

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**
AND
THE HON'BLE SRI JUSTICE M.LAXMAN
+ APPEAL SUIT NO.3864 OF 2004

% 21—03—2022

Special Deputy Collector & Land
Acquisition Officer, SRSP L.A.Unit, Warangal.
...Appellant

vs.

\$ Myakala Veera Reddy and Others
... Respondents

!Counsel for the Appellant: G.P. for Appeals

^Counsel for Respondents: Sri B.Narayana Reddy

<Gist :

>Head Note :

? Cases referred

1. (1995) 5 SCC 683
2. (2002) 1 SCC 142
3. (1995) 2 SCC 142
4. (1995) 6 SCC 355
5. (2004) 4 SCC 79
6. (2007) 9 SCC 650
7. (2014) 13 SCC 613
8. (2005) 12 SCC 443
9. 2008 (232) E.L.T. 577.(2)
10. (1880) 13 Ch D 774 (785)
11. (2005) 2 SCC 673
12. (1989) 1 SCC 101
13. (1991) 4 SCC 139
14. (2000) 5 SCC 488

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

APPEAL SUIT NO.3864 OF 2004

Between:

Special Deputy Collector & Land
Acquisition Officer, SRSP L.A.Unit, Warangal

...Appellant

And

Myakala Veera Reddy and Others

... Respondents

JUDGMENT PRONOUNCED ON: 21.03.2022**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY****AND****THE HON'BLE SRI JUSTICE M.LAXMAN**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

A.RAJASHEKER REDDY, J

M.LAXMAN, J

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
THE HON'BLE SRI JUSTICE M.LAXMAN**

APPEAL SUIT No.3864 OF 2004

JUDGMENT: (*Per Hon'ble Sri Justice M.Laxman*)

1. The challenge in the present appeal is to the order and decree dated 30.06.2000 in O.P.No.140 of 1995 on the file of the Court of the II Additional Senior Civil Judge, Warangal (for short, reference Court), wherein and whereby the market value fixed by the Land Acquisition Officer in respect of three different categories was enhanced from Rs.12,000/- per acre to Rs.24,000/- per acre, Rs.7,000/- per acre to Rs.14,000/- per acre and Rs.9,000/- per acre to Rs.18,000/- per acre in respect of Hasanparthy, Pembarthy and Keshavapoor villages respectively for the acquired lands belonging to the respondents herein and granted other statutory benefits.

2. The appellant herein is the respondent and the respondents herein are the claimants in O.P.No.140 of 1995.

3. The brief facts leading to the present appeal are that the respondents herein are the owners of land to an extent of Ac.14-20 guntas, situated at Hasanparthy, Pembarthy and Keshavapoor villages. The lands were acquired for excavation of

1R/DBM-23 canal. Initially, preliminary notifications under Section 4(1) of the Land Acquisition Act, 1894 (for short, the Act) were issued on 12.03.1982 and 13.03.1982 by invoking urgency clause and possession of the lands was taken over on 08.08.1984. Later, the said proceedings were lapsed for various reasons, which are unnecessary for the disposal of present appeal.

4. Subsequently, fresh preliminary notifications were issued on 14.06.1989 and 15.06.1989, and after considering the claims of the respondents/claimants, the appellant/Land Acquisition Officer passed an Award dated 31.03.1993 fixing market value of Rs.12,000/- per acre in respect of Hasanaparthi village, Rs.7,000/- per acre in respect of Pembarthi village and Rs.9,000/- in respect of Keshavapoor village, as against the claims of the respondents for Rs.70,000/- per acre. Dissatisfied with the same, the respondents herein sought reference for enhancement of compensation.

5. Before the reference Court, the respondents/claimants to support their case, examined P.Ws.1 to 5 and relied upon Exs.A-1 to A-4. The appellant/Land Acquisition Officer, to support his case, examined R.W.1 and relied upon Ex.B-1.

6. The reference Court, by relying upon Exs.A-3 and A-4 and also the oral evidence of P.Ws.4 and 5, doubled the market value fixed by the Land Acquisition Officer for the lands acquired in the said three villages. The reference Court also granted other statutory benefits i.e., additional amount of compensation @ 12% per annum from the date of taking possession of the lands till the date of the Award, and also interest for the first year @ 9% per annum from the date of taking possession and subsequently @ 15% per annum till the amounts are deposited with the reference Court and also granted solatium of 30%. Challenging the same, the Land Acquisition Officer filed the present appeal.

7. Though the present appeal has been filed challenging the enhancement of market value as well as grant of statutory benefits either under Section 23(1-A) or 34 of the Act from the date of possession under the invalid notification, the learned Government Pleader for Appeals is confined his arguments only to the extent of grant of statutory benefits from the date of possession of the lands under invalid notifications. We have also on merits found no reason to interfere with the findings of reference Court on fixation of market value.

8. The only point that arises in the present appeal, in the light of the arguments advanced by the learned Government Pleader and the learned counsel for the respondents, is whether the Land Acquisition Officer/reference Court is justified in granting statutory benefits from the date of taking possession of the lands under invalid notifications?

9. The learned Government Pleader Mr. Sripathi Rajeswar Rao has contended that the reference Court has granted additional amount of compensation @ 12% per annum, without any statutory support, from the date of taking possession of the lands to the date of Award, which according to him, is contrary to the decision of the Apex Court in case of **State of H.P. v. Dharam Das**¹, whereunder the Apex Court has set aside the order granting 12% additional amount on equitable ground from the date of taking possession till the date of deposit in addition to the statutory rate of interest. It is also his contention that the possession of acquired lands was taken anterior to the notification which is not under the Act. Thus, all the statutory benefits ought not to have granted from the date of possession which was taken under the invalid notifications and the same is not consonance with various decisions of Apex Court. He has

¹ (1995) 5 SCC 683

also contended that in the present case, the reference Court also granted interest under Section 28 of the Act from the date of possession which is not valid possession under the Act, and hence, such grant of additional amount and interest is contrary to the well established principles.

10. The learned counsel for the respondents/claimants has contended that granting of additional amount @ 12% per annum is not based on equity grounds, but it was granted as additional market value under Section 23(1-A) of the Act. Therefore, according to him, the aforesaid judgment of the Apex Court has no relevance. It is also his contention that possession was taken under invalid notifications, but not anterior to the notifications. Though subsequent notifications have been issued after lapse of previous notifications, the statutory benefits have to be paid from the date of taking possession of the lands by treating that the possession under the invalid notifications as valid possession.

11. It is needless to observe that the contentions raised by parties are no more *res integra*. A three-Judges Bench of the Apex Court in case of **Siddappa Vasappa Kuri v. Special Land**

Acquisition Officer², having considered the conflicting decisions in **Special Tahsildar (LA), P.W.D. Schemes v. M.A. Jabbar³** and **Asst. Commr., Gadag Sub-Division v. Mathapathi Basavanne⁴**, held that when the possession is anterior to the notification or under valid notification, the benefit under Section 23(1-A) of the Act shall be from the date of notification to the date of Award. In the said judgment, the Apex Court has interpreted Section 23(1-A) of the Act by holding that the commencement of benefits under Section 23(1-A) is from the date of issuance of preliminary notification and the terminal point is either date of Award or the taking possession of the land, whichever is earlier. Since the possession is not under the Act, the terminal point is not available to grant the benefits. Therefore, the terminal point is taken as the date of Award. This settled legal position is not serious in dispute. Therefore, the respondents are entitled for the benefits under Section 23(1-A) of the Act from the date of notifications to the date of Award towards additional market value on the market value fixed under Section 23(1) of the Act.

² (2002) 1 SCC 142

³ (1995) 2 SCC 142

⁴ (1995) 6 SCC 355

12. The next question is what is the date to be taken into consideration for grant of benefits under Section 34 or 28 of the Act when the possession is anterior to the notification or under valid notification. This question is also resolved by a three-Judge Bench of the Apex Court in case of **R.L.Jain v. DDA**⁵. In paragraphs 11 and 12 of the said judgment, the Apex Court has extensively dealt with the procedure under the Act for taking possession of notified land and vesting of the title with the Government. The relevant portion of the judgment reads as under:

“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

⁵ (2004) 4 SCC 79

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 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. A reading of the above judgment, it is clear that under the Act, the valid possession can only be either under Section 17 of the Act by invoking urgency clause or under Section 16 of the Act after passing of the Award. Any possession prior to the preliminary notification issued under Section 4(1) of the Act or under invalid notification is not the valid possession under the Act. Therefore, the benefits contemplated either under Section 34 or 28 of the Act are not from the date of possession which is prior to the notification. Any possession which is not in terms of the Act is not valid possession and the statutory benefits of the Act are not extendable for the said invalid possession held by the Government.

14. Now the question is whether the owners of the land are compensated for the period of invalid possession retained by the

Government without support of the Act or under the invalid proceedings issued under the Act?

15. In this regard, it is relevant to refer to the judgment of the Apex Court in **R.L.Jain**'s case (supra), wherein it has been held as follows:

"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 lends support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded."

16. A reading of the above judgment would show that where the land owners are dispossessed prior to valid notification or on strength of invalid notifications, the Government only takes possession and title still vests with land owners and they are entitled to recover possession through legal process. Such land owners are entitled to get rent or damages for use and occupation for the period the Government retains such possession. In such a situation, the Collector may also

determine just and equitable rent or damages for use and occupation of the property, while determining the compensation amount payable to the land owner for acquisition of the property.

17. The Apex Court, having observed so in the said case, has not granted any relief for retention of such possession by the Government for the reason that the land owner therein was sufficiently compensated even before fresh proceedings were instituted, and that even under the fresh proceedings, sufficient compensation has been determined and paid to the land owner.

18. In the present case, the lands were acquired in three different villages for excavation of 1R/DBM-23 canal on the basis of invalid notifications. Later, fresh notifications were issued and the award was passed on 31.03.1993. By the date of such Award, the Apex Court has not passed the judgment in **R.L.Jain's** case (supra). Therefore, the interest under Section 34 of the Act was paid from the date of dispossession on the strength of invalid notifications. As such, there was no occasion either to the claimants or to the Land Acquisition Officer to claim and determine the rent or damages for use and occupation for the period of such possession which the Government retained

not under the Act. Hence, at this point of time, driving the respondents/claimants to the appellant/Land Acquisition Officer to claim rent or damages for such invalid possession, which is not under the Act, by the Government is wholly inappropriate and unjustified.

19. In similar circumstances, the Apex Court in **Madishetti Bala Ramul v. Land Acquisition Officer⁶**, **Tahera Khatoon v. LAO⁷** and **Land Acquisition Officer & Asstt. Commr. V. Hemanagouda⁸**, by placing reliance of its earlier judgment in **R.L.Jain's** case (supra), has granted additional interest @ 15% per annum on the amount awarded by the Land Acquisition Officer from the date of dispossession to the date of notification. The said judgments were rendered by the two Benches of the Apex Court consisting of two Judges.

20. In the said judgments, the notification date was taken as the terminal point for payment of additional interest @ 15% per annum. The legal basis for granting such additional interest is the decision of the Apex Court in **R.L.Jain's** case (supra). In **R.L.Jain's** case (supra), the Apex Court has not given any

⁶ (2007) 9 SCC 650

⁷ (2014) 13 SCC 613

⁸ (2005) 12 SCC 443

terminal point in restricting the payment of such additional interest till notification, but such rent or damages were extended for use and occupation for the period the Government retained the possession not under the Act. The scheme of the Act does not permit the Government to take possession under the Act simultaneous with the notification. The benefits of Section 28 or 34 are payable from the date of valid possession under the Act.

21. As held by the Apex Court in **R.L.Jain's** case (supra), the valid possession under the Act is either under Section 17 (when urgency clause is invoked) or under Section 16 of the Act. Where urgency clause is invoked, the Government has right to take possession of the land after 15 days from the date of issuance of notices under Section 9(1) of the Act to the land owners. When the urgency clause is not invoked, the Government has right to take possession under Section 16 of the Act after passing of Award. However, in all the said decisions, the Hon'ble Benches of the Apex Court in **Madishetti Bala Ramul's** case (supra), **Tahera Khotoon's** case (supra) and **Hemanagouda's** case (supra), have restricted the terminal point for payment of 15% additional amount upto the notification only, but have not specifically declared that it should be upto notification under

Section 4(1) of the Act only or contrary to **R.L.Jain's** case (supra).

22. It is to be seen judgments cannot be read as statute as held by the Apex Court in **Commissioner of Central Excise, Bangalore v. Srikumar Agencies**⁹ by holding that observation of Courts are neither to be read as Euclid's theorems nor as provisions of the statute.

23. In this regard, we feel appropriate to refer to the decision of Sir George Jessel in **Osborne v. Rowlett**¹⁰ who says:

"The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the **principle** upon which the case was decided."

24. This brings out the distinction between the binding nature of a decision on a particular issue and the binding nature of a principle "upon which the case was decided". The former is precise, while the latter is not. Normally, such precise decisions are accompanied by a course of reasoning which establishes a general principle of law used by the court to justify its decisions. This principle is called the **ratio decidendi** of the decision and its binding nature is of a different kind.

⁹ 2008 (232) E.L.T. 577.(2)

¹⁰ (1880) 13 Ch D 774 (785)

25. We also feel relevant to refer to observation of **Simpson** (Simpson, *op. cit.*, p. 167) who observes: "The *ratio* of a case is only *binding* if it is not inconsistent with statute, or inconsistent with the *ratio* of another decision."

26. The Constitution Bench of the Apex Court in **Central Board of Dawoodi Bohra Community v. State of Maharashtra**¹¹ has held that the law laid down by the Apex Court in a decision of Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

27. It is also relevant to the decision of the Apex Court in **MCD v. Gurnam Kaur**¹², wherein it has been held as under:

"11. ...**Professor P.J. Fitzgerald, editor of Salmond on Jurisprudence**, 12th Edn. explains **the concept of sub silentio** at p. 153 in these words:

A decision passes **sub silentio**, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass sub silentio.

¹¹ (2005) 2 SCC 673

¹² (1989) 1 SCC 101

12. In **Gerard v. Worth of Paris Ltd.** (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in **Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.** (1941) 1 KB 675 : (1941) 2 All ER 11 (CA), the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided 'without argument, without reference to the crucial words of the rule, and without any citation of authority', it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This Rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

28. The Apex Court in **State of U.P. v. Synthetics and Chemicals Ltd.**¹³, speaking through His Lordship R.M. Sahai, J., in his concurring judgment set out the principles of *sub silentio* and has held thus: (SCC pp. 162-63, paras 40-41)

"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the Rule of precedents. It has been explained as Rule of sub silentio. 'A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the

¹³ (1991) 4 SCC 139

court or present to its mind.' (Salmond on Jurisprudence, 12th Edn., p. 153). In *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* (1941) 1 KB 675 : (1941) 2 All ER 11 (CA) the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the Rule and without any citation of the authority'. It was approved by this Court in *MCD v. Gurnam Kaur* MANU/SC/0323/1988: (1989) 1 SCC 101. The Bench held that, 'precedents sub silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. UT of Pondicherry* MANU/SC/0299/1967: AIR 1967 SC 1480 it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

29. In **Arnit Das (1) v. State of Bihar**¹⁴, the Apex Court held as follows (SCC p. 498, para 20):

"20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the Rule of sub silentio, in the technical sense when a particular point of law was not consciously determined. (See *State of U.P. v. Synthetics and Chemicals Ltd.* MANU/SC/0616/1991: (1991) 4 SCC 139, SCC para 41.)"

30. At the cost of repetition, we say that the ratio/principle laid down in **R.L.Jain's** case (supra) which is of three-Judges Bench,

¹⁴ (2000) 5 SCC 488

is that the land owners are entitle for rent or damages towards use and occupation for the period the Government retains possession not under the Act and any possession prior to Section 4 (1) notification or invalid notification is not the possession under the Act.

31. The valid possession under the Act is either under Section 17 or Section 16 of the Act which can only be after notification but not simultaneous with notification under Section 4(1) of Act. This means, by issuance of notification under the Act, the invalid possession of the Government would not automatically become valid possession but it can only be done when proceedings reach the stage of either under Section 17 or Section 16 of the Act.

32. So, we are of the opinion that the benefit of 15% additional interest for retention of possession by the Government, which is not in terms of the Act, cannot be restricted to the date of notification, but it terminates when the Government gets right to take notional possession by following the procedure either under Section 17 or under Section 16 of the Act.

33. In the case on hand, the Government has not invoked any urgency clause in the subsequent valid notifications issued under the Act. This means, the Government gets no right to

take notional possession under Section 17 of the Act. The only other provision is Section 16 of the Act, and such a notional possession can only be taken after passing of the Award. This means, the Government has right to take notional possession immediately after passing of the Award under Section 11 of the Act.

34. In the present case, the Award was passed on 31.03.1993. Therefore, the additional benefit of 15% interest per annum towards rent or damages for use and occupation of land commences from the date of possession which is under invalid notification i.e., 08.08.1984 and terminates with the passing of Award, but not the notification.

35. Now, the further question is the additional benefit of 15% interest per annum which is granted towards rent or damages for use and occupation of the land has to be paid on which amount?

36. In **Madishetti Bala Ramul's** case (supra), the Apex Court held as follows:

“20. In the peculiar facts and circumstances of the case, although the proper course for us would have to remand the matter back to the Collector to determine the amount of compensation to which the Appellants would be entitled for being remained out of possession since 1979, we are of the

opinion that the interest of justice would be met if this appeal is disposed of with a direction that additional interest @ 15% per annum **on the amount awarded** in terms of award dated 02.01.1999 for the period 16.03.1979 till 22.12.1991, should be granted, which, in our opinion, would meet the ends of justice.”

37. A perusal of the above decision would indicate that the additional interest @ 15% per annum was granted on the amount awarded in terms of the Award.

38. In **Tahera Khotoon**’s case (supra), the Apex Court held as follows:

“15. It is also not in dispute that the Municipal Committee was in possession of the aforesaid property right from 1-1-1983 till the Notification was issued by the State Government on 10-1-1996. Keeping in view the observations made by this Court in *Madishetti Bala Ramul* {(2007) 9 SCC 650}, we direct the State Government to pay rents/damages at the rate of 15% **on the compensation awarded** from the date the land owners were dispossessed, namely, from 1-1-1938 till the date of issuance of the preliminary Notification i.e., 10-1-1996. The calculations shall be made by the State Government as expeditiously as possible and disburse the aforesaid amount to the appellants as early as possible, at any rate, within three months from the date of receipt of copy of this order.”

39. A close scrutiny of the above judgment would show that additional amount @ 15% per annum was ordered to pay on the compensation awarded.

40. In **R.L.Jain**’s case (supra), the Apex Court has given the clarification as to what constitutes compensation. The compensation constitutes market value of the land fixed under

Section 23(1) of the Act, additional market value fixed under Section 23(1-A) of the Act and solatium granted under Section 23(2) of the Act. This means, the compensation embraces three components i.e., market value, additional market value and solatium. Therefore, the respondents/claimants are entitled for 15% additional interest in the form of rent or damages for use and occupation of the land from the date of invalid possession till the date of Award on the above said three components.

41. In the result, the appeal is partly allowed as follows:

- (i) The findings of the reference Court with regard to enhancement of market value is confirmed;
- (ii) The amount granted by the reference Court in the form of 12% additional interest from the date of taking possession (prior to the notification) is modified to that of granting 12% additional market value under Section 23(1-A) of the Act from the date of notification till the date of Award on the market value fixed under Section 23(1) of the Act;
- (iii) The grant of benefits under Section 34 of the Act by the appellant/Land Acquisition Officer or under Section 28 by the reference Court from the date of taking possession which is prior to the notification is modified by directing to pay such interest from the date on which the Government gets right to take **notional possession** either under Section 17 or under Section 16 of the Act. In the present case, the respondents/claimants are entitled for such interest from the date of Award till the date of deposit. Such interest is payable on three components i.e., market value, additional market value and solatium;

- (iv) The respondents/claimants are also entitled to additional interest @ 15% per annum on compensation i.e., market value, additional market value and solatium towards rent/damages for use and occupation of the land from the date of possession (prior to the valid notifications) i.e., 08.08.1984 till the date of passing of Award i.e., 31.03.1993.

Miscellaneous petitions pending, if any, shall stand closed.

There shall be no order as to costs.

A.RAJASHEKER REDDY, J

M.LAXMAN, J

Date: .03.2022
L.R. Copy to be marked: Yes
B/o.TJMR