

(1991) 12 KAR CK 0011
In the Karnataka High Court
Case No : M.F.A. No. 2585 of 1991

Asst. Commissioner-cum-Land Acquisition Officer	APPELLANT
Vs	
Mallaiah	RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 23 (1A), 4 (1)

Citation : (1992) ILR (Kar) 704

Hon'ble Judges : Venkatachala, J;Vasanth Kumar, J

Bench : Division Bench

Advocate : R.I.D. Sa, for the Appellant;

Judgement

Venkatachala, J.—Whether the amount awardable under Sub-section (1A) of Section 23 of the Land Acquisition Act, 1894, (for short "the Act") is awardable for lands, the possession of which had been taken by the Deputy Commissioner (Land Acquisition Officer) prior to the Preliminary Notification u/s 4(1) of the Act published in the Gazette respecting such lands, being an important question raised for our Decision in this Appeal, we have admitted it and are proceeding to decide it on merits after hearing learned Counsel appearing on both sides.

2. The material facts, on the basis of which the said question is raised for our Decision, briefly stated, are these:

10 acres 3 guntas of agricultural land in Survey No. 84 and 4 acres 34 guntas of agricultural land in Survey No. 85, both lands situated at Hurudihalli village of Kudligi Taluk in Bellary District, were acquired for a public purpose, to wit, R.D.Project of the State Government, pursuant to the Preliminary Notification u/s 4(1) of the Act published in the Karnataka Gazette dated 21-10-1982. The Land Acquisition Officer's Award u/s 11 of the Act was made on 25-7-1986 having regard to the compensation payable for the said lands under Sub-sections (1) and (2) of Section 23 of the Act. Under that Award, interest payable u/s 34 of the Act on the amount of compensation was made payable from a date prior to the

date of publication of the Preliminary Notification u/s 4(1) of the Act, that is, 26-3-1981, as that was the date on which possession of lands had been taken in anticipation of their acquisition under the Act. Thereafter, Reference u/s 18 of the Act for enhanced compensation for the said lands having been received by the Civil Court - Court of Civil Judge at Hospet, an Award was made by it not only enhancing the compensation payable for the lands under Sub-sections (1) and (2) of Section 23 of the Act, but also awarding an amount on the market value of the land calculated at the rate of 12% per annum from the date of the publication of the Preliminary Notification u/s 4(1) of the Act, that is, 21-10-1982, till the date of the Award of the Land Acquisition Officer u/s 11 of the Act, that is, 25-7-1986, purporting to be under Sub-section (1A) of Section 23 of the Act. As it was contended that such amount under Sub-section (1A) of Section 23 of the Act was not awardable respecting the acquired lands, the possession of which had been taken prior to the date of publication of the Preliminary Notification u/s 4(1) of the Act, the question, adverted to by us at the out-set, has been raised for our Decision in this Appeal.

3. Sub-section (1 A) of Section 23 of the Act, insofar as it becomes material for rendering the decision on the question raised for our consideration, reads:

"(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period on and from the date of the publication of the notification u/s 4, Sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

(Underlining is ours)

The amount awardable under the above sub-section is for a "period" specified therein and does not give room for any doubt because of the clear, plain and unambiguous words employed in the sub-section in that regard. Such period, as becomes clear from the words found in the sub-section, commences on and from the date of publication of the Notification under Sub-section (1) of Section 4 of the Act and goes upto the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Therefore, according to the sub-section, if the date of taking possession of the land falls earlier to the date of the award of the Collector or if the date of taking possession of the land coincides with the date of publication of the Notification under Sub-section (1) of Section 4, there will be no period at all, for which the amount awardable under the sub-section could be awarded. Similarly, there cannot be a period for which the amount awardable under the sub-section could be awarded if the date of taking possession of the land has preceded the date of publication of the Notification under Sub-section (1) of Section 4 of the Act. Thus, the clear, plain and unambiguous words employed in the sub-section make it obvious that no occasion would arise for awarding the amount awardable under the sub-section if, in a given case, no period is found between the date of publication of the

Notification under Sub-section (1) of Section 4 of the Act and the date of taking possession of the land.

4. Though the clear, plain and unambiguous words employed in the sub-section empower the Court to award an amount awardable thereunder only if there is a period or interval between the date of publication of the Preliminary Notification under Sub-section (1) of Section 4 of the Act respecting the land and the date of taking possession of that land where the date of taking possession occurs subsequent to the date of publication of the Preliminary Notification, it was contended for the respondent-claimants that even where there is no period or interval between the date of publication of the Preliminary Notification and the date of taking possession of the land, the Court was empowered under the sub-section to award the amount awardable thereunder for the period or interval occurring between the date of publication of the Preliminary Notification under Sub-section (1) of Section 4 of the Act and date of the award of the Collector. According to Sri C.M. Basavarya, learned Counsel for the respondents-claimants, the sub-section was inserted into the Act by the Land Acquisition (Amendment) Act, 1984, with a view to confer additional benefit on the claimants, whose lands were acquired under the Act, and if that be so, there was no reason as to why even in a case where there was no period or interval of time between the date of publication of the Preliminary Notification and the date of take possession of the land, the amount awardable under the sub-section should not be awarded for the period or interval occurring between the date of publication of the Preliminary Notification and the date of the making of the award by the Collector. In support of his contention, he invited our attention to an observation of a Division Bench Decision of the Bombay High Court in *State of Maharashtra and Another Vs. Nanabhai Rathod and Others*, , made regarding Section 23(1A), which reads thus:

"Considering the Section as it stands, we find that it cannot have any application to the situation where possession has been taken by the acquiring authority even before the issue of notification u/s 4 of the Land Acquisition Act, and having regard to the express language of the provision in the event of losing the possession before the notification the claimants would be entitled to ask for the benefit upto the period of the award by the Collector."

(Underlined by us)

Though the underlined portion of the said observation of the Bombay High Court supports the contention of Sri Basavarya, we find it difficult to see how that underlined portion of the observation can stand along with the un-underlined portion of the said observation, which says that the sub-section cannot have any application to the situation where possession has been taken by the acquiring authority even before the issue of the Notification under Sub-section (1) of Section 4 of the Act. If the said un-underlined portion has to stand, the underlined portion of the observation cannot stand, in that, there would be a contradiction between the two portions of the observation. The Bombay High Court, before making the observation underlined by us, has adverted to the

benefits sought to be conferred on the claimants, whose lands were acquired or to be acquired under the Act by various provisions of the Land Acquisition (Amendment) Act, 1984, and has held that there could be no reason as to why the benefit conferred under Sub-section (1 A) of Section 23 of the Act inserted by the Land Acquisition (Amendment) Act, 1984, should be denied to the claimants merely because the possession of their acquired lands had been taken prior to or before the date of publication of the Preliminary Notification under Sub-section (1) of Section 4 of the Act. With respect to their Lordships, who have rendered the Decision in Nanabhai Rathod case (supra), we are unable to agree with them that the amount awardable under Sub-section (1A) of Section 23 of the Act is awardable to the claimants of the lands, the possession of which had been taken even before the date of publication of the Preliminary Notification under Sub-section (1) of Section 4 of the Act. When the unequivocal language in which Sub-section (1A) of Section 23 of the Act is couched, gives no scope for awarding the amount awardable thereunder for the period lying between the date of the publication of the Preliminary Notification u/s 4(1) and the date of the award, if the date of taking possession of the land falls on a date earlier to the date of the award, we are unable to comprehend how we can construe Sub-section (1 A) of Section 23 of the Act to bring about such result ignoring the fundamental rule of statutory construction that the meaning of a statutory provision, when is clear, plain and unambiguous, no construction should be placed upon it on the supposed Legislative intent with which it was made. Moreover, if we have to hold as contended by Sri Basavarya that the amount awardable under Sub-section (1A) of Section 23 of the Act is awardable for the period or interval occurring between the date of publication of the Preliminary Notification under Sub-section (1) of Section 4 and the date of the award of the Collector where the date of taking possession of the land has occurred prior to the date of publication of the Preliminary Notification under Sub-section (1) of Section 4, we have to ignore the words "or the date of taking possession of the land, whichever is earlier" occurring towards the end of the sub-section. But, we cannot ignore those words found in the sub-section in understanding the meaning of the sub-section because the words employed in a statutory provision cannot be regarded to be superfluous or otiose, contrary to the well recognised cannon of statutory construction that no Legislature can ordinarily be taken to have used the words without a purpose.

5. However, it was also contended by Sri Basavarya that even if the language employed in Sub-section (1A) of Section 23 of the Act did not empower the Court to award the amount awardable thereunder to a land, the possession of which had been taken prior to the date of publication of the Preliminary Notification, this Court should, taking note of the fact that Sub-section (1A) was intended to confer an additional benefit to the claimant respecting his acquired land, construe the provision in Sub-section (1A) as not to deny its benefit to any case of the land acquired under the Act, even if such construction may amount to modification of the language employed therein. In that regard, he invited our

attention to the observations of the Supreme Court in *UNION OF INDIA v. FILIP TIAGO DE GAMA OF VEDEM VASCO DE GAMA* AIR 1990 SC 981 : ILR 1990 Kar 3278, which reads thus:

"17. Section 30(2) provides that amended provisions of Section 23(2) shall apply, and shall be deemed to, any award made by the Collector or Court between 30 April, 1982 and 24 September, 1984, or to an appellate order therefrom passed by the High Court or Supreme Court. The purpose of these provisions seems to be that the awards made in that interregnum must get higher solatium inasmuch as to awards made subsequent to 24 September, 1984. Perhaps it was thought that awards made after the commencement of the Amending Act 68 of 1984 would be taken care of by the amended Section 23(2). The case like the present one seems to have escaped attention by innocent lack of due care in drafting. The result would be an obvious anomaly as will be indicated presently. If there is obvious anomaly in the application of law the Court would shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the Court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislature. That could be done, if necessary even by modification of the language used (See: *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, The legislators do not always deal with specific controversies which the Courts decide. They incorporate general purpose behind the statutory words and it is for the Court to decide specific cases. If a given case is well within the general purpose of the legislature but not within the literal meaning of the statute, the Court must strike the balance."

It is true that if a given case is well within the general purpose of the Legislature, but not within the literal meaning of the statute, then the Court must strike the balance by reading the provision of the statute as would give effect to the general purpose of the Legislature, as has been pointed out by the Supreme Court in the aforesaid observations. But, when we look at the period for which the amount awardable under Sub-section (1A) of Section 23 of the Act has to be awarded, it is the period which occurs between the date on which a proposal for acquisition of the land is made, and the date on which such proposal becomes conclusive by making an Award or by taking possession of the land, whichever is earlier and for which period no amount of interest is awardable under the Act on the amount of compensation to be awarded for the land. The period which may lie between the date of publication of the Preliminary Notification proposing acquisition of such land and date of the Award of the Collector, by which the proposal for acquisition is concluded, or the date of taking possession of such, from the point of view of the claimants of those lands, would be a period of suspense or waiting for them and will result in non-effective utilisation of such lands in that period inasmuch as compensation for improvements effected for land in that period is not payable under the Act. It is obvious that the purpose of Sub-section (1A) of Section 23 is to compensate the claimants for the said period of suspense or waiting and non-effective utilisation of the land, with the amount

of 12% per annum on the market value of the land. When the possession of the land to be acquired pursuant to the Preliminary Notification is taken already and interest on such compensation becomes payable from the date of taking possession, question of the period of suspense or waiting of the claimants, for which they are to be compensated, cannot arise. When the matter is looked at in this light, non-payment of the amount awardable under Sub-section (1A) of Section 23 in respect of a land for the period between the date of publication of the Preliminary Notification and the date of making of the award, the clear meaning of that sub-section cannot in any way defeat the purpose of that sub-section. Hence, question of construing Sub-section (1 A) of Section 23, conforming to the observations of the Supreme Court found in Vasco De Gama's case (supra) cannot arise. Thus, the contention of Sri Basavarya advanced with reference to the observation found in Vasco De Gama's case² (supra) does not merit acceptance.

6. For the foregoing reasons, we hold that the amount awardable under Sub-section (1A) of Section 23 of the Land Acquisition Act, 1894, is not awardable for the land, the possession of which had been taken by the Deputy Commissioner (Land Acquisition Officer) prior to the Preliminary Notification u/s 4(1) of the Act published in the Gazette respecting such land, and decide the question under consideration accordingly.

7. In the result, we allow this Appeal partly and set aside the award of the Court below insofar as it grants thereunder the additional benefits u/s 23(1A) of the Act to the claimants. No costs.