1980) preferred against the said judgment and decree was dismissed by the Additional District Judge, Delhi on 18.3.1989 and the decree for demolition and removal of the construction was affirmed. The DDA preferred a second appeal (RSA No.71 of 1989) in Delhi High Court which was summarily dismissed on 14.8.1991 and then Special Leave Petition was filed in this Court. In order to save the demolition of the building constructed over the plot in dispute, the appropriate authority issued fresh notification under Section 4(1) of the Act for acquisition of the plot in dispute on 9.9.1992 and the declaration made under Section 6(1) of the Act was published on 8.9.1993. After noticing that the notifications under Sections 4 and 6 had already been issued, the Special Leave Petition filed by DDA was disposed of on 13.12.1993 with the following directions :

"Keeping in view the facts and circumstances of this case and to do complete justice between the parties we are of the view that it would not be appropriate to permit the demolition of the flats which have already been constructed on the land in dispute. We, therefore, direct that the compensation which shall be determined under the land acquisition proceedings in respect of the land in dispute shall be payable and paid to the respondent R.L. Jain or his nominee. Needless to say that all offers and counter offers for settling the dispute which were made before this Court, shall stand withdrawn and ineffective. We direct that the land acquisition proceedings be

expedited and be completed preferably within six months from today. We allow the appeal in the above terms. No costs."

The Collector thereafter made an award on 11.6.1994 for the plot in dispute determining its market value as Rs.16,54,175/- and solatium at the rate of 30% on the said amount as Rs.4,96,252/-. The Collector also awarded interest from 10.11.1961 to 9.11.1962 at the rate of 9% amounting to Rs.1,93,538/- and 10.11.1962 to 10.6.1994 (from the date of dispossession till the date of the award) at the rate of 15% amounting to Rs.1,01,86,839/-.

5. The award of the Collector was challenged by the DDA by filing Writ Petition No.292 of 1995 which has been partly allowed by the High Court by the impugned judgment and order dated 19.3.1997. The High Court has held that the award of interest under Section 34 of the Act at the rate of 9% p.a. w.e.f. 10.11.1961 to 9.12.1962 and then at the rate of 15% p.a. from 10.11.1962 to 10.6.1994 is without jurisdiction and to that extent the award has been set aside. The remaining part of the award i.e. for market value of land and solatium has been upheld.

6. Shri Vijay Cotton & Oil Mills Ltd. v. State of Gujarat 1991 (1) SCC 262 has been decided by a Bench of two Judges. In this case the possession of the land was taken over by the government on 19.11.1949 under an arrangement that suitable land of equal value will be given to the owner. But, the government did not give any other alternative land and acquisition proceedings were initiated whereunder the notification under Section 6(1) of the Act was issued on 1.2.1955. The claimant was not satisfied with the award made by the Collector and accordingly asked for a reference under Section 18 of the Act. The District Judge determined the amount of compensation for the acquired land but did not award any interest. The owner of the land did not prefer any appeal against the award of the District Judge before the High Court, but the State preferred an appeal challenging enhancement in compensation. The claimant, then filed time barred cross objection under Order 41 Rule 22 CPC along with an application for condonation of delay. The application for condonation of delay was dismissed with the result, the cross objection stood rejected as time barred. It was contended on behalf of the claimant (owner of the land) that he was entitled to interest with effect from 19.11.1949. The High Court took the view that as the District Judge had not awarded interest for the period claimed by the claimant and his cross objection having been rejected as time barred, the claimant had no right to claim interest in the appeal preferred by the State Government. The claimant then preferred an appeal in this Court which modified the decree of the High Court by awarding interest. Paras 16 and 17 of the Report wherein the matter was dealt with read as under:

"16. ..The interest to be paid under Section 34 and also under Section 28 is of different character than the compensation amount under Section 23(1) of the Act. Whereas the interest, if payable under the Act, can be claimed at any stage of the proceedings under the Act, the amount of compensation under Section 23(1) which is an award-decree under Section 26 is subject to the rules of Procedure and Limitation. The rules of procedure are hand-maiden of justice. The procedural hassle cannot come in the way of substantive rights of citizens under the Act.

17. We do not, therefore, agree with the reasoning and the findings reached by the High Court. We are of the opinion that it was not necessary for the appellant-claimant to have filed separate appeal/cross objections before the High Court for the purposes of claiming interest under Section 28 or Section 34 of the Act. He could claim the interest in the State appeal. The fact that he filed cross-objections which were dismissed as time barred, is wholly irrelevant."

7. The appeal preferred by the claimant was accordingly allowed and it was held that he was entitled to interest on the compensation amount for the period 19.11.1949 to 1.2.1955 in accordance with the provisions of the Act, as they stood prior to amendment made by Act No. 68 of 1984.

8. In *Union of India v. Budh Singh & Ors.* (1995) 6 SCC 233 which has also been decided by a Bench of two Judges, the possession of land was taken on 15.3.1963 and the notification under Section 4(1) of the Act was published on 16.11.1984. The award decree passed by the reference Court attained finally. In execution proceedings the High Court passed an order that in the event of default in payment of the amount within the stipulated time, interest at the rate of 18 per cent per annum from the date of taking possession shall be paid. In appeal before this Court the only question raised was whether the owners of the land were entitled to interest at the rate of 18 per cent per annum from 15.3.1963, the date on which the possession was taken, till 15.11.1984, preceding the date on which the notification under Section 4(1) had been published. After analysis of the provisions of the Act it was held that the Land Acquisition Act is a complete Code covering the entire field of operation of the liability of the State to make payment of interest and entitlement thereof by the owner when the land is taken over. The court has no power to impose any condition to pay interest in excess of the rate and the manner prescribed by the statute as well as for a period anterior to the publication of notification under Section 4(1) of the Act. It was also held that the parameter for initiation of proceedings is the publication of the notification under Section 4 (1) of the Act which would give legitimacy to the State to take possession of the land in accordance with the provisions of the Act and further any possession taken otherwise would not be considered to be possession taken under the Act. The Bench went on to hold that the Act being a self-contained code, the common law principles of justice, equity and good conscience cannot be extended in awarding interest, contrary to the provisions of the statute.

9. Shri Dushyant Dave, learned senior counsel for the appellant has submitted that in Suit No. 154 of 1965 filed by the original appellant R.L. Jain, a decree had been passed that the notification issued under Section 6 of the Act on 11.10.1961 was null and void and the proceedings for acquisition of land with regard to plot No. 223 of village Kharera were illegal and the said decree became final in view of the dismissal of the appeal preferred by Union of India. The earlier notifications issued under Section 4(1) and 6 of the Act, therefore, became non est in the eyes of law but the possession of the plot in dispute had been taken over by Union of India on 10.11.1961. The fresh notification under Section 4(1) of the Act was issued on 9.9.1992. Section 34 clearly lays down that when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon from the time of so taking possession until it is paid or deposited. The appellant was consequently entitled to interest from the date of taking possession, viz. from 10.11.1961 and the Collector had rightly included the interest

component in the award made by him. Learned counsel has submitted that language of Section 34 and also of Section 28 is plain and unambiguous and, therefore, no other view is possible. He has also submitted that in case it is held that the owner of the land is not entitled to interest for the period anterior to notification under Section 4(1) of the Act, it will be highly unjust and inequitable. In support of his submission, he has placed reliance on *Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission* AIR 1928 PC 287, wherein it was held that on a contract for sale and purchase of land it is the practice to require the purchaser to pay interest on his purchase money from the date when he took possession. He has also referred to *The Revenue Divisional Officer Guntur v. Vasireddy Rama Bhanu Bupal & Ors.* AIR 1970 AP 262 (FB) wherein it was held that possession taken even prior to acquisition proceedings and with the consent of the owner would be possession of land under the Act and interest is payable from the date of taking possession. Reliance has also been placed upon *Smt. Swarnamayi v. Land Acquisition Collector*, AIR 1964 Orissa 113, where having regard to Chapter XXVI Rule 3 of Land Acquisition Manual, it was held that where possession was obtained in accordance with the consent of the owner thereof before acquisition proceedings started, interest from the date of taking over possession can be granted. Learned counsel has lastly submitted that the view taken by this Court in *Shri Vijay Cotton & Oil Mills* (supra) is the legally correct and equitable view and applying the ratio of the said case, the award made by the Collector wherein the appellant had been awarded interest from the date of taking over possession, was perfectly correct and the High Court has erred in setting aside the interest component.

10. Shri Mukul Rohtagi, learned Additional Solicitor General appearing for the respondents has submitted that under the Scheme of the Act no event prior to publication of notification under Section 4(1) of the Act can be taken note of as any proceedings under the Act can commence only after publication of the said notification. The market value of the land has to be determined as on the date of issuance of preliminary notification under Section 4(1) and therefore, the Collector or the Court cannot travel prior to the said date. Both Sections 28 and 34 contemplate payment of interest where possession is taken over under the Act after the notification under Section 4(1) has been issued and compensation amount has not been paid and not for any anterior period. The view taken in *Union of India v. Budh Singh* (supra) it is submitted, represents the correct legal position which has been reiterated in a recent decision in *Smt. Lila Ghosh v. State of West Bengal* JT 2003(9) SC 23.

11. In order to decide the question whether the provisions of Section 34 of the Act regarding payment of interest would be applicable to a case where possession has been taken over prior to issuance of notification under Section 4(1) of the Act it is necessary to have a look at the Scheme of the Land Acquisition Act. Acquisition means taking not by voluntary agreement but by authority of an Act of Parliament and by virtue of the compulsory powers thereby conferred. In case of acquisition the property is taken by the State permanently and the title to the property vests in the State. The Land Acquisition Act makes complete provision for acquiring title over the land, taking possession thereof and for payment of compensation to the land owner. Part II of the Act deals with acquisition and the heading of Section 4 is "Publication of preliminary notification and powers of officers thereupon". Sub-section (1) of Section 4 provides that whenever it appears to the appropriate government that land in any locality is needed or is likely to be needed for any public

purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Sub-section (2) provides that thereupon it shall be lawful for any officer either generally or specially authorised by such Government in this behalf and for his servants and workmen, to enter upon and survey and take levels of any land in such locality, to dig or bore in the sub-soil and to do all other acts necessary to ascertain whether the land is adapted for such purpose etc. etc. This provision shows that the officers and servants and workmen of the government get the lawful authority to enter upon and survey the land and to do other works only after the preliminary notification under Section 4(1) has been published. Section 5-A enables a person interested in any land which has been notified under Section 4 (1) to file objection against the acquisition of the land and also for hearing of the objection by the Collector. If the State Government is satisfied, after considering the report, that any particular land is needed for public purposes or for a company, it can make a declaration to that effect under Section 6 of the Act and the said declaration has to be published in the Official Gazette and in two daily newspapers and public notice of the substance of such declaration has to be given in the locality. Thereafter the Collector is required to issue notice to persons interested under Section 9 (1) of the Act stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him. Section 11 provides for making of an award by the Collector of the compensation which should be allowed for the land. 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. This provision shows that possession of the land can be taken only after the Collector has made an award under Section 11. Section 17 is in the nature of an exception to Section 16 and it provides that 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 (1), take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. The urgency provision contained in Section 17(1) can be invoked and possession can be taken over only after publication of notification under Section 9(1) which itself can be done after publication of notification under Sections 4(1) and 6 of the Act. Even here in view of sub-section (3-A) the Collector has to tender 80 per cent of the estimated amount of compensation to the persons interested entitled thereto before taking over possession. The scheme of the Act does not contemplate taking over of possession prior to the issuance of notification under Section 4(1) of the Act and if possession is taken prior to the said notification it will be *de hors* the Act. It is for this reason that both Sections 11(1) and 23(1) enjoin the determination of the market value of the land on the date of publication of notification under Section 4(1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act. These provisions show in unmistakable terms that publication of notification under Section 4(1) is the *sine-qua-non* for any proceedings under the Act. Section 34 of the Act, on the basis whereof the appellant laid claim for interest, reads as under:

"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."

12. The expression "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" should not be read in isolation divorced from its context. The words "such possession"

and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. "Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification under Section 4(1) and other amounts like statutory sum under sub-section (1-A) and solatium under Sub-section (2) of Section 23. The heading of Part II of the Act is Acquisition and there is a sub-heading "Taking Possession" which contains Sections 16 and 17 of the Act. The words "so taking possession"

would therefore mean taking possession in accordance with Sections 16 or 17 of the Act. These are the only two Sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification under Section 4(1) it would not be in accordance with Sections 16 or 17 and will be without any authority of law and consequently cannot be recognised for the purposes of the Act. For the parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Sections 16 or 17 of the Act. The words "so taking possession" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification under Section 4(1) of the Act which is de hors the provisions of the Act.

13. In *Union of India v. Budh Singh* (supra) after analysis of the provisions of the Act the Bench arrived at the following conclusions:

"The parameter for initiation of the proceedings is the publication of the notification under Section 4(1) of the Act in the State Gazette or in an appropriate case in District Gazette as per the local amendments. But the condition precedent is publication of the notification under Section 4(1) in the appropriate gazette. That would give legitimacy to the State to take possession of the land in accordance with the provisions of the Act. Any possession otherwise would not be considered to be possession taken under the Act."

14. In *Shri Vijay Cotton & Oil Mills (supra)*, the precise question raised here namely whether in a case where the possession is taken prior to the issuance of notification under Section 4(1) of the Act, interest can be awarded in accordance with Sections 28 or 34 of the Act was not examined and the only issue examined was whether in an appeal which has been preferred by the State Government challenging the quantum of compensation awarded by the District Judge it is open to the High Court to award interest to the claimant even though he had not preferred any appeal or cross objection for the said purpose. It is well settled that a decision as an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made therein. (See *Krishena Kumar v. Union of India*, AIR 1990 SC 1782, *Municipal Corporation of Delhi v. Gurnam Kaur*, AIR 1989 SC 38 and *M/s. Orient Paper and Industries Ltd. & Anr. v. State of Orissa* AIR 1991 SC 672). *Shri Vijay Cotton & Oil Mills (supra)* is therefore not an authority for the proposition that where possession is taken before issuance of notification under Section 4(1), interest on the compensation amount could be awarded in accordance with Section 34 of the Act with effect from the date of taking of possession.

15. Similar view has been taken in a recent decision by a Bench of two Judges in *Smt. Lila Ghosh vs. State of West Bengal* J.T. 2003 (9) SC 23 and the reasons given there in para 16 of the Report are being reproduced below:

"Even though the authority in *Shree Vijay Cotton & Oil Mills Ltd.* appears to support the claimants, it is to be seen that apart from mentioning sections 28 and 34, no reasons have been given to justify the award of interest from a date prior to commencement of acquisition proceedings. A plain reading of section 34 shows that interest is payable only if the compensation which is payable, is not paid or deposited before taking possession. The question of payment or deposit of compensation will not arise if there is no acquisition proceeding. In case where possession is taken prior to acquisition proceedings a party may have a right to claim compensation or interest. But such a claim would not be either under section 34 or section 28. In our view interest under these sections can only start running from the date the compensation is payable. Normally this would be from the date of the award. Of course, there may be cases under section 17 where by invoking urgency clause possession has been taken before the acquisition proceedings are initiated. In such cases, compensation, under the Land Acquisition Act, would be payable by virtue of the provisions of section 17. As in cases under section 17 compensation is payable, interest may run from the date possession was taken "

16. In this connection it will be apposite to refer to Sub-section (1A) of Section 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 & Ors. 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 Section 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. vs. 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 Section 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 Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate maybe awarded.

19. The case may be examined from the equitable consideration as well. In the earlier acquisition proceedings the notification under Section 4(1) had been published on 13.11.1959 and the Collector had made an award for Rs.6301/- for the plot in dispute on 30.12.1961. The award was made within 1-1/2 months of dispossession which allegedly took place on 10.11.1961. This amount was paid to R.L. Jain and was retained by him. Learned counsel for the respondent has placed before the Court a copy of the sale certificate issued in favour of R.L. Jain on 31.8.1961 which shows that the plot was purchased by him for Rs. 3200/- only and thus he had received almost double amount of compensation. Therefore, even on equitable ground he is not entitled to any amount from the date of dispossession till the date of second notification under Section 4(1) of the Act which was issued in 1992.

20. In this connection, it may be noted that the only plea taken in Suit no.154 of 1965 filed by R.L. Jain was that it was given out at the time of auction sale of the plot that the same was outside the purview of the preliminary notification issued on 13.11.1959 under Section 4(1) of the Act. Even assuming that it was so but that by itself could not render the acquisition proceedings invalid. At best, he would have been entitled to refund of the sale consideration paid by him. However, the Sub-Judge passed a decree that the acquisition proceedings with regard to the plot in dispute are illegal and the notification issued under Section 6(1) of the Act on 11.10.1961 is null and void. The decree having become final it is binding upon the respondent, DDA. The original appellant R.L. Jain on the one hand received compensation amount in terms of the award of the Collector and sought a reference to the Court on the ground of alleged inadequacy of compensation and at the same time filed the suit challenging the acquisition proceedings wherein he obtained a decree that the acquisition proceedings are null and void. It was on account of this judgment and decree that he succeeded in the second suit (Suit No.421 of 1967), wherein a decree for demolition of construction made by DDA and restoration of possession in his favour was passed. It is in such circumstances that in order to save the construction the land acquisition proceedings were initiated again by issuing a notification under Section 4(1) of the Act on 9.9.1992. Under the award given by the Collector on 11.6.1994 he has been awarded Rs.16,54,175 as the market value of the land and Rs.4,96,252 as solatium. The appellant has thus been more than adequately compensated and in our opinion even on equitable grounds he is not entitled to any further amount.

For the reasons discussed above, there is no merit in this appeal and the same is hereby dismissed with costs.