

(2008) 11 KL CK 0040

High Court Of Kerala

Case No: Writ Petition (C) No. 29943 of 2003

Indian Oil Corporation Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Nov. 27, 2008**Acts Referred:**

- Constitution of India, 1950 - Article 14, 300A, 31
- Land Acquisition Act, 1894 - Section 18, 18(2), 23(1A), 23(2), 28

Citation: AIR 2009 Ker 114 : (2009) 2 KLJ 144 : (2009) 2 KLT 284**Hon'ble Judges:** Pius C. Kuriakose, J**Bench:** Single Bench**Advocate:** A.M. Shaffiq, E.K. Nandakumar, A.K. Jayasankar Nambiar, Priya Mahesh and Priya Manjooran, for the Appellant; P. Parameswaran, Asst. Sol.Gl., for the Respondent

Judgement

Pius C. Kuriakose, J.

The Indian Oil Corporation Ltd., a Government of India Company engaged in refining and marketing of petroleum products through out the country challenges in this writ petition Sections 28 and 34 of the Land Acquisition Act 1894 as introduced by Amending Act 68 of 1984. The first respondent in the writ petition is the Union of India and the second respondent is the State of Kerala. The additional third respondent got himself impleaded in the writ petition claiming that he is vitally interested in the result of the writ petition pointing out that 50 acres of land in Kalpetta Village in Wayanad District over which he was having one-third right was acquired recently under the provisions of the Land Acquisition Act and that being out satisfied with the compensation awarded, at his instance a reference u/s 18 is pending before the Sulthan Batheri Sub Court. The petitioner company submits that their grievance is confined to the fixation of 15% interest under the provisions of Section 28 and 34 of the Land Acquisition Act at a time when the interest rates prevalent were higher than what they are today. In the writ petition, the petitioner company cites several instances where various extents of land had to be acquired

under the provisions of Land Acquisition Act, 1894 by the Government at the request of the company. It is submitted that in almost all these cases for reasons which are beyond the control of the requisitioning authority awards are passed much later to one year, as a result of which the liability for payment of interest at the increased rate of 15% is automatically attracted and the liability becomes virtually the liability of the company. The petitioner points out that the rate of 15% was fixed by Act 68 of 1984 which was corresponding to or on a par with the interest rates which were then in force. But for various reasons the current interest rates are much lower than 15% and in this context the petitioner is relying on Exts. P1, P2 and P3. Giving details of interest rates currently offered by Nationalised Banks like State Bank of India, Union Bank of India and Bank of India petitioner submits that the Employees Provident Fund Organisation has reduced the rate of interest to 8.5% per annum. Petitioner has also produced Ext. P4 to show that the prevailing rate of interest in money market is far below the rate of 15% provided under Sections 28 and 34 of the Land Acquisition Act. The petitioner contends that since the interest payable under Sections 28 and 34 of the Land Acquisition Act is far above the rate of interest prevailing in the market claimants are deliberately delaying their cases and such delay comes ultimately to their benefit on account of the interest rate fixed under the Act. Raising various grounds the petitioner has filed this writ petition seeking the following reliefs:

- i) To declare the provisos to Sections 28 and 34 of Land Acquisition Act, 1894, which provides for payment of interest at 15 % to be unconstitutional and void.
- ii) To pass such other order as this Hon"ble Court may deem fit and proper in the circumstances of the case.

2. On behalf of the Union of India a detailed written statement has been filed by the Central Government Standing Counsel justifying the rates of interest provided under Sections 28 and 34.

3. I have heard the submissions of Sri A.M. Shaffiq, senior counsel for the petitioner, Sri Parameswaran Nair, Assistant Solicitor General of India for the first respondent, Smt. Latha T. Thankappan, learned senior Govt. Pleader for the second respondent and Sri B.G. Bhaskar, learned Counsel for the third respondent. Drawing my attention to the various exhibits produced by the petitioner Sri A.M. Shaffiq submitted that though it may be true that at the time of enactment of Sections 28 and 34 by the Parliament the interest rate of 15% was justifiable since those were the times when very high rates of interest were offered by banks and financial institutions all over the country due to passage of time and subsequent developments, rate of interest in the money market has decreased considerably. In the changed scenario continuance of Sections 28 and 34 providing for exorbitant rate of 15% on the compensation determined by the land acquisition officer and by the Land Acquisition Court will be unjust, illegal and arbitrary. In this context, the learned senior counsel placed strong reliance on the observations of the Supreme

Court in [Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another](#), . The learned Asst. Solicitor General of India would very strongly defend the continuance of Sections 28 and 34 in Land Acquisition Act, 1894 in their present form. According to him, it was with a very laudable intention that the Parliament enacted Act 68 of 1984 thereby introducing beneficial provisions like Sections 28 and 34. Asst. Solicitor General submitted that the proviso to Sections 28 and 34 which only provide for payment of interest at the rate of 9% during first year and 15% thereafter were enacted since the Parliament felt that the individual land owners who were being deprived of their properties even against their wishes should be compensated for the loss keeping in view the sacrifice they are compelled to make in the large interest of the community. He further submitted that another object of the insertion of the provisos was to deter the requisitioning authorities from delaying payment of the compensation amount on one reason or the other. Sri B.G. Bhaskar, learned Counsel for the third respondent would submit that the petitioner company is not at all justified in alleging that the claimants in land acquisition reference cases are deliberately delaying matters with the object of securing interest at rates more attractive than those offered by banking companies and other financial institutions. The learned Counsel submitted that it is a matter of common knowledge that deposits are made by the State and the requisitioning authority only years after execution proceedings are commenced and that too only after some coercive process is issued by the execution court.

4. I have considered the rival submissions addressed at the Bar. It is trite that constitutionality of all legislations whether enacted by the Parliament or the State Legislatures will be presumed, and the same is open to challenge only on certain limited grounds. In the instant writ petition the vires of Sections 28 and 34 to the extent they provide for payment of interest on the compensation determined under the Land Acquisition Act by the land acquisition reference court and the land acquisition officer for the period after one year of taking over of possession at 15% per annum is challenged not on any of the permissible and usual grounds on which constitutionality of statutes enacted by the Legislatures are challenged. In fact it is fairly conceded in the writ petition itself that provision for payment of interest at the rate of 15% under Sections 28 and 34 at the time when those sections were enacted was legal and constitutional. The rate of 15% was in consonance with the higher rate of interest which was then prevailing in the financial market. The contention is that due to passage of time interest rates in the market including those offered by private and public sector banking institutions has gone down considerably and the argument is that the rate of 15% provided by Sections 28 and 34 of the Land Acquisition Act does not conform to the interest rates prevailing in the money market. The Supreme Court has in Malpe Vishwanath Acharya's case (supra) while dealing with the constitutionality of certain provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 dealing with determination and fixation of standard rent has inter alia held that law has to be examined from the perspective

of Article 14 to ascertain whether with the passage of time it has become arbitrary or unreasonable. In fact at paragraph 8 of its judgment the Supreme Court has stated as follows:

8. There is considerable judicial authority in support of the submission of learned Counsel for the appellants that with the passage of time a legislation which was justified when enacted may become arbitrary and unreasonable with the change in circumstances. In the State of M.P. v. Bhopal Sugar Industries Ltd. dealing with a question whether geographical classification due to historical reasons would be valid this Court at SCR P. 853 observed as follows:

Differential treatment arising out of the application of the laws so continued in different regions of the same reorganized State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.

I cannot disagree completely with Sri A.M. Shaffiq, senior counsel when he submits that during the past 10 years rate of interest offered by Nationalised Banks and like recognised institutions on the customer's money under deposit with them has gone down. But I will notice immediately that absolutely no material has been placed by the petitioner company to show as to what exactly was the rate of interest prevailing in the market in 1984 when Sections 28 and 34 were introduced into the Land Acquisition Act of 1894. I do not think that even at that time rate of interest on fixed deposits was near to 15%. What I have noticed is that rates of interest offered by banks and like financial institutions have been fluctuating depending on the policies declared from time to time by the Reserve bank of India and by the Finance Ministry obviously on the basis of the levels of inflation prevailing at the relevant times. I cannot agree with Mr. Shaffiq when he argues that the higher rate of interest at 15% was provided by the Parliament under Sections 28 and 34 with the objective of bringing the rate of interest payable on land acquisition compensation on a par with rates of interest which were at that time being offered by banks and financial institutions.

5. Act 68 of 1984 introducing highly consequential amendments into the Land Acquisition Act of 1894 was enacted by the Parliament with very laudable objectives. It was by Act 68 of 1984 that the solatium components of the compensation which thitherto was only 15% of the market value was enhanced to 30%. It was through the said Act itself that Section 23(1-A) was introduced into the principal Act of 1894 thereby providing that an additional amount calculated at the rate of 12% per

annum on the determined market value for the period commencing from the date of publication of the Section 4(1) notification till date of order of the Collector of date of taking possession whichever is earlier shall be paid. It was by the said Act that Sections 28 and 34 were amended and interest rate payable on the compensation amount which was a paltry 4% per annum was increased to 9% during the first year and 15% thereafter. It is clear and it has been judicially settled also that one of the reasons for introduction of provisions like Section 23(1-A) and the proviso to Section 28 increasing the rates of interest payable on the determined compensation was to accelerate the land acquisition proceedings and to ensure that the owner who is deprived of his property even against his wishes in exercise of State's powers of eminent domain, gets compensation at the earliest. Ours is a country where right to private property is not abolished. Nevertheless, Constitution recognises the State's powers of eminent domain to acquire private property for public purposes-for purposes of the community at large subject to Articles 300A and 31A. The Land Acquisition act 1894 is the principal statute in India which enables the Government to acquire citizens' properties compulsorily for public purposes and the term "public purpose" has been defined in the statute as including provision of land for a corporation owned or controlled by the State and Going by the definition clause Corporation owned and controlled by the State shall mean Government Companies like the petitioner company. Sections 38 to 44(b) in Part 7 of the Land Acquisition Act are provisions which are specially applicable when acquisition is for companies. According to me, the main purpose of the Legislature while enacting Act 68 of 1894 for amending the L.A. Act of 1894 was to protect the interest of land owners who were suffering on account of compulsory acquisition of their properties for public purposes.

6. The request of the petitioners seems essentially, to be, to lower the interest rates provided by Sections 28 and 34, so that the same will be on a par with interest rate offered by Banks and financial institutions currently. The request is not a feasible proposition since as already indicated the interest rates offered by banks and financial institutions are not static, but fluctuate from time to time. Various factors such as demand and supply of money, prevailing market economy, lending policies of the banks as regulated by the Reserve Bank of India and the prevailing policies of the Union Government all play their roles in the matter of determination of interest rates by banks and financial institutions. The bank interest rates in currency can be varied at any time. The rates of interest, payable under the provisions of the Land Acquisition Act cannot in my opinion be linked with interest rates offered by banks and financial institutions. One of the arguments which were addressed before me by the Asst. Solicitor General was that to evolve a method for fixing interest rates payable under the Land Acquisition Act on a par with lending rates of financial institutions will be a very difficult task for the administration and that the same will be a complicated process at the field level. There is considerable force in the above argument of the Assistant Solicitor General.

7. Another aspect of the matter also cannot be forgotten. Seventy per cent of India's population earn their livelihood by agriculture and activities related to agriculture. It is mostly lands belonging to the agriculturists which are acquired in large scale for the massive projects of industrial giants like the petitioner. The attachment and affinity of the agriculturist with his land is not only because the same is his source of living, but it is sentimental also. The agony which will be experienced by the farmer who is compelled to give up his farms and fields in public interest and in the interest of public companies like the petitioner is inestimable and the Parliament I am sure had this also in mind while introducing the present provisions such as Sections 23(2), 23(1-A) and the provisions to Sections 28 and 34 in the L.A. Act. It will be noticed by introducing Section 28A into the Act (by Amending Act 68/1984 itself) the Parliament which represents the will of the people demonstrated its concern for the inarticulate and illiterate million who had omitted to invoke the regular reference procedure u/s 18(2) and paved way for realisation of the correct value for their properties. This Court will not be justified in striking down these provisions in the absence of strong and compelling reasons.

8. I cannot, for a moment, agree that the claimants are deliberately delaying final disposal of land acquisition cases, so that they can draw the higher rate of interest guaranteed under Sections 28 and 34. The magnitude of inflation is such that the purchasing power of money is going down steadily and the claimants do not stand to gain by delaying the payments due to them. As for the proviso to Section 34, delay if at all is attributable to the acquiring authority, the State, and the requisitioning authority, Government Department or Institutions like the petitioner. Delay can be avoided by them by accelerating matters and facilitating immediate payment of compensation as soon as award is passed and possession is taken. Even in cases where the emergency provisions are invoked loss to the requisitioning authorities like the petitioner on account of liability to pay interest at increased rate u/s 34 can be avoided by ensuring the statutorily required simultaneous payment of 80% readily and by facilitating culmination of the L.A. proceedings without delay.

9. As for proviso to Section 28, it will be noticed without any hesitation that the State and the requisitioning gets mulcted with liability to pay interest at the increased rate of 15% due to their own lethargy. It is a matter of common knowledge that even in cases where decrees passed by the land acquisition reference court has attained finality, deposit payment is unnecessarily delayed. Now a days the requisitioning authorities are also participating in proceedings before the reference court and they are also readily put to notice as soon as the reference court and the High Court decides the cases or appeals. Even then, deposits/payments are made only after execution is levied and that too after some coercive process is issued by the execution court which is normally done only when there is non-compliance with repeated directions passed by the execution court for deposit of amount. It is noticed that a very substantial portion of the total amount which becomes ultimately payable to the claimant decree holder is towards the statutory interest

payable u/s 28. I have no doubt in my mind that if the State and the requisitioning authority were vigilant the liability arising u/s 28 of the Land Acquisition Act could be avoided to a very considerable extent.

10. The result of the above discussion is as follows:

1. The challenge against the provisions to Section 28 and Section 34 of the Land Acquisition Act, 1894 fails and the prayers in the writ petition are declined. It is declared that Sections 28 and 38 of Act 1/1894 with their respective provisos are valid.

2. All Sub Courts executing decrees in land acquisition reference cases will immediately on entertaining execution petitions verify whether the decrees have become final. Once it is revealed that the decree has attained finality the courts will issue emergent notice to the requisitioning authority or department calling upon them to make or facilitate deposit of the decree debts and alerting them of the consequence of delay in payment.

The parties will suffer their costs in the WP(C).