
(1986) 02 KAR CK 0020
In the Karnataka High Court
Case No : Writ Appeal No. 50 of 1982

Channarajamanni

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-02-1986

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g), 226
Land Acquisition Act, 1894 — Section 18, 34

Citation : AIR 1988 Kar 49

Hon'ble Judges : M. Ramakrishna, J;M. Rama Jois, J

Bench : Division Bench

Advocate : C.G. Gopalaswamy, for the Appellant; M.S. Padmarajaiah, Central Govt. Standing Counsel and S.V. Jagannath, Govt. Pleader, for the Respondent

Judgement

Rama Jois, J.—This writ appeal is presented against the order of the learned single Judge, dismissing the writ petition presented by the appellant, in which she had prayed for the issue of a writ in the nature of mandamus, directing the respondents to pay interest for the period commencing from 31st March, 1974 to 10th April, 1975 in terms of S. 34 of the Land Acquisition Act.

2. The facts of the case in brief are as follows :-

The property belonging to one Devaraja Urs, the husband of the appellant was acquired by the State for locating the National Tuberculosis Institute, Sankey Road, Bangalore. An award fixing the amount of compensation payable to the appellant's husband was made. The award has been accepted by the appellant. The grievance of the appellant was that interest at the rate of 5 per cent per annum required to be given under S. 34 of the Act was not given by the Government. A representation was made by the appellant to the respondent in this behalf. The Assistant Commissioner, by his letter dated 23-2-1978 vide Exhibit "D" replied thus : -

"the applicant is hereby informed that there is no provision for payment of

interest when he has already received annual rent from the acquiring body."

It is not in dispute that the rents were paid from 9-7-1959 to 31-3-1974 to the appellant. It is not in dispute that the possession of the property was taken on 31st March, 1974 and with effect from the said date, no rent was paid. It is also not in dispute that the amount of compensation was deposited only on 10th April, 1975. So, the claim of the appellant in the writ petition was that she should have been paid interest at the rate fixed under S. 34 of the Act on the amount of compensation for the period commencing from 31-3-1974 to 10-4-1975. The learned single Judge has recorded a finding that the appellant was entitled to interest under S. 34 of the Act for the said period and the learned Judge also observed that the Government should be fair and set an example to the citizens, by paying the interest on the amount of compensation for the period commencing from 31-3- 1974 to 10-4-1975, without forcing the appellant to resort to legal remedies. The writ petition was however dismissed holding that the only course open for the appellant for enforcing the payment of interest was to seek a reference under S. 18 of the Act. Questioning the correctness of the said order, the appellant has presented this appeal.

3. The contention of the appellant is that the view taken by the learned single Judge that the appellant has to claim the interest by getting a reference under S. 18 of the Act was erroneous. In our opinion, the contention of the appellant is well founded. Section 18 of the Act provides for seeking a reference, in a case, where the party concerned does not accept the compensation awarded by the Land Acquisition Officer. The claim of the appellant involved in this appeal is not higher compensation but arises consequent on acceptance of the compensation awarded. Therefore, the subject matter of this appeal could not be a subject-matter of reference under S. 18 of the Act.

4. The claim of the appellant is based upon the plain language of S. 34 of the Act. It reads :-

"When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six percent per annum from the time of so taking possession until it shall have been so paid or deposited."

The wording of the section is very clear. The Government is required to pay interest at the rate of 6 per cent per annum on the compensation awarded, from the date of taking possession till the date of making deposit of the compensation amount. In the present case, the possession of the property was taken on 31-3-1974, but the deposit was made on 10-4-1975. Therefore, for that period, the appellant was entitled to interest at the rate of 5 per cent which was the rate prevailing at the relevant point of time. The question is also covered by a Division Bench decision of this Court in *Lucy Mary Agnes Saladanha v. The Land Acquisition Officer*, AIR 1965 Mys 72. In the said case which arose out of a suit in respect of a claim of interest under S. 34 of the Act, this Court held that the

appellant therein was entitled to a decree for payment of interest on the amount of compensation in terms of S. 34 of the Act for the period between the date of taking possession of the land acquired and the date of depositing the amount of compensation.

5. The learned Counsel for the respondent, however submitted that this being a money claim, a petition under Art. 226 of the Constitution is not maintainable. It is well settled that even money relief can be granted in a petition under Art. 226 of the Constitution, provided, it arises out of a statutory obligation and not out of a contract (See *Burmah Construction Co. Vs. The State of Orissa and Others*, In the present case, the claim of the appellant is based on S. 34 of the Land Acquisition Act and there is no dispute at all on the facts either regarding the amount of compensation awarded or regarding the date on which the possession of the property was taken or regarding the date on which the amount of compensation was deposited. When the claim is clear, and flows from a statutory provision it can be enforced through an order made under Art. 226 and there is no justification to compel the party to file a civil suit. Moreover, at the relevant point of time, the right to property was also a fundamental right under Cl. (f) of Art. 19(I) of the Constitution and, therefore, withholding of money due to the appellant in terms of S. 34 of the Act amounted to deprivation of the property due to the appellant and consequently violation of the fundamental right guaranteed under Art. 19(I)(f) of the Constitution, and the right could be enforced under Art. 226 of the Constitution.

6. In the result, we make the following :-

ORDER

(i) The writ appeal is allowed.

(ii) In reversal of the order made by the learned single Judge writ petition No. 1771 of 1980 is allowed.

(iii) A direction shall issue to the respondents to calculate the interest payable in terms of S. 34 of the Act on the amount of compensation awarded in the concerned land acquisition case for the period commencing from 31st March, 1974 to 10th April, 1974, in accordance with law.

(iv) Time for compliance: three months.

(v) No costs as the counsel for appellant did not appear and argue the matter.

7. Prepare a carbon copy of this order and furnish the same to the learned counsel for respondents 2 and 4.

8. Appeal allowed.