

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH, AT DHARWAD



DATED THIS THE 28TH DAY OF MARCH 2013

PRESENT

THE HON'BLE MR.JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE MR.JUSTICE K.N.KESHAVANARAYANA

W.A. No. 30007/2013(LA-KIADB) C/W
W.A. No. 31109/2012, W.A. No.31110/2012
& W.A. No.31111/2012

In W.A. No.30007/2013

BETWEEN:

Suresh D. Bankapur,
Age: 46 years, Occ.: Employee,
R/o Chandranathnagar, Hubli.

- Appellant

(By Sri A.P. Murari and
Ms. Archana A. Magadum, Advocates for
Sri Anand Kumar. A. Magadum, Advocate)

And

1. State of Karnataka,
Department of Industries and
Commerce, Vidhana Soudha,
Bangalore, rep. by its Secretary.
2. Karnataka Industrial Area
Development Board,
Nrupathunga Road, Bangalore

By its Executive Officer.

3. The Special Land Acquisition Officer,
Karnataka Industrial Areas
Development Board, Dharwad.
4. The Executive Member,
KIADB, Rasthrothan Building,
Nruptunga Road, Bangalore.
5. Union of India,
Represented by Principal Secretary,
To the Government of India,
Department of Civil Aviation,
New Delhi.

- Respondents

(By Sri Mahesh Wodeyar, A.G.A. for R1,
Smt. Sharmila Patil, Advocate for R2 to R4,
Sri G.K. Mathad, C.G.S.C. for R5)

This W.A. is filed under Section 4 of the Karnataka High Court Act, 1961, praying to set aside the order dated 09.07.2012 passed by the learned Single Judge in W.P. No. 64214/2012.

In W.A. No.31109/2012

BETWEEN:

Smt. Suman w/o Ashok
Hanumasagar, age: 40 years,
Occ.: Nil, r/o 55,
Tumakur Galli, Hubli.

- Appellant

(By Sri A.P. Murari and
Ms. Archana A. Magadum, Advocates for
Sri Anand Kumar. A. Magadum, Advocate)

And

1. State of Karnataka,
Department of Industries and
Commerce, Vidhana Soudha,
Bangalore, rep. by its Secretary.
2. Karnataka Industrial Area
Development Board,
Nrupathunga Road, Bangalore
By its Executive Officer.
3. The Special Land Acquisition Officer,
Karnataka Industrial Areas
Development Board, Dharwad.
4. The Executive Member,
KIADB, Rasthrothan Building,
Nruptunga Road, Bangalore.
5. Union of India,
Represented by Principal Secretary,
To the Government of India,
Department of Civil Aviation,
New Delhi.

- Respondents

(By Sri Mahesh Wodeyar, A.G.A. for R1,
Smt. Sharmila Patil, Advocate for R2 to R4,
Sri G.K. Mathad, C.G.S.C. for R5)

This W.A. is filed under Section 4 of the Karnataka High Court Act, 1961, praying to set aside the order dated 09.07.2012, passed by learned Single Judge in Writ Petition No.64210/2012.

In W.A. No.31110/2012

BETWEEN:

Smt. Sunanda w/o Venkatesh
Hanumasagar, age: 47 years,

Occ.: Nil, r/o 55,
Tumakur Galli, Hubli.

- Appellant

(By Sri A.P. Murari and
Ms. Archana A. Magadum, Advocates for
Sri Anand Kumar. A. Magadum, Advocate)

And

1. State of Karnataka,
Department of Industries and
Commerce, Vidhana Soudha,
Bangalore, rep. by its Secretary.
2. Karnataka Industrial Area
Development Board,
Nrupathunga Road, Bangalore
By its Executive Officer.
3. The Special Land Acquisition Officer,
Karnataka Industrial Areas
Development Board, Dharwad.
4. The Executive Member,
KIADB, Rasthrothan Building,
Nruptunga Road, Bangalore.
5. Union of India,
Represented by Principal Secretary,
To the Government of India,
Department of Civil Aviation,
New Delhi.

- Respondents

(By Sri Mahesh Wodeyar, A.G.A. for R1,
Smt. Sharmila Patil, Advocate for R2 to R4,
Sri G.K. Mathad, C.G.S.C. for R5)

This W.A. is filed under Section 4 of the Karnataka High
Court Act, 1961, praying to set aside the order dated

09.07.2012, passed by learned Single Judge in Writ Petition
No.64208/2012.

In W.A. No.31111/2012

BETWEEN:

Chandrashekhar M. Tumbad,
Age: 58 years, Occ.: Nil,
R/o Tumbad Oni, Hubli.

- Appellant

(By Sri A.P. Murari and
Ms. Archana A. Magadum, Advocates for
Sri Anand Kumar. A. Magadum, Advocate)

And

1. State of Karnataka,
Department of Industries and
Commerce, Vidhana Soudha,
Bangalore, rep. by its Secretary.
2. Karnataka Industrial Area
Development Board,
Nrupathunga Road, Bangalore
By its Executive Officer.
3. The Special Land Acquisition Officer,
Karnataka Industrial Areas
Development Board, Dharwad.
4. The Executive Member,
KIADB, Rasthrothan Building,
Nruptunga Road, Bangalore.
5. Union of India,
Represented by Principal Secretary,
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New Delhi.

- Respondents

(By Sri Mahesh Wodeyar, A.G.A. for R1,
Smt. Sharmila Patil, Advocate for R2 to R4,
Sri G.K. Mathad, C.G.S.C. for R5)

This W.A. is filed under Section 4 of the Karnataka High Court Act, 1961, praying to set aside the order dated 09.07.2012 passed by the learned Single Judge in W.P. No. 64209/2012.

These Writ Appeals coming for further hearing on this day, **DILIP B. BHOSALE J.** DELIVERED THE FOLLOWING:

JUDGMENT: (DILIP B. BHOSALE)

1. These four Writ Appeals are directed against the orders passed by learned Single Judge, all dated 09.07.2012, in the Writ Petitions filed by the appellants seeking direction to the Special Land Acquisition Officer to consider their representations (Annexure-D in all the Writ Petitions) whereby they sought solatium and interest on the market value of their lands, acquired under the provisions of Karnataka Industrial Areas Development Act, 1966 (for short the 'KIAD Act'). The learned Single Judge dismissed the writ petitions holding that the appellants are not entitled for the solatium and interest on the market value in view

of determination of the amount of compensation by agreement as contemplated by Section 29(2) of the KIAD Act.

2. The prayers made in all the writ petitions filed by the appellants are identical. The only prayer in the Writ Petitions reads thus:

- (i) Issue a writ of mandamus directing the third respondent to consider the representation at Annexure-D dated 03.09.2011 and make payment of solatium and interest on the market value.

3. Learned counsel appearing for the appellants, at the outset, invited our attention to the judgment of the Division Bench (K.Sreedhar Rao and V.Suri Appa Rao JJ) dated 06.12.2012 in **Totesh Kotrappa Mudgal Vs. State of Karnataka & Another** (for short “**T.K.Mudgal**”) in W.A. No. 30951/2012 and submitted that the present appeals are squarely covered by this judgment (dated 06.12.2012) and hence, these appeals may also be disposed of in terms thereof. In support of this contention our attention was

invited to the order dated 30.01.2013, passed by another Division Bench (H.Billappa and B.S. Indrakala JJ) in **Bhulappa Yellappa Kembhavi Vs. State of Karnataka & Others** in W.A. No.30954/2012, which followed the judgment in **T.K.Mudgal**.

4. The facts and the questions considered in the above appeals (**T.K.Mudgal and Bhulappa Y. Kembhavi**) and the facts and the questions raised in the present appeal are similar. In spite thereof, there was a strong opposition to dispose of the present appeals in terms of the judgment in **T.K.Mudgal**. Learned counsel appearing for the respondents submitted that they have already advised their clients to carry the matter to the Supreme Court against the judgment in T.K.Mudgal. They further submitted that they would like to persuade us to take a differing view holding the judgment in T.K. Mudgal *per incuriam*, or to refer the question to a Larger Bench.

5. The lands involved in the present appeals and the lands involved in **T.K.Mudgal and in Bhulappa Yellappa Kembhavi** with the lands of several other owners, were subject matter of the acquisition for extension of Hubli Aerodrome. The amount of compensation paid to the land owners/persons interested was in accordance with the agreement as contemplated by sub-Section (2) of Section 29 of the KIAD Act. The Notification under sub-section (1), the order under Sub-Section (3) and final notification under sub-Section (4) of Section 28 of the KIAD Act in all these cases were same. Learned counsel for the petitioner, therefore, prayed for disposal of these appeals also in terms of the judgment in **T.K.Mudgal**. For the sake of convenience we would state the facts in W.A. No.30007/2013, that are relevant, for deciding the questions raised for our consideration in these appeals.

6. The background facts, sans unnecessary details, are that the petitioner's (in W.A. No.30007/2013) property bearing plot no.247 in block/sy.no.1B+368B measuring 2 guntas and 2¼ annas

situate at Unkal village, Hubli, has been acquired by the respondents for extension of Hubli Aerodrum. The amount of compensation for the land acquired came to be determined by agreement between the State Government and the petitioner as contemplated by Sub-Section (2) of Section 29 of the KIAD Act. The petitioner was paid the amount of compensation in accordance with the agreement dated 05.04.2010. The petitioner accepted the compensation without any demur or protest. In other words, the petitioner while accepting the amount of compensation did not do so under protest or without prejudice to his right to seek solatium and interest on the market value. The petitioner after about 10-11 months of the date of agreement made a representation to the Special Land Acquisition Officer, Karnataka Industrial Areas Development Board, Dharwad, contending that though he had agreed to receive amount of compensation, he did not agree for waiver of solatium and interest, and therefore, in the representation, prayed for awarding the same.

7. Before we make reference to the contentions urged on behalf of the parties and deal with merits of the case it would be relevant to have a close look at the judgment of the Division Bench in **T.K.Mudgal**. In this case it was submitted that the compensation paid to the petitioner was inadequate and not in accordance with law and hence the representation dated 03.09.2011 (Annexure-D) was made to the Land Acquisition Officer (for short “LAO”) to reconsider their case for grant of statutory benefits and interest on the market value. Since the representation was not considered, the petitioner filed Writ Petition on 14.06.2012 seeking direction to the LAO to consider and decide it and make payment of solatium and interest on the market value. The learned Single Judge, however, dismissed the Writ Petition holding that the petitioner had received the amount of compensation under an agreement as full and final settlement and, therefore, is not entitled to claim statutory benefits under sub

Section (1A) and (2) of Sec. 23 of the Land Acquisition Act, 1894, (for short “the L.A. Act”).

7.1. The Division Bench, then after reproducing ‘FORM-D’ prescribed under the Karnataka Land Acquisition (Amendment Rules, 1986) (for short “The Rules”) in paragraph nos.3,4,5 and 6 observed thus:

3. The Karnataka Land Acquisition (Amendment) Rules, 1986 prescribed Form No. D. The prescribed format of agreement in Form No.D which is as follows:

“FORM ‘D’

(See Rule 10-B)

Form of Agreement

*This agreement made this
Day of between.....hereinafter
called ‘the owner’ which expression shall unless
repugnant with the context or meaning thereof
includes his heirs, executors and administrators
of the one part and the Governor of Karnataka,
hereinafter called ‘the Government’ of the other
part. Whereas the owner is absolutely seized
and in possession of or otherwise well and
sufficiently entitled to the piece or parcel of the
land measuring At village
..... in Taluk of
District.*

Whereas, the said piece and parcel of land has been notified for acquisition under the provisions of Land Acquisition Act, 1894 as amended from time to time for /and/possession thereof has been taken by Government duly serving notice under the provision of the said Act, and whereas Section 11(2) of the Land Acquisition Act, 1894 read with Rule 10-B of the Karnataka Land Acquisition (Amendment) Rules, 1986, provides that where the amount of compensation has been determined by agreement between the State Government and the person(s) to be compensated, it shall be paid in accordance with such agreement. And whereas the Khatedar / anubhavdar of the above land has agreed to receive compensation at representing the compensation payable to the owner determined by the Land Acquisition Officer, as required under the said Act and rules and whereas Government has agreed at the request of the owner to pay the owner a sum of Rs..... representing the full compensation payable to the owner, which is inclusive of cost of land, structures, trees, other developmental works, the full compensation payable to the owners, which is inclusive of cost of land, structures, trees, other developmental works solatium, interest and other items relevant for determination of compensation and the owner agreeing to execute a bond in the manner hereinafter appearing”.

The format makes a specific mention that the compensation agreed and payable would include the value of the structures, trees, damages caused to the property, if any, solatium, interest and assured marked value and other items relevant for determination of compensation. **The format specifically insists that the statutory benefits**

whatever the claimant is entitled to under the Act should necessarily have to be calculated and awarded as compensation in addition to the market value.

4. In the present case, the agreement is in Kannada language. **The agreement does not make any mention about the compensation amount awarded includes solatium, interest and other items relevant for determination of compensation** i.e. assured market value payable under Section 23(1)(a) of the Act.

5. The Agreement does not disclose the payment of the statutory benefits. It cannot be argued by the learned Counsel for the KIADB that the compensation awarded includes the statutory benefits.

6. The contention of the learned Counsel for the KIADB-respondent that the agreement is comprehensive enough to show that full and final settlement of compensation is awarded. Therefore, they are not entitled to re-agitate the matter to seek statutory benefits.”

(emphasis supplied)

7.2. Then the Division Bench proceeded to consider the judgment of the another Division Bench (K.Sreedhar Rao and Arali Nagaraj JJ) of this Court in **Krishnabai Vs. Special Land Acquisition Officer (Claims), Upper Krishna Project, Almatti**

2011 (1) LACC 4122 (Kar.) (DB) and in the concluding paragraph nos.8 and 9 observed thus:

8. The Constitutional obligation on the State under Article 300-A mandates the payment of just compensation. The Land Acquisition Act lays down the norms for assessing the market value and in addition declares that the land owner is entitled to additional market value at the rate of 12% under Section 23(1)(a) and solatium at 30% and also interest. **The State when acquires a land under the Land Acquisition Act would necessarily pay the statutory benefits while making payment under consent award, it would not justify the State to deny the statutory benefits to the land owners when his land is acquired by consent award.** In fact, such a attitude militates against the spirit of Article 300-A of the Constitution besides State would be infringing spirit of Article 14 in not giving equal treatment at law.

9. In that view of the matter, the appeal is allowed. The compliance of the order to be made within two months from the date of receipt of copy of this order.

(emphasis supplied)

7.3 The judgment of the Division Bench in **T.K.Mudgal**, as mentioned earlier, was followed by another Division Bench in **Bhulappa Yellappa Kembhavi**, directing the respondents to pay statutory benefits in terms of the judgment in T.K.Mudgal.

8. We have heard learned counsel for the parties at considerable length and with their assistance gone through the entire material placed on record and the relevant provisions of the L.A. Act and KIAD Act and so also the judgments relied upon by them in support of their contentions. Sri A.P. Murari, learned counsel appearing for the appellants, at the outset, invited our attention to the judgment of this Court in **Spl. LAO, KIADB Vs. State of Karnataka 2009 (1) Kar. L.J. (DB)** and submitted that under the provisions of the L.A. Act, apart from the market value, land owners/persons to be compensated are entitled to statutory benefits which cannot be deprived to them merely because they entered into agreements as provided for under Section 29(2) of the KIAD Act.

8.1. It was further submitted, that even in cases where the agreement is entered into, as contemplated by sub Section (2) of Sec.29 of KIAD Act, the Deputy Commissioner is required to make an award under Sub-Section (2) of Section 11 of the L.A.

Act and since, in the present case, no such award was made by the Deputy Commissioner, the petitioner had no option but to approach this Court by way of Writ Petition seeking direction to the Land Acquisition Officer to consider their representation and grant solatium and interest on the market value. In support of this submission he invited our attention to Section 30 of the KIAD Act which states that the provisions of LA Act are *mutatis mutandis* applicable to the acquisition under KIAD Act. Our attention was also invited to the judgment of this Court in **Krishnabai Vs. Upper Krishna Project, Alamatti**, (supra) to contend that terms of the agreement cannot be enforced against the petitioners/land owners to estop them from seeking statutory benefits/ legal compensation. It was further submitted that when the property of a person is acquired under the L.A. Act, it is the statutory right of such person to get compensation including solatium as per the provisions of the L.A. Act and the State cannot make discrimination between the persons whose properties are acquired.

It was then submitted that Article 14 of the Constitution mandates equality before law and equal treatment in law, and merely because the petitioners had opted for consent award, is not a ground to deny the just compensation in accordance with law. In short, he submitted, the fundamental right under Article 14 is inalienable and cannot be waived.

8.2 Next, it was submitted, that every award needs to be in writing signed by the Judge specifying the amount awarded under clause first of Sub-Section (1) of Section 23 of the L.A. Act, and also the amounts (if any) respectively awarded under such of the other clauses of the same sub-section, including the amounts reflected in sub-Section (1A) and (2) of the same Section. In short, it was submitted that under all the three heads, specified in three sub-Sections in Section 23, the sums need to be awarded by the Court. The amounts mentioned in sub-Section (1A) and (2) cannot be delinked. In other words, the award without the benefits under these Sub-Sections would not be an award in terms of

Section 11(2) of the L.A. Act. In support, he placed reliance upon the judgment of the Supreme Court in **Sunder V. Union of India 2001(2) LACC, 341.**

8.3. Lastly, Mr. Murari submitted that it is a constitutional obligation on the State under Article 300-A of the Constitution to make payment of just compensation. It is mandatory for the State which acquires a land either under the Act or under the KIAD Act to pay statutory benefits while making payment under consent award and if it is not paid, such attitude militates against the spirit of Article 300-A of the Constitution of India.

9. Learned counsel for the respondents, on the other hand, at the outset, invited our attention to the judgment of the Supreme Court in **State of Karnataka and another Vs. Sangappa Dyavappa Biradar and others (2005) 4 Supreme Court Cases 264** and submitted that the view taken by the Division Bench in **T.K.Mudgal** was patently illegal and deserves to be reconsidered.

Our attention was invited to the relevant provisions of the L.A. Act and the KIAD Act to contend that under any circumstances, once having agreed to accept the compensation determined on the basis of the agreement and having accepted the same, it is not open to the petitioner to seek statutory benefits either by making representation to the Land Acquisition Officer or to make an application under Section 18 of the L.A. Act, seeking reference to the Civil Court or by way of Writ Petition. It was submitted that right of the land owners to seek solatium and the interest on the market value would arise only when the amount of compensation has been determined by the Deputy Commissioner under Section 29(3) and (4) of the KIAD Act read with Sections 11 and 23 of the L.A. Act and not when it has been determined by an agreement between the State Government and the person to be compensated under Section 29(2) of the said Act. Once the amount of compensation agreed upon is accepted, no legal right in such person survives for claiming either statutory benefits or to seek

reference under Section 18 of the L.A. Act to the Civil Court. In short, it was submitted that an agreement between the parties as regards the value of the lands acquired by the State is binding on them, so long as such agreement and consequently the consent award is not set aside in an appropriate proceeding by a Court of law having jurisdiction in relation thereto.

9.1. It was then submitted that it is not necessary to make an enquiry as contemplated by Section 11 read with Section 23 of the L.A. Act, if the amount of compensation is determined by agreement as provided for under Section 29(2) of KIAD Act. In other words, it was submitted that, having regard to the scheme of Section 29, once the amount of compensation has been determined by an agreement between the State Government and the person to be compensated there is no need to hold any enquiry whatsoever much less the enquiry contemplated under Section 11 read with Section 23 of the L.A. Act.

9.2. Our attention was also invited to Section 30 of the KIAD Act to contend that the question of applying the provisions of the L.A. Act *mutatis mutandis* would arise only in respect of the “enquiry and award” by the Deputy Commissioner. That question did not arise in the present case since the compensation was determined by agreement between the State Government and the landowners under Section 29(2) of the L.A. Act. In the alternative, it was submitted that in any case a writ petition for the relief, as sought in the present writ petition, is not maintainable.

9.3. Next, our attention was invited to the judgment of the Supreme Court in **Mayuram Subramanian Srinivasan Vs. C.B.I (2006) 5 Supreme Court Cases 752; Narmada Bachao Andolan Vs. State of Madhya Pradesh & Another AIR 2011 SC 1989;** and also to the judgment of this Court in **Subhadra and Others Vs. Pankaj Kumar and Another ILR 2013 KAR 102,** to contend that the judgment of the Division Bench in **T.K.Mudgal** is *per-incuriam* since it did not analyze relevant provisions of the

L.A. Act and the KIAD Act and the intricacies thereof were not noticed and, therefore, the view taken therein cannot be treated as binding precedent.

9.4. Lastly, our attention was invited to the judgment of the Supreme Court in **Union of India and Another Vs. Kartick Chandra Mondal and Another (2010) 2 Supreme Court Cases 422** to contend that an erroneous decision cannot be permitted to perpetuate to further error to the detriment to the general welfare of the people or a considerable section.

10. Before we deal with the submissions advanced by the learned counsel for the parties it would be relevant to look into the judgments relied upon by both the sides in support of their contentions.

10.1. The Supreme Court in **Sangappa D.Biradar** (supra), was considering whether the land owner, after having entered into negotiations as regards the price of the lands and in pursuant

whereto and in furtherance whereof consent awards were passed, can file applications seeking a reference to the Civil Court in terms of Sec. 18 of the Act. The Reference applications filed by the petitioners claiming enhancement of the compensation were rejected by the Collector. The Writ Petition filed against the order of Collector were dismissed on the ground that parties having entered into settlement, as regards the price of lands acquired, and if the consent award had been passed pursuant thereof, recourse to Sec. 18 of the Act was impermissible.

10.2 The Writ Appeal filed against the order of the learned Single Judge, was however, allowed on the premise that the amount of compensation was not paid to the land owners therein in terms of the agreement entered into by and between the parties and in any event the respondents could not have been deprived of their statutory right of obtaining solatium and interest in terms of the Act. Having said so, the Division Bench in the Writ Appeal directed the respondents to compute the balance amount payable

to the claimants within the stipulated time. It was also clarified that the landowners would be entitled to not only statutory benefits but whatever interest that they are lawfully entitled to.

10.3. The parties in that case had entered into agreements culminating in passing of the consent awards. The compensation that was arrived at by mutual consent was accordingly paid. It was not in dispute, in the case before the Supreme Court, that in terms of the consent award, the amount of compensation arrived at by mutual consent included solatium and additional market value. It is in this backdrop the question that was considered by the Supreme Court was whether the application filed by the landowners in terms of Sec. 18 of the Act before the Land Acquisition Officer seeking reference to the Civil Court for determination of quantum of compensation were maintainable.

The Supreme Court in paragraph no.12 observed thus:

“A right of a landholder to obtain an order of reference would arise only when he has not accepted the award. Once such award is accepted, no legal right in him survives for claiming a reference to the civil court. As agreement between

the parties as regards the value of the lands acquired by the State is binding on the parties. So long as such agreement and consequently the consent awards are not set aside in an appropriate proceeding by a court of law having jurisdiction in relation thereto, the same remain binding. It is one thing to say that agreements are void or voidable in terms of the provisions of the Indian Contract Act having been obtained by fraud, collusion, etc., or are against public policy but it is another thing to say that without questioning the validity thereof, the respondents could have maintained their writ petitions. We have noticed hereinbefore that even in the writ petitions, the prayers made by the respondents were for quashing the order dated 23.8.1999 passed by the Special Land Acquisition Officer and issuance of a direction upon him to refer the matter to the civil court. The High Court while exercising its jurisdiction under Article 226 of the Constitution, thus, could not have substituted the award passed by the Land Acquisition Officer by reason of the impugned judgment. Furthermore, the question as regards the validity of the agreements had not been raised before the High Court. As indicated hereinbefore, the Division Bench of the High Court had also rejected the contention raised on behalf of the respondents herein to the effect that the agreements did not conform to the requirements of Article 299 of the Constitution or had not been drawn up in the prescribed proforma.”
(emphasis supplied)

10.4. Then the Supreme Court in **Sangappa D. Biradar** proceeded to consider its judgments in **State of Gujarat Vs. Daya Shamji Bhai 1995(5) Supreme Court Cases 746**; and **Ishwarlal Premchand Shan Vs. State of Gujarat 1996 (4) Supreme Court Cases 174**, and held that the condition precedent for maintaining

application for reference under Section 18 is non acceptance of the award by the awardee. Accordingly, the order of the Division Bench passed in the Writ Appeal was set aside being illegal and without jurisdiction, observing that the learned Single Judge was right in concluding that the Writ Petitions were not maintainable.

11. In **Daya Shamji Bhai** (supra), the Supreme Court in paragraph no.6 has observed thus:

“In view of the above agreement and in view of the discussion made by the Land Acquisition Officer in the award and working details given in the annexures made therein, **it is clear that the parties having contracted to receive compensation the question emerges whether they are entitled to seek a reference.** On making an award under Section 11 and issuance of the notice under Section 12 of the Act, the Collector is enjoined under Section 31(1) to tender payment of the compensation awarded by him to the interested persons entitled thereto to receive the compensation according to the terms of the award. **Under the second proviso to sub section (2) of Section 31 “no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18”.** The entitlement to make reference to Civil Court under Section 18(1) and within the period prescribed under Sub-section (2) is conditioned upon non acceptance of the award Sub-section (1) of Section 18 make the matter clear thus: “Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court regarding his objection, be it to the measurement of the land of the amount of the compensation, the person to whom it is

payable, or the apportionment of the compensation among the persons interested. **“The right and entitlement to seek reference would, therefore, arise when the amount of compensation was received under protest in writing which would manifest the intention of the owner of non-acceptance of the award.** Section 11(2) opens with a non-obstante clause “notwithstanding anything contained in sub-section (1) and provides that “if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. By virtue of subsection (4) “notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (2) shall be liable to registration under the Act. **“The award made under Section 11(2) in terms of the agreement, is, therefore, an award with consent obviating the necessity of reference under Section 18.”**

(emphasis supplied)

12. In **Ishwarlal Premchand Shah** (supra), the Supreme Court

in paragraph no.8 observed thus:

“8. This Court in *State of Gujarat v. Daya Shamji Bhai*, (1995) 5 SCC 746; (1995 AIR SCW 3827), had considered the similar contentions and **held that once the parties have agreed under Section 11(2) of the Act, the Land Acquisition Officer, has power under Section 11(2) to pass the award in terms thereof and that the award need not contain payment of interest, solatium and additional amount unless it is also part of the contract between the parties.** The same ratio applies to the facts of this case. In view of the above clauses in the agreements the appellants are not entitled to the payment of additional amounts by way of solatium, interest and additional amount under the provisions of the Act.”

(emphasis supplied)

13. In **Spl. LAO, KIADB** (Supra) this Court was considering the point that even if the amount of compensation has been determined by an agreement between the State Government and the person to be compensated, is there a requirement to pass an award. This point was answered by the Division Bench in paragraph no.14.3, which reads thus:

“In view of the applicability of the provisions of the L.A. Act with regard to the matters stated in Section 30 of the Act and also in view of sub-section (2) of Section 11 of the L.A. Act, interested persons shall have to appear before the Deputy Commissioner, agree in writing in the manner provided, for the compensation to be paid and thereupon, Deputy Commissioner, without making any further enquiry, can make an award according to the terms of the agreement. That means, the authority has the statutory obligation to pass an award as contemplated under Section 11(2) of the L.A. Act which is known in the common parlance as ‘consent award’. **Sub-section (2) of Section 11 of L.A. Act contemplates the making of an award even in case where an agreement is reached between the State Government and the person to be compensated. Sub-section (2) of Section 29 of the Act provides for payment of amount of compensation determined by agreement between the State Government and the person to be compensated, in accordance with such agreement. Hence, we hold that, in furtherance of the agreement between the State Government and the person to be compensated, the Deputy Commissioner is required to make a award under sub-section (2) of Section 11.”**

(emphasis supplied)

14. The Supreme Court in **Sunder Vs. Union of India 2001(2) LACC 341** was considering the question that “is the State liable to pay interest on the amount envisaged under Section 23(2) of the Land Acquisition Act, 1894”.

14.1. Learned counsel appearing for the appellant placed heavy reliance upon the observations made in paragraph no.19 of this judgment to contend that the amounts under sub-Section (1-A) or sub-Section (2) of Section 23 of L.A. Act cannot be delinked from the award made on the basis of agreement contemplated by sub-Section (2) of Section 29 of the KIAD Act read with Section 11(2) and 23 of L.A. Act. Paragraph no.19 of the judgment reads thus:

“Section 26 does not say that the award would contain only the amounts granted under sub-Section (1) of Section 23. The special mention of that sub-section 26 is only for the purpose of directing that the grounds or reasons for awarding the amount under each of the clauses in the sub-section shall be specified in the award. It is unnecessary to mention any reason or ground in any award as to why the sums indicated in sub-section (1-A) and sub-section (2) of section 23 of the Act were granted, because they are only the sequels or concomitant adjuncts of the determination of the total amount indicated in sub-section (1). No judicial exercise is required to quantify the sums mentioned in sub-section (1-A) of sub-section (2) because the section itself specifies the percentage

to be worked out for the purpose of adding to the total amount arrived at under sub-section (1). Otherwise section 26 is not intended to show that the compensation awarded would be bereft of the additional amount and the solatium envisaged under sub-section (1-A) or sub-section (2). This can be clearly discerned from the commencing words of section 26 itself. They are: "Every award under this part shall be in writing signed by the judge". What is referred to therein is part III of the Act which comprises of a fasciculus of twelve provisions starting with section 18 and ending with section 28A of the Act. **There can be no doubt that all the three heads specified in the three sub-sections in section 23 are the sums to be "awarded by the court". Hence the words "every award under this part" cannot be treated as the award after delinking the amounts awarded under sub-section (1-A) or sub-section (2) of section 23."**

(emphasis supplied)

15. Thus, the position of law that emerges from the judgments of the Supreme Court is clear. The amount of compensation determined between the parties by agreement, as regards the value of the land acquired by the State, is binding on them. So long as such agreements and consequently the consent awards are not set aside in an appropriate proceedings by a Court of law having jurisdiction in relation thereto, the same remain binding. In other words, unless the agreements and consequently the consent award are declared by a Court of law, in an appropriate proceedings, as

void or voidable in terms of the provisions of the Indian Contract Act having been obtained by fraud, collusion, etc, or are against the public policy, the agreement and the award remain binding on the parties to the agreement. The person interested, who has signed the agreement without demur cannot approach High Court by way of Writ Petition without questioning the validity of the agreement. The High Court while exercising its jurisdiction under Article 226 of the Constitution cannot substitute the award passed by the Land Acquisition Officer.

15.1. Further, on making an award under Section 11 and issuance of the notice under Section 12 of the L.A. Act, the Collector is enjoined under Section 31(1) of the same Act to tender payment of the compensation awarded by him to the interested persons entitled thereto according to the terms of the award. Under the second proviso to sub-Section (2) of Section 31 no person who has received the amount of compensation otherwise than under protest shall be entitled to make an application under Section 18.

The right and entitlement to seek reference would, therefore, arise when the amount of compensation is received under protest in writing thereby indicating an intention of the owner of non-acceptance of the award. Once the parties have agreed for the amount of compensation as provided for under Section 11(2) of the L.A. Act, the L.A.O, can pass an award in terms thereof, and such award need not contain payment of interest, solatium and additional amounts unless it is also a part of the agreement between the parties.

16. We would also like to look into a judgment of the Division Bench (K. Sreedhar Rao and Arali Nagraj JJ) of this Court in **Krishnabai** (supra), which is also referred to and relied upon in **T.K.Mudgal**. In **Krishnabai** the Division Bench was dealing with the review petitions. In the said case, the Land Acquisition Officer, after negotiations with the land owners, passed the consent award under Section 11(2) of the L.A. Act, stipulating certain conditions including that the land owners would not

approach the Court for enhancement of compensation. The consent award was accordingly passed. The villagers had approached the Government for grant of statutory benefits by way of representations. On the representations, the Land Acquisition Officer passed supplementary award granting the benefit of solatium. However, the Land Acquisition Officer did not grant interest on the solatium from the date of acquisition and hence the land owners filed Writ Petitions in this Court seeking fresh reference of the case to the Land Acquisition Officer for redetermination of the compensation and also for grant of interest on the solatium from the date of acquisition.

16.1. The learned Single Judge allowed the writ petitions in part directing the Land Acquisition Officer to pay interest on the solatium from the date of the award. The request for fresh reference u/S 18 of the L.A. Act, was, however rejected.

16.2. The State preferred Writ Appeal against the order of the learned Single Judge. The Writ Appeals confirmed the order of rejection for fresh reference u/S 18 of the Act, and directed that on the solatium the interest shall be paid from the date of supplementary award and not from the date of the consent award.

16.3. Against this order of the Division Bench the respondents filed petitions seeking review of the judgments that denied interest on solatium from the date of consent award. The Division Bench, ultimately by recording the following reasons in paragraph no.6, allowed the review petitions holding that the land owners were entitled to interest on solatium from the date of consent award and not from the date of supplementary award.

“Perhaps, in view of the above judgment, the Government vide communication No. RD.25.LAQ.92 dated 28.06.1993 directed the LAO to grant solatium to the landowners of Kolhar village. It appears that the judgment in W.P. No.19495/90 was not brought to the notice of this Court at the time of hearing. **The Article-14 of the Constitution mandates equality before law and equal treatment in law, merely because the petitioners had opted for consent award is not a ground to deny the just compensation in accordance with law. The terms of the consent given if any cannot be enforced against the petitioners to estop them from seeking the legal**

compensation. When the property of a person is acquired under the Act, it is the statutory right of such person to get compensation including solatium as per the provisions of the Act. The State should uniformly grant the compensation including solatium with interest thereon in accordance with law under the L.A. Act to all the persons whose properties are acquired without hostile discrimination. The fundamental right under Article 14 is inalienable and cannot be waived. In that view, the petitioners cannot be discriminated and denied compensation in law.”

(emphasis supplied)

17. In the present case, since the arguments advanced by learned counsel for the parties and the questions raised are centred around the provisions of the L.A. Act and the KIAD Act, at this stage, we would like to have a glance at all relevant provisions.

Section 29 and 30 of the KIAD Act are relevant, which read thus:

“29. Compensation.- (1) Where any land is acquired by the State Government under this Chapter, the State Government shall pay for such acquisition compensation in accordance with the provisions of this Act;

(2) *Where the amount of compensation has been determined by agreement between the State Government and the person to be compensated, it shall be paid in accordance with such agreement;*

(3) *Where no such agreement can be reached, the State Government shall refer the case to the Deputy Commissioner for determination of the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid; and*

(4) *On receipt of a reference under sub-section (3), the Deputy Commissioner shall serve notice on the owner or occupier of such land and on all persons known or believed to be interested herein to appear before him and state their respective interests in the said land.*

30. Application of Central Act 1 of 1894. - *The provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of compensation and the payment of compensation in respect of lands acquired under this Chapter."*

(emphasis supplied)

17.1. Sec. 47 of the KIAD Act provides that the provisions of the KIAD Act shall have the effect not withstanding anything inconsistent therewith contained in any other law.

17.2. Sub Section (1) of Sec. 29 provides that the State Govt. shall pay the compensation for any land acquired by the State Government under Chapter VII of KIAD Act. Sub-Section (2) provides for determination of the amount of compensation by agreement between the State Government and the person to be compensated and the payment thereof in accordance with such agreement. Sub-Section (3) of Sec. 29 provides that where no

such agreement can be reached, the State Government, shall “refer” the case to the Deputy Commissioner for determination of the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid. Sub-Section (4) state that, on receipt of reference under Sub-Section (3), the Deputy Commissioner shall serve notice on the owner or occupier of such land and on all persons known or believed to be interested herein who appear before him and state their respective interests in the said land.

17.3. Sec. 30 states that the provisions of the L.A. Act *mutatis mutandis* apply in respect of (i) the “enquiry and award” by the Deputy Commissioner; (ii) the reference to the Court; (iii) the apportionment of compensation; and (iv) the payment of compensation, in respect of the lands acquired under this Chapter.

17.4. Thus, as provided for in Section 30 of KIAD Act for the “enquiry and award” by the Deputy Commissioner the provisions

of the LA Act shall *mutatis mutandis* apply to the acquisition under the provisions of the KIAD Act for determination of the amount of compensation, where no agreement as provided for under Sub-Section (2) of Section 29 is reached. In other words, the provisions of LA Act would come into play for holding an “enquiry” and passing an “award” as provided for under Section 11 read with other relevant provisions of the said Act, including Section 23.

17.5. A conjoint reading of Sec. 29 and 30, insofar as the present appeals are concerned, would show that where no agreement, as contemplated by Sub-Section (2) of Sec. 29, can be reached, the State Government is empowered to refer the case to the Deputy Commissioner for determination of the compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid. Where the reference is made the provisions of L.A. Act would *mutatis mutandis* apply in respect of the “enquiry” and “award” by the Deputy Commissioner.

17.6. Thus, the scheme of Section 29 read with Section 30 of KIAD Act, would show that where the amount of compensation has been determined by agreement and if the amount is paid in accordance with such agreement, the question of “enquiry and award” would not arise. The provisions of L.A. Act in that event would not apply and the acquisition proceedings under the KIAD Act would stand concluded/terminated. Where the amount of compensation is being considered under Section 29(2), no person, to be compensated, can be forced to agree for any particular amount of compensation. Even where the person interested desires to enter into an agreement, nothing prevents him from claiming solatium and the interest, as a part of settlement, before signing the agreement. But, where the amount of compensation, determined by agreement, is paid and accepted without demur, as a full and final settlement, in our opinion, the acquisition under the provisions of KIAD Act, stands concluded.

18. Sec. 11 of the L.A. Act reads thus:

“11. Enquiry and award by Collector.- {(1)} On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land {at the date of the publication of the notification under-section 4, sub-section (1)}, and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;

[provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf;

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.]

[(2) Notwithstanding anything contained in sub-section (1), if ***at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further***

enquiry, make an award according to the terms of such agreement].

[(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.]

[(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration of this Act.]

(emphasis supplied)

18.1. Sec. 11 of L.A. Act provides for an “enquiry and award” by Collector. Sub Section (1) of Sec. 11 provides for the procedure to be followed by the Land Acquisition Officer for holding an enquiry and for making an award.

18.2. Sub Section (2) of Sec. 11, opens with a non-obstante clause that notwithstanding anything contained in Sub Section (1), provides that if at “any stage” of the proceeding/enquiry, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award in the form prescribed by Rules made by the appropriate Government, he may, “without making further

enquiry”, make an “award” according to the terms of such an agreement. The award made under Section 11(2) in terms of the agreement, therefore, is an “award with consent” obviating the necessity of reference under Section 18. Sub-Section (4) of Section 11 states, notwithstanding anything contained in the Registration Act, 1908, no agreement made under Sub Section (2) shall be liable to registration under that Act.

18.3. The expression “award” occurred in Section 11 is not defined in the L.A. Act nor is it defined in KIAD Act. Section 11(1) lays down that the Collector has to make an award with reference to three matters, namely, (i) the area of land included in the award; (ii) the total compensation to be allowed in respect of that land, and (iii) the apportionment of the compensation money among all the persons interested in the land or believed to have been interested in the land. The award of the Collector under Section 11 becomes final and conclusive evidence as between the Collector and the person whose land is acquired. It is well settled

that the award of the Collector is not the source of the right to compensation by claimants as the award only quantifies the offer of the appropriate Government to the person whose land is acquired or being acquired under the authority conferred by the L.A. Act (see **G.H. Grant (Dr.) Vs. State of Bihar AIR 1966 SC 237**). Thus the award of the Collector is only an offer and is an administrative act. If the person to be compensated accepts it, that is the end of the matter. But if he does not accept it and seeks reference to Court, then it would be for him to show that the value of the land offered is not just as if he is a plaintiff before the Court. The person to be compensated, thus, has the burden of establishing his case.

19. Section 18 read with Section 31 of the L.A. Act would show that any person interested who has not accepted the award or has received the amount of compensation under protest as to the sufficiency of the amount, shall be entitled to make a written application under Section 18 to the Collector seeking reference for

determination of appropriate amount of compensation to a Court. In other words, once the amount of compensation determined by the Collector, as reflected in the award, is accepted without demur by the person to be compensated, it is not open for him to seek reference to Court under Section 18 of the L.A. Act.

20. Sec. 23(2) of the L.A. Act enjoins to award, in addition to the market value, 30% solatium in consideration of compulsory acquisition. Sec. 23(1-A) was introduced (by Act 68 of 1984 Section 15), w.e.f. 24.09.1984, to award an amount calculated at the rate of 12% p.a. on such market value, in addition to the market value of the land, for the period commencing on and from the date of the publication of Sec. 4(1) Notification to the date of award of the Collector or date of taking possession of the land to the date of deposit into Court of such excess compensation. Under Section 28 interest was directed to be paid on excess compensation at the rate specified therein from the date of taking possession of the land to the date to deposit into Court of such

excess compensation. These *three components* are in addition to the compensation determined under Sub Section (1) of Sec. 23.

20.1. As observed by the Supreme Court in **Ishwarlal Premchand Shah**, the above *three components* intended to operate in different perspective. One for compulsory acquisition, the other for the delay on the part of the Land Acquisition Officer in making the award, and the third one for deprivation of the enjoyment of the land from the date of taking possession till determination of the compensation. The Parliament having taken notice of the inordinate delay in making the award by the Land Acquisition Officer from the date of Notification published under Section 4(1) till passing the award under Section 11, to offset the price pegged during the interregnum, Section 23(1-A) was introduced.

20.2. Determination of the compensation would be done under Section 23(1) on the basis of market value prevailing as on the date of publication of the Notification under Section 4(1). It

would, therefore, be open to the parties to enter into a contract under Section 11(2), without the necessity to determine the compensation under Section 23(1) and to receive market value at the rate incorporated in the contract signed under Section 11(2), and in that event, the L.A.O. has power to pass an award in terms thereof and that the award need not contain payment of interest, solatium and additional amount unless it is also a part of the contract between the parties. Thus, the landowners/persons to be compensated are not entitled to payment of additional amount by way of solatium, interest on the market value under the provisions of the L.A. Act if the amount of compensation is determined by agreement (see *State of Gujarat Vs. Dayashamji Bhai*).

21. That takes us to consider the question, where the amount of compensation has been determined by agreement between the State Government and the person to be compensated as contemplated under Sub Section (2) of Section 29 of KIAD Act, whether the provisions of the LA Act would apply and passing of

an award under Section 11(2) of L.A. Act would be necessary. In other words, even after determination of the amount of compensation by agreement under Section 29(2), whether there should be an “award” as provided for in Section 11(2).

22. Section 29 of KIAD Act and Sec. 11 of the L.A. Act would show that sub-Section (2) of both the provisions provide for determination of the amount of compensation by agreement. Where no such agreement can be reached, sub-Section (3) of Section 29 provides for a reference to the Dy. Commissioner and Section 11(1) read with other relevant provisions of the same Act provide for an enquiry, where no such agreement can be reached in respect of the amount of compensation and making an award. Thus, for the acquisition of land under KIAD Act, as provided for in Section 30 of the same Act, the provisions of LA Act would *mutatis mutandis* apply for conducting an enquiry for determination of the amount of compensation and making an award.

22.1. Sub-Section (2) of Sec. 11 provides for determination of the amount of compensation by way of an agreement, at “any stage of the proceedings” and in that eventuality the LAO, without making “further enquiry”, can make an award according to the terms of such agreement.

23. Thus, the stages at which there could be determination of the amount of compensation according to the terms of agreement contemplated by Sub Section (2) of Section 11 of L.A. Act and the agreement contemplated by Sub Section (2) of Section 29 of KIAD Act are different. Section 11 of L.A. Act starts with enquiry and ends with award. The award under Section 11 could be on merits or according to the terms of agreement. While Section 29 of the KIAD Act starts with determination of the amount of compensation by agreement. If such an agreement cannot be reached and if a reference is made to the Deputy Commissioner, as contemplated by sub-Section (3) of Section 29, the enquiry will have to be conducted for determination of the

amount of compensation, as contemplated by Section 11 read with Section 23 of the L.A. Act. During the enquiry under Section 11 the LAO has two options to determine the amount of compensation. Firstly, to hold an enquiry as contemplated under Section 11(1) and pass an award, and secondly, at the enquiry, if the person interested in the land agrees in writing on the matters to be included in the award, in the form prescribed by Rules made by the appropriate Government, to make an award according to the terms of agreement without making “further enquiry”. In our opinion, the agreement contemplated by sub-Section (2) of Section 11 of the LA Act cannot be equated with the agreement under sub-Section (2) of Section 29 of KIAD Act. Thus, where an acquisition of land is under the KIAD Act, the person to be compensated gets two opportunities for determination of the amount of compensation by agreement, firstly, before reference under Section 29(3) of the same act, and then, after reference, in the course of an enquiry under Section 11 of the L.A. Act.

23.1. Where there is an agreement, before the reference under sub-Section (3) of Section 29 of KIAD Act is made, between the State Government and the person to be compensated in respect of the amount of compensation, the State Government is obliged to pay in accordance with the agreement and in that case, it would not be necessary to make mention in the agreement about the solatium and the interest on market value as provided by Section 23 of the L.A. Act, unless it is also a part of the agreement. Thus, for the payment of compensation for acquisition under KIAD Act, there could be an agreement between the State Government and the person to be compensated as contemplated by 29(2), and in that event the agreement need not be in any form, as no such form is prescribed under the same Act, though, in a given case the authority may use Form-D with or without modifications. Merely because the format-Form-D is used, that would not mean, such an agreement is under Section 11(2) of the L.A. Act. And, if there is no agreement, as contemplated by sub-Section (2) of

Section 29 of the KIAD Act, and where there is a reference to the Deputy Commissioner for determination of the amount of compensation under Section 29(3), and where the agreement is arrived at in the course of enquiry contemplated by sub-section (2) of Section 11, there has to be an award in terms of such agreement in the form prescribed by the Rules. That eventuality in the present case did not arise.

23.2. Section 11(2) of the L.A. Act and Section 29(2) of the KIAD Act are read with Sec. 30 of the KIAD Act, it is clear that the provisions of Sec. 11(2) of the L.A. Act would apply, in case of an acquisition under the provisions of KIAD Act, only and only where no agreement under Section 29(2) of the KIAD Act between the State Government and the person to be compensated can be reached for determination of the amount of compensation.

24. Thus, the position of law that emerges from the aforesaid provisions of the L.A. Act and the KIAD Act is as follows:

Section 28 of the KIAD Act provides for issuance of notifications, preliminary as well as final, for acquisition of land. Section 29 provides for the stages for determination of the amount of compensation to be paid to the person whose land has been acquired by the State Government under Chapter VII of the KIAD Act. Section 29 read with Section 30 of the KIAD Act contemplate two stages for determination of the amount of compensation by agreement between the State Government and the person to be compensated. Firstly, before making a reference to the Deputy Commissioner under sub-Section (3) of Section 29, and secondly, after the reference, in the course of an enquiry as contemplated by Section 11(2) of the L.A. Act.

24.1. The question of operating the *three components* under Section 23 of the L.A. Act, as observed earlier, would not arise, unless there is a specific agreement to the contrary between the parties, where the amount of compensation is determined by agreement under Section 29(2) of the KIAD Act. In the event of

an agreement, the question of inordinate delay in making the award from the date of preliminary notification under Section 28(1) of KIAD Act also would not arise. But, where the State Government makes reference, under Section 29(3), the Deputy Commissioner ought to follow the procedure contemplated by the provisions of the L.A. Act. In the course of such enquiry, once again the person interested gets an opportunity to agree for the amount of compensation in writing and in such an eventuality there could be an award according to the terms of the agreement in the form prescribed by the Rules.

24.2. Once the agreement in respect of the amount of compensation is arrived at and if the person interested signs the agreement and accepts the agreed amount as full and final settlement, either under Section 29(2) of KIAD Act or in the course of enquiry under Section 11(2) of the L.A. Act, it becomes final and the acquisition proceedings insofar as such person is concerned, stands concluded/terminated and it is not open to such

person to make an application either under Section 18 of the L.A. Act or to file a Writ Petition under Article 226 of the Constitution of India for seeking the reliefs, as prayed for, in the present petitions.

24.3. It is true that in a given case, a person may approach High Court directly under Article 226 of the Constitution of India if he does not want to dispute the market value determined in the course of enquiry and if the statutory benefits are either not awarded or there was an error in calculation while awarding such benefits including interest. There are instances where High Courts have entertained such Writ Petitions. But, certainly, the Writ Petition, such as the present one, is not maintainable for seeking solatium and interest on the market value after having accepted the amount of compensation by way of an agreement, as full and final settlement, under Section 29(2) of the KIAD Act or Section 11(2) of the L.A. Act, for that matter.

25. That takes us to consider the submission made on behalf of the appellants based on Article 300-A of the Constitution of India. Though, right to property is no more a fundamental right, it continues to be a constitutional right. Under Article 300-A of the Constitution, no person shall be deprived of his property save by authority of law. It is true that the right under Article 300-A is a valuable right and the person cannot be deprived of his property without following due process of law. However, it cannot be overlooked that the power of acquisition is the sovereign or prerogative power of the Government to acquire lands for public purpose. Such power exists independent of Article 300-A of the Constitution, which merely indicates the limitation on the power of acquisition by the State. The State can acquire property in exercise of its power of 'eminent domain' subject to existence of public purpose and on payment of reasonable compensation in terms of the provisions of the L.A. Act. Having regard to Article 300-A, in our opinion, it is of no avail to the petitioners to seek

any relief in the present appeals. We are unable to understand as to how Article 300A would help the appellants to seek statutory benefits including interest on the market value once having agreed for the amount of compensation by way of an agreement contemplated by Section 29(2) of the KIAD Act.

26. It is against this backdrop we would now like to consider whether we should refer the question involved in this appeal to the Larger Bench or it is possible to hold the judgment of the Division Bench in **T.K.Mudgal** *per incuriam*.

26.1. In this connection, we would like to make reference to the judgment of the Supreme Court in **MAYURAM SUBRAMANIAN SRINIVASAN vs. C.B.I.** In paragraphs 10, 11 and 12 of the report, the Supreme Court observed thus:

"10. In State v. Ratan Lal Arora it was held that where in a case the decision has been rendered without reference to statutory bars, the same cannot have any precedent value and

shall have to be treated as having been rendered *per incuriam*. The present case stands on a par, if not on a better footing. The provisions of Section 439 do not appear to have been taken note of.

11. "Incuria" literally means "carelessness". In practice *per incuriam* is taken to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law", as held in *Young v. Bristol Aeroplane Co. Ltd.*, is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution of India, 1950 (in short "the Constitution") which embodies the doctrine of precedents as a matter of law. The above position was highlighted in **State of U.P. v. Synthetics and Chemicals Ltd. To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience.** The position was highlighted in *Nirmal Jeet Kaur v. State M.P.*

26.2. The question was again examined in **N.Bhargavan Pillai v. State of Kerala.** It was observed in para 14 as follows: (SCC pp. 223- 24)

14. Coming to the plea relating to benefits under the probation Act, it is to be noted that Section 18 of the said Act clearly rules out application of the Probation Act to a case covered under Section 5(2) of the Act.

Therefore, there is no substance in the accused-appellant's plea relating to grant of benefit under the probation Act. The decision in Bore Gowda case does not even indicate that Section 18 of the Probation Act was taken note of. **In view of the specific statutory bar, the view, if any, expressed without analysing the statutory provision cannot in our view be treated as a binding precedent and at the most is to be considered as having been rendered *per incuriam*.** Looked at from any angle, the appeal is sans merit and deserves dismissal which we direct."

(emphasis supplied)

26.3. **In Narmada Bachao Andolan v. State of Madhya**

Pradesh & Anr., the Supreme Court in paragraphs 60 and 61

observed thus:

PER INCURIM-Doctrine:

"60. **"Incuria" literally means "carelessness"**. In practice *per incuriam* is taken to mean per ignoratium. The Courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered, in ignorance of a Statute or other binding authority. While dealing with observations made by a seven Judges' Bench in India Cement Ltd. etc. etc. v. State of Tamil Nadu etc. etc., AIR 1990 SC 85, the five Judges' Bench in **State of West Bengal v. Kesoram Industries Ltd. & Ors., (2004) 10 SCC 201: (AIR 2005 SC 1646: 2004 AIR SCW 5998)**, observed as under:

"A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, A statement caused by an apparent 20 typographical or inadvertent error in a judgment of the Court should not be misunderstood as declaration of such law by the Court."

61. Thus, "*per incuriam*" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the Court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

(emphasis supplied)

26.4. This Court in **Subhadra and Others Vs. Pankaj and another** ILR 2013 KAR 102 after considering the aforementioned judgment of the Supreme Court in paragraph no.14 observed thus:

“14. It is thus clear that if there is an error of law occurring in a judgment, apparently committed by mistake or through inadvertence, such judgment should not be misunderstood as declaration of law by the Court. Similarly, if the judgment is delivered in forgetfulness of some statutory provision, or a statement of law caused by inadvertence or conclusion that has been arrived at without any reasons, or rendered without analysing the relevant provision, it cannot be treated as a binding precedent and at the most is to be considered as having been rendered per-incuriam. In other words, if intricacies of relevant provisions are either not noticed by the Court or brought to the notice of Court and if the view is expressed without analysing the said provision, such view cannot be treated as binding precedent.”
(emphasis supplied)

27. The Division Bench in **T.K.Mudgal** observed that “the format (Form D) of the agreement specifically insists that the statutory benefits whatever the claimant is entitled to under the LA Act should necessarily have to be calculated and awarded as compensation in addition to the market value”. Though it was so observed, we did not find any such insistence in the “Form D”. The format, in fact, provides that if the person to be compensated has appeared to receive it as full and final settlement it shall be inclusive of all costs, as indicated therein, including solatium,

interest and other relevant factors. The Division Bench further proceeds to observe that “the agreement does not make any mention that the compensation amount awarded includes solatium, interest and other items relevant for determination of compensation, i.e., assured market value payable under Section 23 of the Act and that the agreement does not disclose the payment of statutory benefits.” After so observing the Division Bench proceeds to hold that the compensation awarded cannot be stated to have included these statutory benefits. The Division Bench then proceeded to make reference to Article 300-A of the Constitution of India and observed that it mandates the payment of just compensation. Then in the concluding paragraphs they allowed the appeal and directed the respondents to pay the solatium and interest on the market value within the time frame.

27.1. From perusal of the judgment in **T.K. Mudgal**, it appears to us, that it did not consider the scheme/provisions contained in Sections 29 and 30 of the KIAD Act, and Section 11, 23 read with

other relevant provisions of the LA Act. Even there is an error in reading Form 'D'. The judgments of the Supreme Court, referred to herein above, were also not brought to the notice of the Bench. The decision in **T.K. Mudgal** was rendered without reference to the bar, as observed by the Supreme Court in the aforementioned judgment, in the event of consent award or determination of the compensation by agreement, for seeking either statutory benefits or reference under Section 18 of the L.A. Act to Court.

27.2. It is well settled that the view expressed without analyzing the statutory provisions cannot be treated as a binding precedent and at the most is to be considered as having been rendered *per incuriam*. Further, if there is an error of law occurred in a judgment apparently committed by mistake or through inadvertence, such judgment should not be misunderstood as declaration of law by the Court. Similarly, if the judgment is delivered in forgetfulness of some statutory provisions or a statement of law caused by inadvertence or conclusion that has

been arrived at is without any reason, or rendered without analyzing relevant provisions, it cannot be treated as a binding precedent and at the most is to be considered as having been rendered *per incuriam*.

27.3. In **T.K. Mudgal** the intricacies of the relevant provisions were not noticed by the Court or brought to the notice of the Court, and therefore, the view expressed therein without analyzing the said provision, cannot be treated as a binding precedent. We, therefore, hold that the judgment of the Division Bench in **T.K.Mudgal** is *per incuriam* and it cannot be treated as a binding precedent. In the circumstances, we need not follow the said judgment for granting solatium and interest on the market value as prayed for.

28. At this stage we would like to consider the judgment of the Division Bench of this Court in Spl. LAO, KIADB (Supra). In this case two final notifications under Section 28(4) of the KIAD

Act were issued on 06.12.1995 and 30.10.1997 and the lands were acquired for the purpose of development by the Board. Even before issuance of the two notifications under Section 28(4), certain payments were made by the Board, purportedly by way of an agreement, to the persons interested. The persons interested submitted an application on 10.11.2003 for payment of just and adequate compensation. The learned Single Judge in the said case observed that under the provisions of L.A. Act, apart from the market value, land owners were entitled to statutory benefits which cannot be deprived to them merely because they entered into agreements before issue of notification under Section 28(4), and that such agreement cannot be construed as an agreement under Section 29(2) of the KIAD Act. In view thereof, the Division Bench while dealing with the appeal filed by the SLAO framed a point for consideration that, “even if the amount of compensation has been determined by agreement between the

State Government and the person to be compensated, is there a requirement to pass an award”.

28.1. Thus, the case that fell for consideration of the Division Bench was the one where there was no agreement under sub-Section (2) of Section 29 of the KIAD Act. The Division Bench considered the provisions contained in sub-Section (2) of Section 11 of the L.A. Act and the provisions contained in sub-Section (2) of Section 29 of the Act and observed that in view of the applicability of the provisions of the LA Act with regard to the matters stated in Sec. 30 of the KIAD Act and also in view of sub-Section (2) of Sec. 11 of the Act, the authority has the statutory obligation to pass an award as contemplated by Section 11(2) of the Act which is known in the common parlance as consent award.

28.2. Such a view was taken by the Division Bench in view of the language employed in sub Section (2) of Sec. 11 of the L.A. Act. This provision contemplates making of an “award” even in cases

where the amount of compensation is determined by an agreement between the Collector and the person to be compensated. The Division Bench, in the facts of that case had no reason or occasion to notice the difference between the provisions contained in sub-section (2) of Sec. 11 of the L.A. Act and in sub-section (2) of Section 29 read with Section 30 of the KIAD Act. Sec. 30 provides that the provisions of the Act shall apply in respect of the “enquiry and award”. The question of holding an “enquiry” and passing an “award” in case of an acquisition under the provisions of the KIAD Act, would arise only and only where no such agreement can be reached as provided for under sub-Section (2) of Section 29 of KIAD Act and where the State Government refers the case to the Deputy Commissioner for determination of the amount of compensation to be paid for such acquisition under Section 29(3). In that event, there could be “enquiry” and “award” under Section 11(2) of the L.A. Act. If the amount of compensation has been determined by an agreement between the

State Government and the person to be compensated, it shall be paid in accordance with such agreement, is the mandate of sub-Section (2) of Section 29, and therefore, question of passing an award under Section 11(2) would not arise.

29. In the present case the agreement was entered into as contemplated under sub-Section (2) of Section 29 of KIAD Act, and therefore, there was no need of passing an award under sub-Section (2) of Section 11 of the L.A. Act according to the terms of the agreement. That appears to be the reason, as noticed by the Division Bench in **T.K.Mudgal**, why there is no reference to “including solatium and interest on the market rate” in the agreement. Having said so, we do not find it necessary to make reference to Larger Bench even on the question whether there is a requirement to pass award if the amount of compensation has been determined by an agreement between the State and the person to be compensated.

30. The objective of providing for determination of the amount of compensation by agreement in the course of an enquiry or at any stage of the proceedings, either under the provisions of the L.A. Act or under the provisions of the KIADB Act, is to conclude the acquisition proceeding at the earliest and to curb further proceedings, such as challenge to the acquisition/ notifications or the reference to Court. In other words, in the event of an agreement or a consent award, the question of challenging the acquisition or making an application for seeking reference under Section 18 to Court or seeking statutory benefits by filing writ petition would not arise. There are instances, where LAOs grant more compensation than the market price by way of an agreement with an objective of avoiding further litigation and to save time, money and energy of both the sides in fighting in Courts. If the persons interested, such as the petitioners in the present case, are allowed to raise dispute where the amount of compensation has been determined by agreement or to make an

application seeking reference under Section 18 of the L.A. Act, the very objective of introducing the provisions like sub-section (2) of Section 11 of the L.A. Act and sub-Section (2) of Section 29 of the KIAD Act, would stand frustrated. The Courts are not expected to frustrate the provisions of law in this manner.

31. In the result, we have no hesitation in holding that in the event of an agreement under Section 29(2) of the KIAD Act, between the State Government and the person to be compensated, once the agreement is signed and the agreed amount of compensation is paid and accepted without demur/protest, one cannot turn around and seek solatium or interest on the market value unless he seeks a declaration from a Court having jurisdiction, that the agreement is void or voidable in terms of the provisions of the Indian Contract Act, having been obtained by fraud, collusion, etc. or is against public policy. The writ petition under Article 226 or 227 of the Constitution of India for the

reliefs, as sought in the present writ petitions, is not maintainable.

In the result, all the writ appeals are dismissed with costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

bvv