

(From : ALLAHABAD)

SHIVARAJ V. PATIL AND D. M. DHARMADHIKARI, JJ. **

Civil Appeal No. 3270 of 1998, D/- 9-3-2004.

Om Prakash and others, Appellants v. State of U. P. and others, Respondents.

(A) U. P. Municipalities Act (2 of 1916), Sec. 298 List I Heading F, 241 — Constitution of India, Arts. 19 (1) (g), (6); 51-A — Prohibition on sale of eggs within Municipal limits — Not an unreasonable restriction on right to trade — (Per Court) — Omission to mention word 'eggs' in S. 241 or 298(2) List I Heading F — Does not render amended bye-law adding word 'eggs', as invalid — It is justified qua general powers conferred upon Municipality under S. 298 (1) — (Per Shrivaj Patil, J.) — Reasonableness of complete restriction imposed on trade of non-vegetarian food items — To be viewed from cultural and religious background of three Municipal towns — Tourists and pilgrims are major sources of revenue for Local Municipal bodies and inhabitants of three towns. (Per D. M. Dharmadhikari, J.)

Gazette Notifications prohibiting the sale of eggs within the municipal limits of Rishikesh is challenged on the ground that notifications issued imposed unreasonable restrictions affecting their rights under Article 19 (1) (g) of the Constitution, as they prohibited the sale of eggs within the municipal limits; the amended bye-laws including the 'eggs' prohibiting their sales within the municipal limits was not valid as 'eggs' is not covered by Section 298 (2) List I Heading F of the U. P. Municipalities Act, 1916. Held, prohibition imposed is not unreasonable restriction on right to trade. (Paras 12, 16, 40)

Per Shrivaj Patil, J. :— Under Section

* CMWP No. 19173 of 1986, D/- 17-12-1996 reported in AIR 1997 All 209 : 1997 All LJ 1058 : 1998 AllHC 2566

** [The Judgments are printed in the order in which they are given in the certified copyEd.....]

CV/CV/S100149/2004/BNG/RTT/12256/2004

298 (1) a municipality has the power to make bye-laws consistent with the Act and Rules for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipal area and furtherance of the municipal administration under the Act. Sub-Section (2) of the same Section states in particular, and without prejudice to the generality of the power conferred by sub-section (1) the municipality can make any bye-law described in List I. Assuming 'eggs' is not one of the specified items under Section 298 (2) List I Heading F of the Act, the respondent board has power under Section 298 (1) of the Act to make a bye-law unless such a bye-law framed by the Board is inconsistent with the provisions of the Act or the Rules. No provision was pointed out to contend that the amended bye-law in question is inconsistent with the provisions of the Act or Rules. Though under the heading F of List I aforementioned 'eggs' is not an item which is totally a stranger with reference to sale of such item in the market for human consumption. Mere omission to mention 'eggs' either in Section 241 or Section 298 (2) List I Heading F does not make the amended bye-law invalid. Prohibition of sale of eggs within the municipal limits of Rishikesh was not an unreasonable restriction, the bye-law was in the larger interest of welfare of the people consistent with the provision of the Act and that the amended bye-law was not invalid having due regard to Sections 241 and 298 of the Act. (Paras 11, 12)

Per Dharmadhikari, J. (Concurring) :—

Whether a particular restriction on trade to the extent of its complete prohibition can be held to be 'reasonable' within the meaning of clause (6) of Article 19 depends upon the nature of the trade involved and the public interest that is intended to be served by such total restriction. The law regulating local administration of an urban or rural area affects the social and economic life of the community. As pointed out by another Legal Thinker Stone, in his book "Social dimensions of Law & Justice" 'reasonable restriction', if properly used, helps in adjustments of conflicting interests, such as in the present case where large number of people residing and visiting Rishikesh, believe in strict vegetarianism as a part of their religion and way of life. The appellants who are running hotels and restaurants and others

Um Prakash v. State of U. P. Like them constitute comparatively a very small section of the society engaged in carrying on trade of non-vegetarian food items in the town. (Paras 31, 34)

The reasonableness of complete restriction imposed on trade of non-vegetarian food items has, therefore, to be viewed from the cultural and religious background of the three municipal towns. It is a matter of common knowledge that member of several communities in India are strictly vegetarians and shun meat, fish and eggs. Such people in great number regularly and periodically visit Hardwar, Rishikesh and Muni Ki Reti on pilgrimage. In the three towns people mostly assemble for spiritual attainment and religious practices. All citizens are enjoined by Fundamental duties prescribed in Article 51-A to respect faith of each other and thereby 'promote harmony and spirit of common brotherhood' in a pluralistic society as India is. The resolution by Municipal Board Rishikesh to amend its bye-laws for banning public dealing and trade of non-vegetarian food items in municipal town of Rishikesh along with adjoining towns of Hardwar and Muni Ki Reti has been taken in deference to the religious and cultural demands of large number of residents and pilgrims who visit regularly and periodically on auspicious and festive days to the three towns. It is stated on behalf of the Municipal board that major source of revenue and employment in the three is from the continuous inflow of tourists and floating population of pilgrims. Maintenance of clean and congenial atmosphere in all religious places is in common interest of the residents, pilgrims and visitors. Continuous floating population of pilgrims benefit the inhabitants of the towns by providing them various sources of earning livelihood and employment. Tourists and pilgrims are the major sources of revenue for the Local Municipal Bodies and the inhabitants of the three towns. Geographical situation and peculiar culture of the three towns justify complete restriction on trade and public dealing in non-vegetarian food items including eggs within the municipal limits of the towns. Trade in all kinds of food items vegetarian or non-vegetarian in adjoining towns and village outside the municipal limits of three towns remains unrestricted and there is no substantial harm caused to those engaged

(Paras 35, 36, 37, 39, 40)

(B) U. P. Municipalities Act (2 of 1916), S. 298 (1) — Power of Board to frame bye-laws — Appellant challenged the validity of amended bye-law — Special resolution was passed amending the bye-law — Burden is on appellant to show that special procedure was not followed — Validity of bye-law cannot be challenged on such ground for first time in appeal — Mere wrong reference made to provision in preamble to the bye-law — Does not invalidate the bye-law. (Para 12)

(Para 12)

Cases Referred : Chronological Paras

- State of Andhra Pradesh v. McDowell & Co., AIR 1996 SC 1627 : 1996 AIR SCW 1679; (1996) 3 SCC 709
- 22 Hashmatullah v. State of Madhya Pradesh, AIR 1996 SC 2076 : 1996 AIR SCW 2498; (1996) 4 SCC 391
- 23 H. C. Suman v. Rehabilitation Ministry Employees Co-operative House Building Society Ltd., New Delhi, AIR 1991 SC 2160 : 1991 AIR SCW 2532 : (1991) 4 SCC 485
- 13 State of Maharashtra v. Himmatthal Narheram Rao, AIR 1970 SC 1157
- 21 Afzal Ullah v. State of Uttar Pradesh, AIR 1964 SC 264 : 1964 (1) Ch LJ 156 : (1964) 4 SCR 991
- 11 Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731
- 23 State of Madras v. V. G. Row, AIR 1952 SC 196 : 1952 Ch LJ 966
- 20, 32 Chintaman Rao v. State of M. P., AIR 1951 SC 118
- 19, 32 Emperor v. Sibnath Banerji, AIR 1945 PC 156
- 11 Ms. Rachna Gupta, Advocate, for Appellants; Dr. Meera Agarwal, Ramesh Chandra Mishra, Advocates for Respondent in Municipal Board; C. D. Singh, Pramod Dayal, Advocates, for State of U. P.; Avtar Singh Rawat, Addl. Advocate General for State of Uttaranchal; J. K. Bhatia, Advocate for State of Uttaranchal.
- SHIVARAJ V. PATIL, J. :— The appellants and two other persons filed a writ petition in the High Court challenging the Ga-

zetic modifications prohibiting the sale of eggs within the municipal limits of Rishikesh on the ground that notifications issued imposed unreasonable restrictions affecting their rights under Article 19 (1) (g) of the Constitution as they prohibited the sale of eggs within the municipal limits. The amended bye laws including the 'eggs' prohibiting their sales within the municipal limits was not valid as 'eggs' is not covered by Section 298(2) List I Heading F of The U. P. Municipalities Act, 1916 (for short 'the Act').

2. Admitted facts as noticed by the High Court, are that District Rishikesh is by and large a place where many temples exist. In the counter affidavit filed by the respondents before the High Court it is stated that several citizens, societies and organizations trade representations to the Municipal Board, Rishikesh requesting it to impose restrictions on the sale of 'eggs' also in public places. Having regard to the said demand of citizens the municipality issued notification in question after getting the approval of the Government as per the provisions of the Act. It is also pointed out that the transportation of 'eggs' through municipal limits of Rishikesh is not prohibited in any way. A businessman, who wants to take 'eggs' through Rishikesh, is not prohibited and he may carry on his trade outside the municipal limits of Rishikesh. The relevant bye-laws before amendment was:—

"No person shall sell or expose for sale or cook or carry in a manner exposed to public gaze any kind of meat or fish in any public place, thorough fare, streets, lodging houses, hotels, clubs, restaurants, dharamshalas, bakhiras and shops situated within the limits of the Municipal Board."

The amended bye-law reads:—

"No person shall sell or expose for sale or cook or carry in a manner exposed to public gaze any kind of meat, fish or eggs in any public place, thorough fare, streets, lodging houses, hotels, clubs, restaurants, dharamshalas, bakhiras and shops situated within the limits of Municipal Board."

3. As is evident, in amended bye-law only 'eggs' is added. There was already prohibition in regard to any kind of meat or fish. The High Court has noticed that under bye-laws before amendment prohibition of sale of meat and fish, which was existing for long time, was not challenged.

4. In the light of the rival contentions urged on behalf of the parties the question that arises for consideration is whether the Municipal Board could frame bye-laws prohibiting the sale of 'eggs' within its municipal limits, when the word 'eggs' is not covered by Section 298(2) List I Heading F of the Act.

5. Learned counsel for the appellants urged that total prohibition on sale of eggs in the municipal limits of Rishikesh is unreasonable and seriously affects rights of the appellants to carry on trade under Article 19(1)(g) of the Constitution; under Section 298 of the Act the respondent Board could not frame bye-law in relation to 'eggs' looking to Section 298(2) List I Heading F and Section 241 of the Act; eggs cannot be read as included in 'meat' or 'fish' since the eggs, which are being sold by the appellants, do not hatch and give birth to chicks and even otherwise if the respondent Board in the interest of promoting or maintaining the health, safety of the public can make bye-law, then the total prohibition would be unreasonable and arbitrary although the Board can take steps as it may deem necessary to regulate the sale of eggs.

6. Challenge made on behalf of the appellants was met by learned counsel on behalf of the respondents by contending that Section 241 of the Act deals with the requirement of obtaining a licence to use any place as market or shop for sale of animals, meat or fish intended for human food, or as a market for the sale of fruits or vegetables and such right shall be subject to the bye-laws made under Section 298(2) List I Heading F of the Act; the words used in this Section as to 'animals', 'meat' or 'fish' are not followed with word 'only', which means that for either similar articles also there may be requirement for licence; none of the provisions of the Act including Sections 241 and 298 provide that municipality cannot make bye-laws for imposing a ban on the sale of eggs within municipal limits. The learned counsel further submitted that Section 298(1) of the Act has conferred general power on the Municipal Board to make bye-laws for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipal area and for the purpose of municipal administration under the Act; this general power of the municipality extends to even to those sub-

jects, which have not been specifically enumerated under Section 298(2) List I Heading F of the Act.

7. The learned counsel for the appellants, when confronted with the position that under Section 298(1) the municipality has general power to frame bye-laws, made submission that in order to frame bye-laws under Section 298(1) a special resolution has to be passed by adopting a special procedure and it does not appear that any such procedure was adopted. Hence the amended bye-law cannot be sustained.

8. The High Court in the impugned order has dealt with the contentions advanced on behalf of the appellants and negatived them keeping in view the provisions of the Act and the various decisions cited. The High Court has noticed that the welfare of the people is paramount consideration, which has to be kept in mind while deciding the validity of a law when it is said to be contrary to the constitutional guarantees. The High Court, as can be seen from the impugned judgment, while dealing with the challenge to the notification on the ground that it infringed the right of the appellants guaranteed under Article 19(1)(g) of the Constitution of India, after referring to various decisions of this Court and following them, has concluded that the impugned notification does not violate any right of the appellants as guaranteed under Article 19(1)(g) of the Constitution in the context of the facts of the case and keeping in view Section 298 of the Act and bye-laws framed thereunder. Hence it is not necessary to deal any further on this question. It is stated in the impugned judgment, "as noted in the earlier part of this judgment, it is not denied that several organizations, societies and residents of Rishikesh had approached the Municipal Board for such a ban on sale of eggs as it was already imposed concerning sale of meat and fish and that was the reason that by the amended law the aforesaid word "eggs" was added in the existing bye-laws."

9. Referring to various decisions of this Court the High Court concluded that the amended bye-laws prohibiting sale of eggs within the municipal limits was permissible to achieve the object of the Act in the interest of the welfare of the people. The High Court has also found that under Section

298(1) of the Act the municipality has the general power to frame a bye-law by special resolution for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipal area and for the furtherance of the municipal administration under the Act. It is also noticed that right of a person to use any place within the limits of municipal area under Section 241 of the Act is itself subject to bye-laws, if any, made under Section 298(2) List I Heading F of the Act. In this view the High Court did not find any illegality in the amended bye-law. Consequently the writ petition was dismissed by the impugned order.

10. The two provisions of the Act, viz., Sections 241 and 298 to the extent they are relevant are to be noticed:—

"241. Licensing of markets and shops for sale of certain articles.—(1) The right of any person to use any place, within the limits of a municipal area, other than a municipal market, as a market or shop for the sale of animals, meat or fish intended for human food, or as a market for the sale of fruit or vegetables, shall be subject to bye-laws (if any) made under Heading F of Section 298.

(2)

xxx xxx xxx xxx

"298. Power of municipality to make bye-laws.—(1) A municipality by special resolution may, and where required by the State Government shall, make bye-laws applicable to the whole or any part of the municipal area, consistent with this Act and with any rule, for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipal area and for the furtherance of municipal administration under this Act.

(2) In particular, and without prejudice to the generality of the power conferred by sub-section (1), the municipality, wherever situated, may in the exercise of the said power, make any bye-law described in List I below and the municipality, wholly or in part situated in a hilly tract may further make, in the exercise of the said power, any bye-law described in List II below.

- LIST I
- A-E
 - F.—Markets, Slaughter houses, sale of food, etc.

..... in the High Court challenging the Ga-

stances brought to the notice of the Court.

The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.

[Emphasis added]

21. The observations in the aforesaid two decisions have been quoted with approval in the State of Maharashtra v. Himmatbhai Narbheram Rao (AIR 1970 SC 1157) in which challenge to Section 385 of Bombay Municipal Corporation Act imposing restrictions on dealing with carcass or skin of animals within the municipal limits as affecting the trade of the people dealing in those obnoxious items was negatived holding such restrictions to be in general public interest.

22. Reasonable restriction on certain trades in articles which are hazardous to public health such as liquor, it is held, can go to the extent of imposing complete prohibition on such trade. See State of Andhra Pradesh v. McDowell and Co. (1996 (3) SCC 709).

[AIR 1996 SC 1627; 1996 AIR S C W 1679]

23. Complete ban on slaughter of cow and its progeny has also been upheld to save cow as an animal species highly useful to human community. See Mohd. Hanif Quareshi and others v. State of Bihar (AIR 1958 SC 731) and Hashmatullah v. State of Madhya Pradesh and others (1996 (4) SCC 391).

[AIR 1996 SC 2076; 1996 AIR SCW 2498]

24. Learned counsel on behalf of appellants has argued that trade of eggs cannot be considered as objectionable or injurious to society. In fact, egg eating is encouraged as necessary for improvement of public health. Doctors recognise it as a nutritive supplement to other food. There are eggs which contain no chicks and, therefore, acceptable to many sections of the society including those who are otherwise vegetarians.

25. The basic question, therefore, that arises is whether complete prohibition im-

posed on trade of eggs within the municipal limits of Rishikesh can be held to be reasonable and can pass the test of clause (6) of Article 19, as has been interpreted by this Court from case to case in various situations.

26. It is a matter of common knowledge that Haridwar, Rishikesh and adjoining town Muni Ki Reti situate on the bank of river Ganges are pilgrim centres with huge temple complexes, shrines, ashrams, yoga teaching institutions and other institutions engaged in religious activities and spiritual practices. The three towns attract pilgrims round the year and in greater numbers during auspicious days and annual fairs. Pilgrims congregate in the towns to take bath in river Ganga considered to be holy by them. They visit temples and stay in various religious places and institutions. There is, thus, a continuous inflow of pilgrims in these religious towns. Every 6th year a big religious fair is organised called as Purn Kumbh or Ardh Kumbh in which crores of people from all over the country congregate in the three towns.

27. Supporting the imposition of ban on trade of eggs along with ban on trade of meat and fish, which is already in existence, it has been stated by the State and the local authority that it was so imposed on constant demands of citizens, various organisations and institutions operating within Haridwar and Rishikesh areas. Copies of some of such representations in writing received from individuals and religious organisations have been placed on record of this case. A major section of the society in the three towns consider it desirable that vegetarian atmosphere is maintained in the three towns for the inhabitants and the pilgrims.

28. In municipal limits of Haridwar public dealing in meat, fish and eggs was banned by the Notification issued as far back as on 23rd July, 1956 and in Muni Ki Reti by Notification dated 18-12-1976. These restrictions imposed in Haridwar and Muni Ki Reti have not been challenged by any section of people in the Court and have continued as fully acceptable to all. The towns of Haridwar and Rishikesh have acquired religious importance as they are located on the heights of Himalayas.

29. As a justification for extension of ban on trade of eggs with ban on trade of meat

and fish in municipal area of Rishikesh which adjoins Haridwar and Muni Ki Reti, it has been stated on behalf of Municipal Board and State that during the periodical Kumbh fairs, the areas which are notified for organizing Kumbh Mela comprise parts of municipal areas in Haridwar, Muni Ki Reti and Rishikesh. One such Notification earmarking the areas of Kumbh Mela held in the year 1992, issued under byclause (2) of United Province Mela Act of 1938 (UP Act No. 16 of 1938) has been annexed with counter affidavit of the State.

30. The High Court in upholding complete restriction on dealing and trading of eggs in Rishikesh has relied on several decisions of this Court. The High Court has come to the conclusion that such prohibition extended to the trade of eggs in municipal town of Rishikesh is a reasonable restriction and has been imposed in the interest of general public.

31. Whether a particular restriction on trade to the extent of its complete prohibition can be held to be 'reasonable' within the meaning of clause (6) of Article 19 depends upon the nature of the trade involved and the public interest that is intended to be served by such total restriction.

32. The concept of 'reasonableness' defies definition. Abstract definition like 'choice of a course which reason dictates' as propounded in the earliest case of this Court in Chintaman Rao (supra) is elastic. In the subsequent case of V. G. Row (supra), therefore, this Court has observed that 'no abstract standard or general pattern' of reasonableness can be laid down as applicable to all cases. Legal Author Friedmann in his book 'Legal Theory, 4th Ed., at pages 83-85', comments that reasonableness is an expression used to convey basically the Natural Law ideal of 'justice between man and man'. The concept of 'reasonable man' is also an application of the principles of natural justice to the standard of behaviour expected of the citizen. The functional and conceptual implication of the term 'reasonableness' is that it is essentially another word used for public policy. It means the application of the underlying principles of social policy and morality to an individual case. Friedmann further observes that the 'test of reasonableness is nothing substantially different from 'social engineering',

[AIR 1951 SC 118] [AIR 1952 SC 196; 1952 Cri LJ 966]

'balancing of interests', or any of the other formulas which modern sociological theories suggest as an answer to the problem of the judicial function.

33. The term 'reasonable restriction' as used in Article 19(6) is highly flexible and relative term which draws its colour from the context. One of the sources to understand it is natural law and in the sense of ideal, just, fair, moral or conscionable to the facts and circumstances brought before the Court.

34. The law regulating local administration of an urban or rural area affects the social and economic life of the community. As pointed out by another Legal Thinker Stone, in his book Social dimensions of Law and Justice 'reasonable restriction'. If properly used, helps in 'adjustments of conflicting interests' such as in the present case where large number of people residing and visiting Rishikesh, believe in strict vegetarianism as a part of their religion and way of life. The appellants who are running hotels and restaurants and others like them constitute comparatively a very small section of the society engaged in carrying on trade of non-vegetarian food items in the town.

35. The reasonableness of complete restriction imposed on trade of non-vegetarian food items has, therefore, to be viewed from the cultural and religious background of the three municipal towns.

36. It is a matter of a common knowledge that members of several communities in India are strictly vegetarians and shun meat, fish and eggs. Such people in great number regularly and periodically visit Haridwar, Rishikesh and Muni Ki Reti on pilgrimage.

37. In the three towns people mostly assemble for spiritual attainment and religious practices. All citizens are enjoined by Fundamental Duties prescribed in Article 51-A to respect faith of each other and thereby 'promote harmony and spirit of common brotherhood' in a pluralistic society as India is.

Article 51-A - "It shall be the duty of every citizen of India—

- (a) to (d).....
(e) to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and

regional or sectional diversities; to renounce practices derogatory to the dignity of women; (f) to value and preserve the rich heritage of our composite culture."

38. The Fundamental Duties enjoined on citizens under Article 51-A should also guide the legislative and executive actions of elected or non-elected institutions and organisations of the citizens including the municipal bodies.

39. The resolution by Municipal Board, Rishikesh to amend its bye-laws for banning public dealing and trade of non-vegetarian food items in municipal town of Rishikesh along with adjoining towns of Haridwar and Muni Ki Reti has been taken in deference to the religious and cultural demands of large number of residents and pilgrims who visit regularly and periodically on auspicious and festive days to the three towns. It is stated on behalf of the Municipal Board that major source of revenue and employment in the three towns is from the continuous inflow of tourists and floating population of pilgrims. Maintenance of clean and congenial atmosphere in all the religious places which are spread over all the three towns is in common interest of the residents, pilgrims and visitors. Continuous floating population of pilgrims benefit the inhabitants of the towns by providing them various sources of earning, livelihood and employment. Tourists and pilgrims are the major sources of revenue for the Local Municipal Boards and the inhabitants of the three towns. Geographical situation and peculiar culture of the three towns justify complete restriction on trade and public dealing in non-vegetarian food items including eggs within the municipal limits of the towns. The High Court rightly upheld it to be a reasonable restriction. Trade in all kinds of food items vegetarian or non-vegetarian in adjoining towns and villages outside the municipal limits of three towns remains unrestricted and there is no substantial harm caused to those engaged in such trade.

40. For the aforesaid reasons, the impugned bye-law notified by Municipal Board, Rishikesh cannot be held to be violative of Article 19 (1)(g) of the Constitution. With this addition, I respectfully agree with the opinion of learned brother Shrivastav V. Prati, J. and with his conclusion that this appeal be dismissed.

Appeal dismissed.

AIR 2004 SUPREME COURT 1904.

(From : Delhi)

S. RAJENDRA BABU, AR. LAKSHMANAN AND G. P. MATHUR, JJ.

Civil Appeal No. 5515 of 1997. D./12-31-2004.

R. L. Jain (D) by LRs. Appellants v. D. D. A. and others. Respondents.

Land Acquisition Act (1 of 1894), Ss. 34, 4 and 48 — Interest — For period anterior to publication of Notification under S. 4(1) — Cannot be awarded in cases where possession is taken before issuance of notification under S. 4(1) — Expression "such possession" and "so taking possession" occurring in S. 34 of Act — Means taking possession in accordance with Ss. 16, 17 of Act — Any possession taken prior to issuance of notification is de hors the Act — In such cases landowner retains title over property — Is entitled to rent/damages for period — Provisions of S. 48, apply.

Asst. Commr. v. Mathapatti, AIR 1995 SC 2492 : 1995 AIR SCW 3668, Overruled.

In order to decide the question whether the provisions of S. 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 S. 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 primarily and the title of 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 landowner. The scheme of the Act does not contemplate taking over of possession prior to the issuance of notification under S. 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 Ss. 11(1) and 23(1) enjoin the determination of the market value (Delhi).

C.W.P. No. 292 of 1995, D/- 19-3-1997

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The land on the date of publication of notification under S. 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 S. 4(1) is the sine qua non for any proceedings under the Act. (Para 11)

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" occurring in S. 44 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, Ss. 11 and 15 of the Act which by virtue of S. 23(1) mean market value of the land on the date of notification under S. 4(1) and other amounts like statutory sum under sub-sec. (2) of S. 1-A and solatium under sub-sec. (2) of S. 23. The heading of Part II of the Act is Acquisition and there is a sub-heading "Taking Possession" which contains Ss. 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Ss. 16 or 17 of the Act. These are the only 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 Ss. 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification under S. 4(1) it would not be in accordance with Ss. 16 or 17 and will be without any authority of law and consequently cannot be recognised for the purposes of the Act. For the party of reasons the words "from the date on which he took possession of the land" occurring in S. 28 of the Act would also mean lawful taking of possession in accordance with Ss. 16 or 17 of the Act. The words "so taking possession" carry under no circumstances mean such possession of the owner of the land which has been done prior to publication of notification under S. 4(1) of the Act which is de hors the provisions of the Act.

AIR 1995 SC 2492 : 1995 AIR SCW 3668. Overruled.
Spl. Tehsildar v. Jubbar. AIR 1995 SC 762, Approved.
Shri Vijay Cotton Mills v. State. AIR 1991 SC 656 : 1991 AIR SCW 221. Disting. (Para 12)

In a case where the landowner is dispossessed prior to the issuance of preliminary notification under S. 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to best 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 ages 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. 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 landowner for the acquisition of the property. The provision of S. 48 of the Act land support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded. (Para 18)

Further landowner 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 S. 4(1) of the Act. (Para 19)

Cases Referred: Chronological Paras
Smt. Lila Ghosh v. State of West Bengal, AIR 2004 SC 288 : 2003 AIR SCW 6117 : (2003) 9 JT (SC) 23
Assistant Commissioner, Gadag v. Mathapatti Basavanewwa, AIR 1995 SC 2492 : 1995 AIR SCW 3668 (Overruled) 16
Special Tehsildar, Vijaywada v. M. P. Jabbar, AIR 1995 SC 762 (Approved) 16
Union of India v. Bunch Singh, (1995) 2 SCC 233 : (1995) 6 SCC 2337 : (1995) 2 Rent 1, 8, 10, 13 LR 447
Shri Vijay Cotton and Oil Mills v. State of Gujarat, AIR 1991 SC 656 : 1991 AIR SCW 221 : (1991) 1 SCC 262 (Disting.) 1, 6, 9, 14, 15