

(1970) 08 KAR CK 0013
In the Karnataka High Court
Case No : Misc. First Appeal No. 136 of 1968

Anjanappa

APPELLANT

Vs

The Land Acquisition Officer and Assistant Commissioner,
Nanjangud Sub-Division, Nanjangud

RESPONDENT

Date of Decision : 28-08-1970

Acts Referred:

Land Acquisition Act, 1894 — Section 23 (1), 23 (2), 26, 27
Mysore Court-fees and Suits Valuation Act, 1958 — Section 48

Citation : AIR 1971 Kar 326 : (1971) 1 MysLJ 390

Hon'ble Judges : E.S. Venkataramiah, J;C. Honniah, J

Bench : Division Bench

Advocate : S. Rangaraj, for the Appellant;

Judgement

Honniah, J.—The question that arises for consideration in this appeal is whether an appellant, whose lands have been acquired under the Land Actuation Act, as in force in the State of Mysore, to be hereinafter referred to as "the Act" being dissatisfied with the amount of compensation awarded to him by the Court on a reference to it u/s 18 of the Act appeals to the High Court, is bound to include in the valuation of his appeal, fifteen per cent of the market value of the land, which is statutory allowance payable u/s 23(2) of the Act and pay Court fee thereon, or whether he is entitled to value the appeal excluding the statutory allowance on the basis of difference between the claim and the amount awarded by the lower Court. The answer to the question turns on the true construction of Section 48 of the Mysore Court Fees and Suits Valuation Act 1958 to be hereinafter referred to as the "Court Fees Act", which provides that the fee payable under this Act on a memorandum of appeal against a decision or an award or order relating to compensation under any Act for the time being in force for the acquisition of property for public purpose shall be computed on the difference between the amount awarded and the amount claimed by the appellant. Mr. Rangaraj, the learned counsel for the appellant contends that u/s 23(1) of the Act, the amount of compensation to be awarded is to be determined

by taking into consideration the factors stated in Clauses 1 to 6 of the said Sub-section and in construing the expression "amount awarded" in Section 48 of the Court Fees Act it should be taken to cover only the amount awarded having regard to the considerations mentioned in Clauses 1 to 6 in Sub-section (1) of Section 23 of the Act. According to him, the expression "amount awarded" in Section 48 of the Court Fees Act and in the Land Acquisition Act should receive similar construction. In support of his contention, he relied upon the provisions of Sections 26 and 27 of the Act,

2. In order to answer the point raised by Mr. Rangaraj, it is necessary to refer to the relevant sections of the Act. Section 15 of the Act provides:--

"In determining the amount of compensation, the Deputy Commissioner shall be guided by the provisions contained in Sections 23 and 24."

Section 23(1) deals with matters to be considered in determining compensation. That Section provides that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall take into consideration the several factors mentioned in that Sub-section. Section 23(2) provides :--

"In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value in consideration of the compulsory nature of the acquisition."

3. Section 24 deals with matters to be neglected in determining compensation and that section says that the factors mentioned therein should not be taken into consideration in determining compensation. Section 26 merely prescribes the form of award and Section 27 provides for awarding costs. These two Sections indicate the form of Award to be made by the Court. The Award as stipulated in the Act must state the area of the land acquired, compensation awarded, and the apportionment of the amount among all persons interested in the land in respect of whom the Deputy Commissioner has information. Once the sum is deposited u/s 31, the function of the Award ceases. Sub-section (2) of Section 26 states that the Award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, Clauses (2) and (9) of the Code of Civil Procedure. A decree according to the provisions of the CPC is the formal expression of an adjudication which so far as the Court expressing it is concerned, conclusively determines the rights of parties with regard to all or any of the matters in controversy. Section 34 of the Act provides for payment of interest at 5% per annum, on the compensation awarded. From a reading of these provisions, particularly the provisions contained in Section 15, it is clear that the expression "amount of compensation" awarded by the Deputy Commissioner includes not only the market value, but also the 15 per cent, thereon as required to be determined u/s 23 because it is obvious that the Deputy Commissioner is bound to tender to the person from whom the land has been compulsorily acquired the said 15 per cent, also and to deposit the same in

Court, if the land owner does not consent to receive the same. A harmonious construction of the provisions referred to above leads to the only conclusion that the total compensation payable under the Act not only includes what is determined under Sub-section (1), but also what is provided in Sub-section (2) of Section 23 of the Act. It is therefore clear that the extra amount of compensation claimed by the appellant in an appeal, should u/s 48 of the Court-fees Act include also the 15 per cent, of the market value and that he should pay Court-fee on the total amount Including the 15 per cent. It seems to us that he cannot value his appeal only at the excess market value claimed by him in the appeal excluding the statutory allowance of 15 per cent., but at the same time, in case of success not only claim that excess market value decreed to him but also claim that the appellate decree should automatically give him an additional 15 per cent of the said excess market value. We are of the view that the claim in appeal is different from the claim put forward by him before the Deputy Commissioner. That is the view that has been taken by this Court in Subhadra Bai v. State of Mysore (1970) 1 Mys LJ 91. In that case this Court was no doubt, dealing with the question whether Court-fee had to be paid on the current interest on the aggregate amount determined u/s 23 of the Act. But while doing so, the Court, had to construe Section 48 of the Court-fees Act and had to interpret the expression "amount awarded" occurring in that Section. On that point, this is what the Court said:

"We hold that the expression "amount awarded" in Section 48 of the Court-fees Act, means the amount computed u/s 23 of the Land Acquisition Act inclusive of solatium," Same view has been taken by the Madras High Court in (Koppaka) Brahmanandam Vs. Secy. of State, and the High Court of Travancore-Cochin in Abdul Rahiman Kunju v. State AIR 1955 Trav Co 110.

4. Mr. Rangaraj relied upon a Full Bench decision of the Andhra Pradesh High Court in Kesireddy Appala Swamy and Others Vs. Special Tahsildar, Land Acquisition Officer, Central Railway, Vijayawada, Therein their Lordships held that:--

"Under the Land Acquisition Act, while solatium u/s 23(2) may form part of the compensation to be awarded by the Collector u/s 11, it does not form part of the award which the Court has to pass u/s 26, though it is required u/s 23(2) to add 15% on the amount of market-value awarded by it, which will be in the nature of a direction to the Collector to pay the amount just in the same way as he is directed to pay interest. The reason for excluding solatium from the award to be passed by the Court is perhaps due to the solicitude of the Legislature not to overburden the owner whose lands are acquired against his will with payment of Court-fee thereon. Section 48 of the A. P. Court Fees and Suits Valuation Act itself requires payment of Court-fee on difference between the amount awarded and the amount claimed. The amount which an owner is required to claim includes neither solatium nor interest, but only compensation for all his interests in that land. Thus, solatium u/s 23(2) of Land Acquisition Act forms part of

neither the claim nor of the award, and consequently, in appeal u/s 54 thereof, no Court fee is payable on such amount."

This decision appears to have not given due importance to the language of Section 15 of the Act, and the use of the expression "compensation" in Section 34 which is the aggregate of what is awarded u/s 23(1) and Section 23(2). With due respect, we differ from the law laid down by their Lordships and prefer to follow the decision in Subhadra Bai's case. (1970) 1 Mys LJ 91 referred to above.

5. We therefore, overrule the objection raised by the appellant regarding payment of Court-fee on solatium and direct him to value the appeal including the statutory allowance and pay Court-fee thereon within a week.