

HIGH COURT OF GUJARAT (D.B.)**GUJARAT INDUSTRIES POWER CO LTD***Versus***FATIMABEN****Date of Decision:** 04 October 2016**Citation:** 2016 LawSuit(Guj) 2574**Hon'ble Judges:** [M R Shah](#), [A S Supehia](#)**Case Type:** First Appeal**Case No:** 407 of 2015**Subject:** Civil, Property**Acts Referred:**[Land Acquisition Act, 1894 Sec 6, Sec 23\(2\), Sec 34, Sec 16, Sec 28, Sec 32, Sec 23\(1A\), Sec 23, Sec 29, Sec 30, Sec 33, Sec 31, Sec 11, Sec 18, Sec 4](#)**Final Decision:** Appeal disposed**Advocates:** [Nanavati Associates](#), [Kruti M Shah](#)**Cases Referred in (+): 14****M. R. Shah, J.**

[1] As common question of law and facts arise in this group of appeals and as such can be said to be cross appeals, all these appeals are decided and disposed of together by this common judgment and order.

[2] Feeling aggrieved and dissatisfied with the common judgment and award passed by the learned 11th Additional Senior Civil Judge, Surat (hereinafter referred to as the "Reference Court") passed in Land Reference Case Nos. 9 of 1999 to 16 of 1999 with LAR No. 19 of 1999 with LAR Nos.21 of 1999 to LAR Nos. 28 of 1999 insofar as awarding interest under Section 28 of the Land Acquisition Act (hereinafter referred to as the "Act") on the enhanced amount of compensation at the rate of 9% p.a. for the first year of taking over the possession of the lands acquired and at the rate of 15% p.a. for the subsequent year till the enhanced amount of compensation is paid/deposited, the acquiring body has preferred present First Appeal Nos. 407 of

2015, 409 of 2015, 410 of 2015, 412 of 2015, 507 to 519 of 2015, 1717 of 2016, 317 & 318 of 2016 and 2383 to 2387 of 2015.

2.1. Feeling aggrieved and dissatisfied with the aforesaid common judgment and award passed by the learned Reference Court in awarding compensation for the lands acquired at Rs. 21 per sq. mtrs. (additional compensation at the rate of 18 per sq. mtrs.), the original claimants have also preferred the respective First Appeal Nos. 1097 to 1100 of 2015, 1086 of 2015, 880 to 888 of 2015, 13 & 14 of 2015, 398 of 2015, 1549 of 2015, 12 of 2015, 941 of 201 and 1326 of 2016 requesting to enhance the amount of compensation.

[3] Shri Nandish Chudgar and Shri Maulik Nanavati, learned advocates have appeared on behalf of the acquiring body in respective First Appeals and Ms. Kruti Shah and Shri K.M. Sheth, learned advocates have appeared on behalf of the respective claimants in their respective First Appeal and Ms. Shruti Pathak and Shri Rakesh Patel, learned AGP have appeared on behalf of the Special Land Acquisition Officer in respective First Appeals.

[4] The facts leading to the present First Appeals in nutshell are as under:

4.1. The lands situated at village Shahgam Mandvi Prant, District Surat came to be acquired under the provision of the Act for the public purpose and acquiring body - Gujarat Industries Private Company Limited (hereinafter referred to as the "acquiring body"). The notification under Section 4 of the Act came to be published and issued on 20.01.1995/09.11.1995 whereas the notification under Section 6 of the Act was published on 11.06.1996. Thereafter, the lands came to be acquired for public purpose of electric power station and lignite mining for the acquiring body. The Special Land Acquisition Officer declared award under Section 11 of the Act being LAQ Case No. 40 of 1995 determining the market value and awarded compensation at the rate of Rs. 37 per sq. mtrs. At the request of original claimants, References are made under Section 18 of the Act to the District Court, which were numbered as Land Reference Case Nos. of 199 to 16 of 1999 with LAR No. 19 of 1999 with LAR Nos.21 of 1999 to LAR Nos. 28 of 1999. The original claimants had claimed the compensation at the rate of Rs. 100 per sq. mtrs..

4.2. The original claimants led/ produced following oral as well as documentary evidence.

Oral Evidence:

Description	Exh. No.
Deposition of the Claimant of LAR No. 25 of 1999 Bilal Ibrahim Bhula Patel.	53

Deposition of the Claimant of LAR No. 12 of 1999, 13 of 1999 and 15 of 1999 Iliyas Daud Patel.	58
Deposition of Administrative office of Kamrej Vibhag, Sahkari Khan Udyog Mandali.	64
Deposition of Inspector of APMC, Kosamba Shri Rajnikumar Joshi.	72
Deposition of Member clerk of Shri Madhi Vaibhag Sahkari Khand Udyog Mandali Limited, SuraliVinodbhai Patel.	89
Deposition of Account Clerk of APMC, Surat, Shri Chetankumar Natwarlal Patel.	96
Deposition of Talati Cum Mantri of Shah Gam Surat Ravjibhai Jethabhai	108
Deposition of Clerk of Shri Khedut Sahkari Khand Udyog Mandali Ltd., Pandvai, Sub Dist. Hansot, BharuchJanakbhai Pratapsinh	113

Documentary Evidence:

Description	Exh. No.
Village abstract of 7/12 of village Shah Gam for the acquired land for the year 1991 to 1995.	12 to 50.
Village Form No. 16, Kuva Park.	51
Village abstract of 7/12 showing the details of Wells.	55 to 57.
Copy of accounts of the year 199394 of Sava Group Cotton Sales Society Ltd. Kosamba	60 & 61.
Average price list of sugarcane issued by Shri Kamrej Vibhag Sahkari Khand Udyog Mandali Ltd. Nani Pradi.	66 to 67
Share Certificates of Shri Kamrej Vibhag Sahkari Khand Ugyog Mandali Limited.	64, 65 and 68 to 71
Average price list of cotton and juwar issued by the APMC. Kosamba.	74 to 87.
Copy of receipt of Ibrahim Yusuf Patel for the year 1995 96 for the crop of sugarcane of Shri Madhi Vibhag Khad Udyog Sahakari Mandli Limited at Surat.	91
Voucher of the advance payment for the year 199596 towards crop of sugarcane by Shri Madhi Vibhag Udyog Sahkari Mandli Ltd at Surali.	92 & 93.
Share Certificates of Shri Madhi Vibhag Khand Udyog Sahkari Mandli Limited.	94 & 95
Copy of the average price list of green tuvar issued by the APMC, Surat.	98 to 107 & 107 A & 107B.
Certificate issued by the Shah & Charetha Gruh Gram Panchayat with regard to wells, tube wells, lake.	109

Village form no. 16 of the Vilalge Shahgam i.e. Kuva Patrak.	110.
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4.3. On behalf of acquiring body and the Special Land Acquisition Officer, Manager of the acquiring body Shamjibhai Vallabhbhai was examined at Exh. 124 and Deputy Collector Shri J.K. Thesiya was examined at Exh. 135. No documentary evidence was led on behalf of the original opponent - acquiring body and Special Land Acquisition Officer.

4.4. On appreciation of evidence and considering the yield, agriculture crop in a year and on appreciation of evidence having found that crops of Juvar, Tuver, Cotton and Sugarcane and having found that the lands were irrigating lands and having irrigating facilities, by impugned common judgment and award the learned Reference Court has assessed the market value of the lands acquired at Rs. 21 per sq. mtrs. and after deducting Rs. 3 per sq. mtrs., as awarded by the learned Special Officer, the learned Special Land Acquisition Officer has awarded additional compensation at the rate of Rs. 18 per sq. mtrs. The learned Reference Court has also granted all the statutory benefits which may be available under the Act, more particularly, as provided under Sections 23 (1-A) and 23(2) of the Act. The learned Reference Court has also ordered to pay interest amount on an additional compensation also at the rate of 9% p.a from the date of taking over permanent possession for the first year and thereafter, at the rate of 15% p.a. till realization of total aggregate amount as provided under Section 23 of the Act.

4.5. Feeling aggrieved and dissatisfied with the impugned common judgment and award passed by the learned Reference Court awarding the interest on an additional compensation at the rate 9% p.a. from the date of taking permanent possession for the first year and thereafter at the rate of 15% p.a till realization of the total aggregate amount as provided under Section 28 of the Act, the acquiring body has preferred aforesaid respective First Appeals. The original claimants have also preferred respective First Appeals requesting to enhance the compensation.

[5] Shri Nandish Chudgar, learned advocate for the acquiring body has vehemently submitted that in the facts and circumstances of the case, the learned Reference Court has materially erred in awarding the interest on the additional compensation provided under Section 28 of the Act.

5.1. It is further submitted by Shri Nandish Chudgar, learned advocate for the acquiring body that while awarding the interest under Section 28 of the Act on the enhanced amount of compensation, the learned Reference Court has not properly appreciated that the interest provided under Section 28 of the Act is discretionary as held by the Hon'ble Supreme Court in catena of judgments. He has further

stated that the learned Reference Court has not shown any reason for exercising discretion and awarding interest.

5.2. Shri Nandish Chudgar, has heavily relied upon the decision of the Hon'ble Supreme Court in the case of [Major General Kapil Mehra and others v. Union of India and Anr.](#), 2015 2 SCC 262 : (2014 air scw 6086) in support of his submission that awarding the interest under Section 28 of the Act is discretionary which proceeds on basis that due compensation not having been paid, the claimant should be allowed interest on enhanced compensation amount. It is submitted that in the aforesaid decision, it is observed and held by the Hon'ble Supreme Court that such discretionary powers is to be exercised in judicious manner and not arbitrarily.

5.3. Shri Nandish Chudgar, learned advocate for the acquiring body has also relied upon the decision of the Division Bench of the Allahabad High Court in the case of [State of U.P and others v. Raj Narain Singh and Anr.](#), 1986 AIR(All) 321 as well as in the case of [Khushal Singh and Ors. v. Secretary of State](#), 1931 AIR(All) 394 in support of his above submissions.

5.4. Shri Nandish Chudgar, learned advocate for the acquiring body has also relied upon the Full Bench of the Kerala High Court in the case of [Peter John v. Commissioner of Income Tax](#), 1986 157 ITR 711(Kerala).

5.5. Shri Nandish Chudgar, learned advocate for the acquiring body has also relied upon the decision of the Hon'ble Supreme Court in the case of [Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers](#), 2010 4 SCC 785 (para 20) in support of his submission that when discretion is to be exercised it must be judiciously exercised and backed by reasoning.

5.6. It is vehemently submitted by Shri Nandish Chudgar, learned advocate for the acquiring body that in the present case right from very beginning i.e., from the date on which the award was declared by the Special Land Acquisition Officer the acquiring body was very vigilant in depositing the amount of compensation. It is submitted that in the present case Special Land Acquisition Officer declared the award under Section 11 of the Act on 12.06.1998 and on the very day the acquiring body deposited total amount towards compensation. It is submitted that even the acquiring body deposited the full amount of compensation as determined by the Reference Court immediately within reasonable time and there was no delay at all on depositing the enhanced amount of compensation from the date of determining of the market value/compensation by the Reference Court. It is

submitted that in the present case the Reference Court declared the award on 25.07.2014 and determined the enhanced marked value/compensation on 25.07.2014 and after receipt of the copy of the judgment and award the acquiring body deposited the full amount as determined by the Reference Court on 10.11.2014. It is submitted that therefore, there was no delay at all on the part of the acquiring body in not depositing the amount of compensation either determined by the Special Land Acquisition Officer and/or by the Reference Court. It is submitted that therefore, in the facts and circumstances of the case the acquiring body should not have been saddled with the liability to pay the interest under Section 28 of the Act on the enhanced amount of compensation.

5.7. It is further submitted that Shri Nandish Chudgar, learned advocate for the acquiring body that on the contrary in the present case it took 15 years by the Reference Court in deciding the Reference. It is submitted that such a delay in deciding the reference is not attributed to the acquiring body as acquiring body is always ready and willing to proceed further with the hearing of the Reference and that by such a huge delay of 15 years in deciding the Reference and in determining the enhanced amount of compensation, the acquiring body would be saddled with huge liability of interest which is unbearable. It is submitted that interest liability at 15% p.a under Section 28 of the Act in the present case would be approximately Rs. 3 crores and the additional liability at the rate of 9% for the first year would be Rs. 11,89,893/- against the total payable amount of Rs. 5,25,51,625/-. It is submitted that therefore, the major liability would be the interest under Section 28 of the Act, which shall be for no fault of acquiring body. It is submitted that because of the aforesaid awarding of interest under Section 28, the entire project would be unviable. It is submitted that therefore, while awarding interest under Section 28 of the Act, the learned Reference Court has not considered the aforesaid aspect at all.

5.8. Shri Nandish Chudgar, learned advocate for the acquiring body has further submitted that while exercising the discretion awarding interest under Section 28 of the Act, the learned Reference Court either has discretion to award the interest on the enhanced amount of compensation as provided under Section 28 of the Act or not and to award interest at any rate as provided under Section 28 of the Act.

5.9. In the alternative, it is submitted that while exercising the discretion awarding interest under Section 28 of the Act on the enhanced amount of compensation, the Reference Court may award the interest lessor than what is provided under proviso to Section 28 of the Act i.e., less than 15% from the second year taking over the permanent possession. It is submitted that in a case where it is found that the Reference Court awarding interest under Section 28 of the Act, there shall be huge

financial liability upon acquiring body for no fault of it, the Reference Court may award the interest lessor than what is provided under Section 28 of the Act. In support of his above submission, he has relied upon the decision of the Division Bench of this Court in the case of Raghubans Narain Singh v. The U.P. Govt. through Collector of Bijnor, 2005 2 GLH 977. It is submitted that in the aforesaid decision considering the hardship which shall be faced by the acquiring body because of the interest liability under Section 28 of the Act, the Division Bench has awarded interest throughout at the rate of 9% p.a.

5.10. Shri Nandish Chudgar, learned advocate for the acquiring body has further submitted that while awarding interest under Section 28 of the Act as such learned Reference Court is required to be discretion at two stages. It is submitted that first discretion is required to be exercised however the Reference Court awards the interest in the first part of Section 28 of the Act i.e. 9% p.a. and second discretion is required to be exercised while awarding interest at the rate of 15% p.a. from the second year of taking over the possession. It is submitted that in the present case while exercising the discretion, the learned Reference Court has not exercised discretion judiciously and back by reasoning. Therefore, it is requested to allow the present First Appeals and modify the impugned common judgment and award to the extent awarding interest under Section 28 of the Act on the enhanced amount of compensation.

[6] 0. All these appeals are vehemently opposed by Ms. Kruti Shah and Shri K.M. Sheth, learned advocate for the original claimants.

6.1. Now, so far as submission on behalf of the acquiring body that interest to be awarded under Section 28 is discretionary and not mandatory is concerned, learned advocates appearing on behalf of the original claimants have heavily relied upon the decision of the Hon'ble Supreme Court in the case of [Manipur Tea Co. Pvt. Ltd. v. Collector of Hailakandi](#), 1997 9 SCC 673. It is submitted that in the aforesaid decision the Hon'ble Supreme Court has categorically observed and held in para that though the word "may" has been used in proviso to Section 28 of the Act, it has to be construed as "shall" and therefore, claimants would be entitled to interest at the rate of 9% on an enhanced compensation for one year and thereafter at 15% on deposit in the Court.

6.2. It is further submitted by learned advocate for the original claimants that though in Section 28 of the Act word "may" is used it should be construed and read as "shall" as the claimants are entitled to compensation at the market value prevailing at the time of notification 4 of the Act has been issued and they are entitled to get the compensation at the time when the possession of the acquired

lands have been taken. It is submitted that therefore, when the Reference Court decides the market value and the compensation and enhance amount of compensation, it will relate back to the notification under Section 4 of the Act and when the possession of the acquired lands have been taken and therefore, the claimants will be getting the compensation at the market value determined by the Reference Court after number of years as such they are deprived of correct compensation as per the market value for number of years and in the meantime acquiring body retains the same and utilized the same and on the other hand the claimants will be deprived of the said amount of compensation and therefore, the claimants shall be entitled to interest on the enhanced amount of compensation. It is submitted that therefore, the word "may" used in Section 28 of the Act shall be read and construed as "shall" and that should be legislative intent showing that the claimants are not deprived of the interest on the enhanced amount of compensation for the interregnum period, i.e., from the date of taking over of possession till enhanced amount of compensation is deposited/paid.

6.3. Now, so far as submission on behalf of the acquiring body that it took 15 years for the Reference Court to decide the References and such delay is not attributable to the acquiring body and therefore, acquiring body should not be saddled with the liability to pay interest under Section 28 of the Act is concerned, it is submitted by the learned advocates for the original claimants that at the same time the delay is also not attributable to the original claimants. It is submitted that the claimants are always as such interested in getting the References disposed of at the earliest so that they can get the compensation at the correct market value for the lands acquired which they have lost. It is submitted that therefore, the claimants also should not be made to suffer by depriving them the interest under Section 28 of the Act.

6.4. It is further submitted by learned advocates for the original claimants that in such a situation and while interpreting the provision the legislative intent is also required to be considered and even the balance is also required to be strike. It is submitted that the enhance amount of compensation continued to be with the acquiring body, as such they were required to pay the compensation as per correct market value which the Special Land Acquisition Officer did not assess it correctly and which came to be assessed by the Reference Court while deciding the Reference. It is submitted that therefore, as such, the said amount continued to be with the acquiring body and they utilized it, which otherwise they would have paid at the time when the possession was taken and/or at the time when the award is declared by the Special Land Acquisition Officer. It is submitted that on the other hand the claimants are deprived of such compensation which otherwise they would

have received either at the time of taking possession or at the time when the Special Land Acquisition Officer declared the award, if the Special Land Acquisition Officer would have determined and assessed the market value correctly. It is submitted that therefore, if the balance is to struck in such a situation the claimants shall be entitled to the interest under Section 28 of the Act, on the enhanced amount of compensation, which the claimants were deprived for the interregnum period i.e., from the date of taking over of possession till actual compensation as per market value determined by the Reference Court is deposited/paid.

6.5. In the alternative, it is vehemently submitted by learned advocates for the original claimants that assuming without admitting that awarding interest under Section 28 of the Act would be discretionary and not mandatory, it is submitted that however once the Reference Court exercise the discretion awarding interest under Section 28 of the Act, in that case, once discretion is exercised awarding interest under Section 28 of the Act thereafter the Reference Court has no discretion to award the interest less than provided under Section 28 of the Act. In support of their above submission, learned advocates for the original claimants have relied upon the decision of the Hon'ble Supreme Court in the case of [Raghubans Narain Singh v. The U.P. Government through Collector of Bijnor](#), 1967 AIR(SC) 465 as well as decision of the Hon'ble Supreme Court in the case of [Sunder v. Union of India](#), 2001 AIR(SC) 3516.

6.6. Learned advocates for the original claimants have also relied upon the following decisions of the Hon'ble Supreme Court in support of the submission to award interest under Section 28 of the Land Acquisition Act.

- (1) In the case of [Haridwar Development Authority v. Raghubir Singh and others](#), 2010 11 SCC 581 (paras 14 & 15).
- (2) In the case of [Union of India v. Budh Singh and Ors.](#), 1995 6 SCC 233.
- (3) In the case of [Manipur Tea Co. Pvt. Ltd. v. Collector of Hailkandi](#), 1997 AIR(SC) 1779 (paras 14 and 15).

6.7 Ms. Kruti Shah, learned advocate for the original claimants has further submitted that in the present case even the conduct on the part of the acquiring body is also required to be considered while considering/awarding the interest under Section 28 of the Act. It is submitted that in the present case the acquiring body is a public body while acquiring lands for excavation of the lignite they were required to act fairly. It is submitted that in the present case acquiring body agreed to pay and in fact paid the compensation to the other persons whose lands have

acquired along with the original claimants at the rate of 20.08 ps per sq. mtrs. It is submitted that therefore, when the lands of the present claimants came to be acquired and may be they did not agree for the concerned award at the rate of Rs. 20.08 ps per sq. mtrs., in that case also, when the Special Land Acquisition Officer heard them at the time when the award was declared under Section 11 of the Act, they ought to have offered the same compensation which was paid to the other lands owners whose lands were acquired along with the present claimants. It is submitted that on the contrary they contested the claim made by the original claimants and the Special Land Acquisition Officer awarded compensation at the rate of Rs. 3 per sq. mtrs. It is submitted that at the time when Special Land Acquisition Officer declared the award if they would have paid compensation at the rate of Rs. 20.08 ps per sq. mtrs., which they paid to the other claimants, their liability to pay the interest would not have arisen which has now arisen because of their unfair conduct and depositing and paying the compensation at the rate of Rs. 3 per sq. mtrs., in the year 1998. It is submitted that therefore, now it will not lie in the mouth of the acquiring body to contend that there will be a huge liability of interest of 15 years upon them. It is submitted that therefore, also in the facts and circumstances of the case even if it is held that the award of interest under Section 28 of the Act would be "discretionary" and not "mandatory" in that case also, interest awarded by the learned Reference Court in the present case is not required to be interfered with by this Court.

6.8 It is submitted that as such no submissions were made before the learned Reference Court not to award the interest under Section 28 of the Act and therefore, as such there was no occasion for the learned Reference Court to give the reasons while exercising the discretion awarding the interest under Section 28 of the Act.

6.9 Now, so far as submission on behalf of the acquiring body that while awarding the interest under Section 28 of the Act, the learned Reference Court is required to exercise the discretion at two stages i.e., while awarding interest at the rate of 9% p.a., throughout from the date on which the possession of the land was taken over to the date of payment of such excess amount in the Court and awarding interest under proviso to Section 28 of the Act i.e., interest at the rate of 15% p.a., after date of expiry of period of one year from the date of which possession is taken is concerned, it is submitted that assuming without admitting that the same would be discretionary in that case also, for the aforesaid reasons the claimants will be receiving the fair amount of compensation as per the decision of the Reference Court after number of years and for the interregnum period they were also required to take possession as well as actual amount of compensation (fair compensation)

discretion must be exercised in favour of original claimants rather than not to award the interest under Section 28 of the Act. It is submitted that therefore, even if on construing and considering the word "may" used in Section 28 and even if it is considered to be "discretionary" in that case also, discretion must be exercised in favour of the claimants to award interest under Section 28 of the Act, and refusing to award the interest under Section 28 of the Act, would be an exception in rarest of rare case.

6.10 Now, so far as respective appeals preferred by the original claimants to enhance the amount of compensation determined and awarded by the learned Reference Court is concerned, it is vehemently submitted by learned advocates for the original claimants that the learned Reference Court has materially erred in determining the market value/compensation at the rate of Rs. 21 per sq. mtrs. It is submitted that as such the learned Reference Court has specifically observed and held that most of the claimants taking crops of Juvar, Cotton, Tuver, green Tuver and claimants of block 20 also taking crops of sugarcane. It is submitted that though the learned Reference Court has specifically observed and held that the lands acquired were irrigated lands, the learned Reference Court has while awarding the compensation has virtually considered the income of only one crop, taking average of all the four crops. It is submitted that as such it has been established and proved by the learned Reference Court that the claimants were taking at least two crops in the year. It is submitted that therefore, the learned Reference Court ought to have awarded compensation at least at the rate of Rs.40 per sq. mtrs.

Making above submission and relying upon the above decisions, it is requested to allow the appeals preferred by the original claimants and enhanced the amount of compensation to the aforesaid extent.

[7] Respective appeals preferred by the original claimants for enhancement of amount of compensation have been vehemently opposed by Shri Maulik Nanavati, learned advocate for the acquiring body.

7.1 It is submitted by Shri Maulik Nanavati, learned advocate for the acquiring body that in the facts and circumstances of the case and on appreciation of evidence, the amount awarded by the learned Reference Court determining and awarding compensation at the rate of Rs. 21 per sq. mtrs., cannot be said to be erroneous.

7.2 It is further submitted by Shri Maulik Nanavati, learned advocate for the acquiring body that in the present case the claimants have not produced any

cogent documentary evidence to establish the production of quantity of crops. It is submitted that even the claimants have not produced any documentary to prove that all throughout in a year they were getting irrigation facility. It is submitted that as observed by the learned Reference Court village Shahgam is not included in the common area canal and no evidence was led to show that the claimants were taking water from the wells and payment were made thereof. It is submitted that therefore, the yield products were mostly depending upon the monsoon season. It is submitted that therefore, on the basis of guess work and minimizing the figures given by the claimants considering the irrigation facility as well as standard mentioned by this Court in catena decisions, the learned Reference Court has rightly determined and awarded the compensation at the rate of Rs.21 per sq. mtrs., which in the facts and circumstances of the case and considering the evidence on record as such, cannot be said to be erroneous and therefore, same is not required to be interfered in exercise of appellate jurisdiction.

Making above submission, it is requested to dismiss the appeals preferred by the original claimants.

[8] Heard the learned advocates for the respective parties at length.

[9] The short but interesting question of law posed for consideration of this Court is whether the award of interest under Section 28 of the Act would be discretionary and/or mandatory and if it is held to be discretionary, under which circumstances, the discretion is to be exercised ?

[10] While considering the aforesaid question, Sections 28 to 34 of the Land Acquisition Act are required to be referred to, which are as under:

28. Collector may be directed to pay interest on excess compensations:

If the sum which, in the opinion of the Court, the Collector ought to have may be awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of 1 [nine per centum] from the date on which he took possession of the land to the date of payment of such excess into Court :

2 [Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at, the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry].

28-A. Re-determination of the amount of Compensation on the basis of the award of the Court

(1) Where in an award under this Part, the Court allows to the applicant amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to reference under section 18.

29. Particulars of apportionment to be specified: Where there are several persons interested if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

30. Disputes as to apportionment: When the amount of compensation has been settled under section 11; if any dispute arises as to the apportionment of the same or any part thereof, or to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

31. Payment of compensation or deposit of same in Court

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

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

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

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

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

(3) Notwithstanding anything in this section the Collector may, with the sanction, of the 1 [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same tide, or in such other way as may be equitable having regard to the interest of the parties concerned.

(4). Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and 2 [competent] to contract in respect thereof.

32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate

(1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall -

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(b) if such purchase cannot be affected forthwith, then in such Government or other approved securities as the Court shall think fit and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said lands; and such moneys shall remain so deposited and invested until the same be applied -

(i) in the purchase of such other land as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incidental thereto, to be paid by the Collector, namely :-

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. Investment of money deposited in other cases:

When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested of claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have deposited or as near thereto as may be.

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 1 [nine per centum] 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.]

[11] At this stage, the recent decision of the Hon'ble Supreme Court in the case of [Major General Kapil Mehra and others](#), 2014 AIR(SCW) 6086 is required to be referred to and considered. While considering the interest to be awarded under Sections 28 & 34 of the Act, the Hon'ble Supreme Court in paras 43 to 47 has observed and held as under:

43. Land Acquisition Act, 1894, provides for payment of interest to the claimants either under Section 34 or under Section 28 of the Act. Section 34 of the Act fastens liability on the Collector to pay interest on the amount of compensation to be worked out in accordance with provisions of Section 23(1) and the sub-section thereof, at the rate of 9% per annum from the date of taking possession until the amount is paid or deposited. As per proviso to Section 34, if the compensation amount or any part thereof is not paid or deposited within a period of one year from the date of taking over possession, interest shall be payable at the rate of 15% per annum 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.

44. Section 28 empowers the Courts, if it was enhancing the compensation awarded by the Collector, to award interest on the sum in excess of what the Collector had awarded as compensation. Both in terms of Section 34 and Section 28, interest at 9% per annum is payable for the first year of taking possession and 15% per annum thereafter, if the amount of compensation was not paid or deposited within a period of one year or deposited thereafter.

45. Award of interest under Section 34 is mandatory in as much the word used in the Section is "shall". The scheme of the Act and the express provisions thereof establish that the interest payable under Section 34 is statutory. The claim for interest under Section 28 of the Act proceeds on the basis that due compensation not having been paid, the claimant should be allowed interest on the enhanced compensation amount. The award of interest under Section 28 is discretionary power vested in the Court and it has to be exercised in a judicious manner and not arbitrarily. The use of the word "may" in Section 28 does not confer any arbitrary discretion on the Court to disallow interest for no valid or proper reasons. Normally,

Court awards interest if it enhances the compensation in excess of the amount awarded by the Collector, unless there are exceptional circumstances.

46. A Constitution Bench of this Court in [Gurpreet Singh v. Union of India](#), 2006 8 SCC 457, considering the scope of Section 34 and Section 28 of the Act, has held as under:-

"44. Section 34 of the Act fastens liability on the Collector to pay interest on the amount of compensation determined under Section 23(1) with interest from the date of taking possession till date of payment or deposit into the Court to which reference under Section 18 would be made. On determination of the excess amount of compensation, Section 28 empowers the Court, if it was enhancing the compensation awarded by the Collector, to award interest on the sum in excess of what the Collector had awarded as compensation. The award of the Court may also direct the Collector to pay interest on such excess or part thereof from the date on which he took possession of the land to the date of payment of such excess into Court at the rates specified thereunder. The Court stated: [[Prem Nath Kapur v. National Fertilizers Corporation of India Ltd.](#), 1996 2 SCC 71, SCC p. 77, para 10].

10. "In other words, Sections 34 and 28 fasten the liability on the State to pay interest on the amount of compensation or on excess compensation under Section 28 from the date of the award and decree but the liability to pay interest on the excess amount of compensation determined by the Court relates back to the date of taking possession of the land to the date of the payment of such excess "into the Court"."

45. The Court concluded: (Prem Nath Kapur case, SCC p. 78, para 12).

"12. It is clear from the scheme of the Act and the express language used in Sections 23(1) and (2), 34 and 28 and now Section 23(1-A) of the Act that each component is a distinct and separate one. When compensation is determined under Section 23(1), its quantification, though made at different levels, the liability to pay interest thereon arises from the date on which the quantification was so made but, as stated earlier, it relates back to the date of taking possession of the land till the date of deposit of interest on such excess compensation into the Court. ...The liability to pay interest is only on the excess amount of compensation determined under Section 23(1) and not on the amount already determined by the Land Acquisition Officer under Section 11 and paid to the party or deposited into the Court or determined under Section 26 or Section 54 and deposited into the Court or on solatium under Section 23(2) and additional amount under Section 23(1-A)."

47. In the scheme of the Act, considering the different stages at which interest is payable on the compensation amount/enhanced compensation, the Constitution Bench of this Court in Gurpreet Singh's case further held as under:-

"32. In the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed. Obviously, the award takes in all the amounts contemplated by Section 23(1), Section 23(1-A), Section 23(2) and the interest contemplated by Section 34 of the Act. The whole of that amount is paid or deposited by the Collector in terms of Section 31 of the Act. At this stage, no shortfall in deposit is contemplated, since, the Collector has to pay or deposit the amount awarded by him. If a shortfall is pointed out, it may have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage. On the deposit by the Collector under Section 31 of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest.

33. The second stage occurs on a reference under Section 18 of the Act. When the Reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under Section 23(1), Section 23(1-A), Section 23(2) and interest on the enhanced amount as provided in Section 28 of the Act and costs in terms of Section 27. The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made, falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference.

34. The third stage occurs, when in appeal, the High Court enhances the compensation as indicated already. That enhanced compensation would also bear interest on the enhanced portion of the compensation, when Section 28 is applied. The enhanced amount thus calculated will have to be deposited in addition to the amount awarded by the Reference Court if it had not already been deposited.

35. The fourth stage may be when the Supreme Court enhances the compensation and at that stage too, the same rule would apply."

11.1. In the case before the Hon'ble Supreme Court, the Reference Court as such did not enhance the amount of compensation but the confirmed the award passed by the Collector, however the High Court enhanced the compensation and High Court held that the claimants shall be paid the interest in terms of Section 28 of the Act. The High Court ordered to payment of interest at the rate of 9% for the

first year and thereafter at the rate of 15% p.a., till the date of payment, on the enhanced compensation and despite the aforesaid observations made in paras 43 to 47 thereafter the Hon'ble Supreme Court had not interfered with the order passed by the High Court awarding interest under Section 28 of the Act.

11.2. In the case of Gurpreet Singh , the Hon'ble Supreme Court considered the various stages in the Land Acquisition Act and award of interest provided under Sections 28 and 34 of the Land Acquisition Act. In the aforesaid decision, the Hon'ble Supreme considered the entire scheme of the Land Acquisition Act. While analyzing and considering the scheme of the Land Acquisition Act, in paras 28 to 35, the Hon'ble Supreme Court has observed and held as under :

28. Going by this principle and for the moment keeping out the scheme of the Land Acquisition Act, it appears to us that on payment or deposit of the amount awarded by the Collector in terms of Section 11 read with Section 31 of the Act, the claimant cannot thereafter claim any interest on that part of the compensation paid to him or deposited for the payment to him once notice of deposit is given to him. Thereafter, when the reference Court enhances the compensation with consequential enhancement in solatium and interest under Section 23(1-A) of the Act and further awards interest on the enhanced compensation in terms of Section 28 of the Act, the claimant/decree holder can seek an appropriation of the amounts deposited pursuant to that award decree, only towards the enhanced amount so awarded by the reference Court. While making the appropriation, he can apply the amount deposited, first towards the satisfaction of his claim towards interest on the enhanced amount, the costs, if any, awarded and the balance towards the land value, solatium and the payment under Sections 23 (1-A) of the Act and if, there is a shortfall, claim that part of the compensation with interest thereon as provided in Section 28 of the Act and as covered by the award decree. Once the sum enhanced by the reference Court, along with the interest is deposited by the State, there will be no occasion for the claimant/awardee to seek a reopening of the amount awarded by the Collector, substituted by the amount awarded by the reference Court and seek to have a re-appropriation of the amount towards what is due. Same would be the position in a case where the amount awarded by the reference Court, including the interest is deposited, but the amount is further enhanced in appeal by the High Court. Again, the same principle would apply. The principle would continue to apply when the Supreme Court awards further enhancement in a further appeal to that Court. But if after the award by the reference Court the amount is not deposited by the State, interest would run on the compensation in terms of Section 28 of the Act on that amount as provided in Section 28. The same would be the position regarding the enhancement given in appeal by the High Court

and in the enhancement given in appeal by the Supreme Court. The mandate of Section 34 and Section 28 that interest would run from the date the Collector takes possession till the particular amount is deposited as provided in those sections ensures that the claimant is recompensed adequately. Section 28 ensures such recompense at each stage of enhancement of compensation.

29. Let us now consider the scheme of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Amendment) Act 68 of 1984. After the publication of the preliminary notification under Section 4 of the Act and after hearing of objections, a declaration has to be made under Section 6 of the Act. The Collector is then to take the order for acquisition from the Appropriate Government or the officer authorized in that behalf by the Government. After completing the formalities contemplated and the enquiry made in terms of Section 11 of the Act, the Collector has to make an award indicating the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of the compensation among the persons known or believed to be interested in the land. In making the award, the Collector shall be guided by Sections 23 and 24 dealing with matters to be considered in determining the compensation and matters to be excluded in determining the compensation as enjoined by Section 15 of the Act. Under Section 12 of the Act, the award becomes final as between the Collector and the persons interested and the Collector is to give notice of his award to persons interested. On making the award, the Collector may take possession of the land in terms of Section 16 of the Act. Under Section 31, on making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by the contingencies referred to in Section 31 itself. Under Section 34 of the Act, when the amount of compensation awarded 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 cent. per annum from the time of taking possession till it shall have been paid or deposited. But if the compensation or any part thereof is not paid within a period of one year from the date on which possession is taken, interest is payable at the rate of fifteen per cent. per annum 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. It is relevant to notice that on payment of the amounts thus due, the award made by the Collector stands satisfied.

30. A person interested, who is not satisfied with the amount of compensation awarded by the Collector is entitled to receive the amount under protest and could apply to the Collector requiring him to refer the matter to the Court in terms of

Section 18 of the Act. The Collector is then to make a statement to the Court and the Court is entitled to fix the compensation subject to Section 25 of the Act which provides that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11 of the Act. In fixing the compensation, the Court shall have regard to the matters referred to in Sections 23 and 24 of the Act. Under Section 26, every award shall be deemed to be a decree within the meaning of Section 2(2) of the Code of Civil Procedure and every reasoned award shall be deemed to be a judgment as defined in Section 2(9) of the Code of Civil Procedure. Under Section 27 of the Act, every award made by the Court shall also contain directions regarding the costs incurred in the proceedings in Court, the costs of the claimant found entitled to enhancement, normally to be borne by the Collector. Under Section 28 of the Act, the Court which has awarded compensation in excess of the sum which the Collector did award as compensation, may direct that the Collector shall pay interest on such excess at the rate of nine per cent. per annum from the date on which he took possession of the land to the date of payment of such excess into Court. The proviso enjoins the Court to direct that where such excess or any part thereof is paid into Court after the expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent. per annum, shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court after the date of such expiry. Two aspects require to be noted. One is that the interest is payable only on the excess amount of compensation awarded by the reference Court and the second is that interest on the enhanced amount awarded is payable from the date of taking possession at the rate of 9% per annum for the first year after taking possession and thereafter at 15% per annum till the deposit of the excess is made. This clearly indicates that there is no scope for the reopening of the appropriation already made pursuant to the award. The other significant factor is that the award should specify the amount awarded as market value of the land separately and the other amount, if any, awarded under other heads of Section 23(1).

31. Under Section 54 of the Act, a person, still not satisfied with the decree of enhancement in his favour on the reference under Section 18 of the Act, has a right to file an appeal to the High Court and from the decision of the High Court in such an appeal, an appeal to the Supreme Court. If one were to go by the definition of "Court" occurring in Section 3(d) of the Act, Section 28 providing for payment of interest on excess compensation may not apply to an appeal under Section 54 of the Act on the excess, if any awarded by the High Court or in subsequent appeal by the Supreme Court. But when in an appeal under Section 54 of the Act, the appellate Court further enhances the compensation, it awards the compensation

that the reference Court ought to have awarded and so understood, Section 28 of the Act may be applied at the appellate stage. If the expression "Court" used in Section 28 of the Act is understood in the generic sense, (on the basis that the context otherwise requires it), the result would be the same. The other provision relevant to be noted is Section 53 of the Act which makes the Code of Civil Procedure applicable to all proceedings before the Court under the Act save insofar as the provisions of the Code are found to be inconsistent with anything contained in the Act. Section 54 also does not keep out the Code, but makes the appeal under it subject to the provisions of the Code applicable to appeals from original decrees.

32. On the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed. Obviously, the award takes in all the amounts contemplated by Section 23(1) of the Act, Section 23(1-A) of the Act, Section 23(2) of the Act and the interest contemplated by Section 34 of the Act. The whole of that amount is paid or deposited by the Collector in terms of Section 31 of the Act. At this stage, no shortfall in deposit is contemplated, since, the Collector has to pay or deposit the amount awarded by him. If a shortfall is pointed out, it may have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage. On the deposit by the Collector under Section 31 of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest.

33. The second stage occurs on a reference under Section 18 of the Act. When the reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under Section 23(1), Section 23(1-A), Section 23(2) and interest on the enhanced amount as provided in Section 28 of the Act and costs in terms of Section 27. The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made, falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference.

34. The third stage occurs, when in appeal, the High Court enhances the compensation as indicated already. That enhanced compensation would also bear interest on the enhanced portion of the compensation, when Section 28 is applied. The enhanced amount thus calculated will have to be deposited in addition to the amount awarded by the reference Court if it had not already been deposited.

35. The fourth stage may be when the Supreme Court enhances the compensation and at that stage too, the same rule would apply.

11.3. Thereafter in paras 44 and 45, it is observed and held by the Hon'ble Supreme Court as under :

44. Section 34 of the Act fastens liability on the Collector to pay interest on the amount of compensation determined under Section 23(1) with interest from the date of taking possession till date of payment or deposit into the Court to which reference under Section 18 would be made. On determination of the excess amount of compensation, Section 28 empowers the Court, if it was enhancing the compensation awarded by the Collector, to award interest on the sum in excess of what the Collector had awarded as compensation. The award of the Court may also direct the Collector to pay interest on such excess or part thereof from the date on which he took possession of the land to the date of payment of such excess into Court at the rates specified thereunder. The Court Stated:

"In other words, Sections 34 and 28 fasten the liability on the State to pay interest on the amount of compensation or on excess compensation under Section 28 from the date of the award and decree but the liability to pay interest on the excess amount of compensation determined by the Court relates back to the date of taking possession of the land to the date of the payment of such excess into the Court."

45. The Court concluded:

"It is clear from the scheme of the Act and the express language used in Sections 23(1) and (2), 34 and 28 and now Section 23(1-A) of the Act that each component is a distinct and separate one. When compensation is determined under Section 23(1), its quantification, though made at different levels, the liability to pay interest thereon arises from the date on which the quantification was so made but, as stated earlier, it relates back to the date of taking possession of the land till the date of deposit of interest on such excess compensation into the Court. The liability to pay interest is only on the excess amount of compensation determined under Section 23(1) and not on the amount already determined by the Land Acquisition Officer under Section 11 and paid to the party or deposited into the Court or determined under Section 26 or Section 54 and deposited into the Court or on solatium under Section 23(2) and additional amount under Section 23(1-A)."

11.4-11.5. However, a contrary view has been taken by the Hon'ble Supreme Court in the case of [Manipur Tea Co. Pvt. Ltd.](#), 1997 AIR(SC) 1779 and it is held and observed by the Hon'ble Supreme Court that it is legislative principle that the claimant would be entitled to the rate of interest for the first year 9% from the date

of taking possession and on expiry thereof at 15% till date of deposit in the Court on the enhanced compensation. In the aforesaid decision, it is further observed by the Hon'ble Supreme Court that though the word "may" has been used in proviso to Section 28 of the Act, it has been construed as "shall" and therefore, the claimants would be entitled to interest at the rate of 9% on enhanced compensation for one year and thereafter at the rate of 15% till date of deposit in the Court.

11.6. However, the decision in the case of [Gurpreet Singh](#), 2006 AIR(SCW) 5813 is by the Larger Bench of Five Hon'ble Judges of the Hon'ble Supreme Court and the decision in the in the case of [Major General Kapil Mehra and others](#), 2014 AIR(SCW) 6086 is by the Division Bench of the Hon'ble Supreme Court and therefore, the decisions of the Hon'ble Supreme Court in the case of Gurpreet Singh and in the case of Major General Kapil Mehra and others would be binding to this Court. Therefore, considering the aforesaid two decision of the Hon'ble Supreme Court in the case of Gurpreet Singh and in the case of Major General Kapil Mehra and others and even otherwise considering the language used in Sections 28 & 34 of the Act and when in Section 28 of the Act the word used is "may" and in Section 34 of the Act, the word used is "shall" and therefore, whenever the Legislature wanted to make it mandatory the word "shall" is used, it is to be held that the award of interest under Section 28 of the Act would be discretionary.

11.7. However, when said discretion is to be exercised by the learned Reference Court while considering the award of interest under Section 28 of the Act, the learned Reference Court is required to bear in mind that the claimants are deprived of the amount of compensation which the Reference Court is determining for the interregnum period from the date of taking over possession of the acquired lands till they are paid the fair amount of compensation as determined by the learned Reference Court, which otherwise, they would have received either at the time of taking over the possession or at the time when the Collector declared award under Section 11 of the Act, and that the said amount came to be retained and utilized by the acquiring body. Therefore, the considering the such circumstances, more particularly, when the claimants are deprived of their legitimate claim/legitimate amount of compensation, while exercising such discretion, the Reference Court is required to exercise discretion in favour of the claimants rather than in favour of acquiring body. Thus, as such, it can be said that whenever discretion is required to be exercised by the Reference Court while awarding interest under Section 28 of the Act, it must be in favour of claimants and discretion not to award interest under Section 28 of the Act would be an exception.

[12] Now, the next question which is posed for consideration of this Court whether once the Reference Court exercise a discretion in favour of the claimants to award interest under Section 28 of the Act by giving same reasons whether thereafter the Reference Court has any discretion to award interest less than provided under Section 28 of the Act ?

[13] In the case of [Raghubans Narain Singh](#), 1967 AIR(SC) 465 while interpreting unamended Section 28 of the Act, it is observed and held by the Hon'ble Supreme Court that once the Court exercise the discretion in awarding interest under Section 28 of the Act, the Reference Court has no discretion to award interest less than provided under Section 28 of the Act. In para 7, the Hon'ble Supreme Court has observed and held as under :

7.0. On the question of interest, Mr. Mishra contended that under Section 28 neither the District Judge nor the High Court had any discretion in allowing interest at a rate less than 6%. He argued that this question being purely one of construction and not depending on any finding of fact even though the question was not specifically raised in the appellant's cross-objections before the High Court the High Court ought to have allowed interest at 6%. Mr. Karkhanis, on the other hand, argued that what section 28 does is to provide for a ceiling of the rate of interest. And even if that is not so, since, the section confers discretion on the Court to grant or not to grant interest that discretion impliedly means that even where the Court grants interest it can do so at any rate up to 6%. The contention so put forward resolves itself into two questions : (1) whether in the absence of a specific objection as to interest in the appellant's cross-objections the High Court ought to have gone into that question and (2) whether on a proper interpretation of section 28 the Court has a discretion to grant interest at a rate less than 6 %. The first point would not create any difficulty in the way of the appellant because the High Court did in fact go into the question of interest even though it was not specifically taken in the cross-objections and decided the question also on interpretation of section 28. Besides, the question is purely one of law and as Lord Watson said in Connecticut [Fire Insurance Co. v. Kavanagh](#), 1892 AC 473.

"When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain, the plea.

Section 28 reads as follows :-

"If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum" etc.

In its plain language the discretion that is conferred on the Court is whether in the given circumstances of a particular case the Court should award interest or not. The words "may direct" mean that it is discretionary on the part of the Court to grant or refuse to grant interest. But the words following those words, viz., "the Collector shall pay interest on such excess at the rate of six per centum per annum" would mean that once the discretion to grant interest is exercised there is no further discretion and the interest if awarded has to be at the rate of six per centum per annum. This also appears to be the construction of S. 28 so far understood. It is because the section leaves no discretion as regards the rate of interest that the Central Provinces Act XVII of 1939 by section 2 provides that the rate of interest shall be at a rate which shall be not less than 3 Y. per (sic) annum and not more than 6 % per annum in place of the words "at the rate of six per centum per annum" in section 28. Some of the other State legislatures such as Madras, Gujarat, Maharashtra and Punjab have instead of using the above mentioned phraseology substituted 6 % in S. 28 by "4 % per annum". The result of these amendments is that whereas in the case of the Central Provinces (now Madhya Pradesh) the Court has a discretion to grant interest at anything between three, to six per cent, in the case of the other States the Court has to award interest at the rate of 4 %. We are told that no such amendment has been carried out in U.P. The consequence is that section 28 as it stands must apply and therefore where the Court exercises its discretion and grants interest the interest has to be at the rate of 6 %. The construction which we are inclined to place on section 28 is to a certain extent supported by the same expression used in section 34 which also deals with interest and which provides that when the amount of compensation is neither paid nor deposited before taking possession of the acquired land "the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum" etc. It is a well-settled rule of construction that where the legislature uses the same expression in the same statute at two places or more the same interpretation should be given to that expression unless the context requires otherwise. That being so, there is nothing wrong in permitting the appellant to raise the point 498 as to the rate of interest as that question depends only upon the construction of section 28. In the view that we have taken as to the interpretation of section 28 Mr. Mishra must also succeed on this question.

13.1 Similar view has been taken by the Hon'ble Supreme Court in the case of Sunder .

13.2 However, it is required to be noted that in the case of Raghubans Narain Singh the Hon'ble Supreme Court has occasioned to consider unamended Section 28 of the Act. By the Amendment Act, 1894, Section 28 of the Act has been amended proviso of Section 28 of the Act, which provides awarding interest at the rate of 15% p.a for the period of after expiry of one year from the date of possession on the enhanced amount of compensation till it is actually paid.

13.3 Now, considering amended Section 28 of the Act, Section 28 can be said to be in two parts. First part of the Section 28 provides that if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the award of the Court "may" direct that the Collector "shall" pay interest on such excess at the rate of 9% p.a., from the date on which he took the possession of the land to the date of payment of such excess into Court. The second part of Section 28 of the Act would be proviso to Section 28 and it provides that award of the Court "may" also direct that were such excess or any part of thereof paid to the Court after date of expiry of period of one year from the date of which such possession is taken, interest at the rate of 15% p.a. "shall" be payable from the date of expiry of said period of one year on the amount such excess or part thereof which has not been paid in the Court before the date of expiry. Thus, on bare reading of Section 28 of the Act, Reference Court will have discretion to award the interest at the rate of 9% p.a. throughout from the date of which he took the possession of the land to the date of payment of such excess into Court as provided in first part of Section 28 of the Act and the Reference Court "may" will also have a discretion to award the interest as per the proviso i.e., interest at the rate of 15% p.a., from the date of expiry of period of one year of taking over the possession on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry. Thus, at two stages, the Reference Court is required to exercise the discretion. Therefore, we are of the opinion that when claimants are deprived of their fair compensation at the time when the possession of the acquired lands have been taken and/or at least at the time when the Collector declared award under Section 11 of the Act, which came to be determined by the learned Reference Court while assessing and determining correct market value which otherwise they were entitled to at earlier and on the other hand the acquiring body were required to give fair market value and the comparable on the basis of fair market value at the time when they took the possession and/or at least when the Collector declared the award and they will be now paying the amount of compensation as determined by

the Reference Court subsequently, meaning thereby they retained the said amount with them and they utilized the same, we are of the opinion that while exercising the discretion awarding interest on the first part of Section 28 i.e., interest on such excess enhanced amount of compensation at the rate of 9% p.a. from the date on which, the Collector took the possession of the lands to the date of payment of such excess into Court, the Court must exercise the discretion in favour of original claimants.

13.4 However, while exercising the discretion awarding interest as per proviso to Section 28 of the Act i.e., at the rate 15% from the date of expiry of period of one year, the Reference Court may consider the surrounding circumstances as observed by the Division Bench of this Court in the case of Dahyabhai Ashabhai Patel and Ors. . In the case of Dahyabhai Ashabhai Patel and Ors. when it was demonstrated that the overall liability of additional compensation, by virtue of the judgment of the High Court would be increased by almost Rs. 12 crores on account of interest only as against the additional compensation at Rs. 6,80,00,000/, the Division Bench has observed and held that in such case awarding interest at 9% throughout period, shall meet end of justice. In the said decisions, it is observed by the Hon'ble Division Bench that discretion to award interest under the provision of Section 28 of the Act has to be exercised having regard to the unexplained delay and prolonged pendency of the claims in the trial Court, for about a decade. However, as observed hereinabove and as per our opinion to award interest at the rate of 9% throughout would be a rule rather than exception and in the surrounding circumstances by giving cogent reasons the Court may exercise the discretion not awarding the interest at the rate of 15% if the circumstances warranted as observed hereinabove and as observed by the Division Bench of this Court in the case of Dahyabhai Ashabhai Patel and Ors. .

[14] Now, so far as contention on behalf of the acquiring body that in the present case there is a delay of 15 years in deciding the References which is not attributable to acquiring body and therefore, acquiring body should not be saddled with the liability of interest under Section 28 of the Act is concerned, it is required to be noted that at the same time the delay of 15 years in deciding the Reference is not attributable to the claimants also. On the contrary, the claimants shall be interested in early disposal of the References so that they can get fair compensation at the earliest. In any case, nothing is on record that there was any delay on the part of the claimants and the claimants were any way responsible for such delay. As observed hereinabove, as such acquiring body retained the amount of compensation which as such they were required to pay much earlier at the time of taking over the possession. For all these years, claimants are deprived of the amount which in fact the acquiring body retained with

them and utilized. In the payment of interest, the discretion has to be exercised judiciously. As a normal rule the claimants would not be interested in delaying the proceedings. As a matter of fact, they would be in a hurry to terminate the proceedings and to receive compensation, more particularly, when they were lost their valuable agriculture land. Therefore, normal rule should be awarding interest. It must be remembered that interest is being paid for the deprivation of the use of money belonging and payable to the claimants. Since, the Court dockets are crowded there is considerable delay in the disposal of the the cases and thereafter in the appeals, before the Appellate Court. There may be a case where the claimants required timely money. Thus, what the Court is concerned with is whether the claimants are deprived of use of money and whether deprivation is caused by the act of claimants themselves. Under the circumstances, as such on the aforesaid ground the submission on behalf of the acquiring body that in such a situation the discretion is not required to be exercised awarding the interest under Section 28 of the Act cannot be accepted.

[15] Now, so far as interest awarded under Section 28 of the Act in the present case is concerned, apart from the aforesaid reasons even conduct on the part of the acquiring body is also required to be considered. It is required to be noted that in the year 1996-97 the acquiring body paid the compensation to other land owners whose lands were acquired along with claimants at the rate of Rs. 20.08 ps sq. mtrs. may be under consent award. It may be at that time the claimants were not agreeable for consent award at the rate of Rs. 20.08 ps per sq. mtrs., however at the same time being fair acquiring body, it was their duty to pay the fair compensation which they paid to other land owners. On the contrary, they resisted the claim of the claimants before the Collector and claimants were paid the compensation at the rate of Rs. 3 per sq. mtrs. If in the year 1996-97 the acquiring body would have paid the compensation at the rate of Rs. 20.08 per sq. mtrs., which they paid to the other land owners whose lands were acquired along with claimants, in that case, such huge liability of interest which is now arisen would not have arisen. Under the circumstances, in the aforesaid facts and circumstances when the learned Reference Court has awarded the interest at the rate of 9% p.a., from the date of taking permanent possession from the first year and thereafter at the rate of 15% p.a., till realization of the total aggregate amount as provided under Section 28 of the Act, it cannot be said that the learned Reference Court has committed any error which call for the interference of this Court in exercise of appellate jurisdiction.

15.1 At this stage, it is required to be noted that there is nothing on record showing that any such objection was raised by the acquiring body before the learned Reference Court objecting to grant/award of interest under Section 28 of the Act. Be that as it may, for the reasons stated above, it cannot be said that in

the present case and in the facts and circumstances of the case, the learned Reference Court has committed any error in awarding interest under Section 28 of the Act.

[16] Now, so far as the appeals preferred by the original claimants requesting to enhance the amount of compensation is concerned, it is required to be noted and it is not disputed that the lands of village Shahgam, Tal: Mangrol, Dist. Surat which have been acquired has any deficiency of rain. That by impugned judgment and award the learned Reference Court has determined the compensation at the rate of Rs. 21 per sq. mtrs., for the lands acquired. That while determining the compensation, the learned Reference Court has determined the compensation on yield basis. It has come on record that the land owners were taking Juwar, Tuber, Cotton and Sugarcane crops in a year. According to the claimants they were taking four crops in a year. However, even if it is believed that the claimants were taking two crops in a year, in that case also, the amount awarded by the learned Reference Court can be said to be on lower side. While determining the compensation after minimizing the claim by the claimants considering the price of agriculture product/crop and after taking mean and the value of the crops, the learned Reference Court has determined the compensation at the rate of Rs. 21 per sq. mtrs. Thus, it appears that while awarding the compensation ultimately, the learned Reference Court can be said to be considered the price of actual crop only. As observed hereinabove and even as per the evidence on record, it can be said that the claimants were taking the crops of Juwar, Tuber, Cotton and Sugarcane at least twice in a year. Therefore, considering the aforesaid facts and circumstances, we are of the opinion that if the claimants are awarded the compensation at the rate of Rs. 30/per sq. mtrs. the same can be said to be fair and just compensation. To the aforesaid extent, the impugned common judgment and award passed by the learned Reference Court are required to be modified by enhancing the amount of compensation.

[17] In view of the above and for the reasons stated above, respective appeals preferred by the acquiring body being First Appeal Nos. 407 of 2015, 409 of 2015, 410 of 2015, 412 of 2015, 507 to 519 of 2015, 1717 of 2016, 317 & 318 of 2016 and 2383 to 2387 of 2015 are hereby dismissed. The impugned judgment and award passed by the learned Reference Court awarding the interest under Section 28 of the Act is/are hereby confirmed. The respective appeals preferred by the original claimants are hereby partly allowed and the impugned common judgment and award is/ are modified to the extent and it is held that the original claimants shall be entitled to compensation at the rate of Rs. 30 per sq. mtrs. (instead of Rs. 21 per sq. mtrs. by the learned Reference Court). The claimants shall be entitled to all the statutory benefits which may be available under the Land Acquisition Act including the interest under Section 28 of the Act. However, it is observed and clarified that the original claimants shall be

entitled to interest on taking over the possession under Section 16 of the Act. All these appeals preferred by the original claimants are hereby partly allowed to the aforesaid extent. No costs.

In view of disposal of First Appeals, Civil Application No.7669 of 2016 stand disposed of accordingly.

Order accordingly.

