

(1975) 02 KAR CK 0003
In the Karnataka High Court
Case No : Misc. First Appeal No. 159 of 1975

D.M. Jawarilal and Others

APPELLANT

Vs

Special Land Acquisition Officer, CITB, Bangalore

RESPONDENT

Date of Decision : 28-02-1975

Acts Referred:

Land Acquisition Act, 1894 — Section 26 (1), 54, 9 (2)
Mysore Court-fees and Suits Valuation Act, 1958 — Section 19

Citation : AIR 1975 Kar 129 : (1975) 1 KarLJ 296

Hon'ble Judges : K. Bhimaiah, J;D.M. Chandrashekhar, J;B. Venkataswami, J

Bench : Full Bench

Advocate : S. Rangaraj, for the Appellant;

Judgement

1. A Division Bench of this Court has referred the following question of law for the opinion of the Full Bench:

"In an appeal u/s 54 of the Land Acquisition Act, seeking for enhancement of the compensation, should the amount of statutory allowance proportionate to the amount of such enhancement, be included in the value of the subject-matter of appeal for purpose of court-fee?"

2. We have heard the arguments of Mr. S. Rangaraj, learned Counsel for the appellants-claimants, and of the learned Additional Government Advocate who has appeared in pursuance of a notice issued u/s 19 of the Karnataka Court-Fees and Suits Valuation Act, 1958 (hereinafter referred to as the Court-fees Act).

3. Mr. Rangaraj contended that in an appeal u/s 54 of the Land Acquisition Act (hereinafter referred to as the L. A. Act), seeking for enhancement of compensation the amount of statutory allowance proportionate to the enhancement of compensation sought for in the appeal, need not be included in the value of the subject-matter of appeal for the purpose of court-fee payable on the memorandum of appeal, while the learned Additional Government Advocate contended that such amount should be included for computation of such court-fee

4. In order to appreciate the rival contentions of learned Counsel, it is necessary to set out the relevant provisions of the L. A. Act and the Court-fees Act,

5. Sub-section (2) of Section 9 of the L. A. Act provides, inter alia, that the notice issued to persons interested in the land acquired, shall require them to state the amount and particulars of their claim to compensation.

6. The relevant portions of Section 23 of the L. A. Act read:--

"23. Matters to be considered in determining compensation. -- (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

First, the market-value of the land at the date of the publication of the notification u/s 4, Sub-section (1);

(2) 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."

Sub-section (1) of Section 26 of the L. A. Act reads::

"26- Form of awards -- (1) Every award under this Part shall be in writing signed by the Judge and shall specify the amount awarded under clause first of Sub-section (1) of Section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts,"

Section 48 of the Court-fees Act reads:--

"48. Fee on memorandum of appeal against order relating to compensation:-- The fee payable under this Act on a memorandum of appeal against a decision or an award or an 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 applicant,"

The main part of Section 49 of the Court-fees Act reads:--

"49. Appeals.-- The fee payable in an appeal shall be the same as fee that would be payable in the Court of first instance on the subject matter of the appeal:"

7. The answer to the question whether in an appeal u/s 54 of the L. A. Act seeking for enhancement of the compensation, the amount of statutory allowance proportionate to such enhancement, should be included for the purpose of court-fee, depends upon the meaning of the words "the amount awarded" and "the amount claimed" occurring in Section 48 of the Court-fees Act. If the words "amount awarded" mean not only what has been awarded under Sub-section (1) of Section 23 of the L. A. Act but also the amount awarded under Sub-section (2) of that Section and likewise if the words "amount claimed" include not only what is payable u/s 23(1) of the L. A. Act, but also solatium,

then it is obvious that the appellant has to pay Court-fee on solatium proportionate to the enhancement of compensation claimed in the appeal. On the other hand if the words "amount awarded" mean only what has been awarded u/s 23(i) of the L. A. Act and likewise if the words "amount claimed" mean only what is payable u/s 23(1) of the L. A. Act; the appellant need not pay court-fee on solatium proportionate to the enhancement of compensation claimed in the appeal.

8. The meanings of the expressions "compensation" and "market value", in the L. A. Act, have been stated thus by the Supreme Court in *Union of India (UOI) Vs. Shri Ram Mehar and Others*,

"The additional amount of 15% certainly forms part of the amount of compensation because u/s 23 the compensation is to consist of what is provided For in Sub-section (1) and the additional amount of 15% on the market value of the land acquired. But compensation and market value are distinct expressions and have been used as such in the Acquisition Act..... The key to the meaning of the word compensation "is to be found in Section 23(1) and consists of (a) the market value of the land and (b) the sum of 15% on such market value which is stated to be the consideration for compulsory nature of the acquisition. Market value therefore is only component in the determination of the amount of compensation."

9. From the above passage, it is clear that solatium is a part of compensation for compulsory acquisition of land under the L. A. Act.

10. As to the meaning of expression "amount-awarded" occurring in Section 48 of the Andhra Pradesh Court-fees and Suits Valuation Act, 1956 (hereinafter referred to as the Andhra Court-fees Act) which is in pari materia with Section 48 of the Karnataka Court-fees Act, Jaganmohan Reddy, C.J. who delivered the leading opinion of the Full Bench in *Kesireddy Appala Swamy and Others Vs. Special Tahsildar, Land Acquisition Officer, Central Railway, Vijayawada*, that while solatium u/s 23(2) of L. A. Act may form part of 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 of the L. A. Act though it (the Court) is required u/s 23(2) of the L. A. Act to add 15% on the amount of the market-value awarded by it, which will be in the nature of a direction to the Collector to pay that amount just in the same way as he is directed to pay interest. As regards the expression "amount claimed". His Lordship observed that under the provisions of the L. A. Act what is required to be claimed by a person interested in the land acquired, is compensation for his interest in land, that there is no specific mention either in Section 9 or Section 11 of the L. A. Act that he should claim solatium or interest and that since u/s 15 of the L. A. Act the Collector is required to be guided by the provisions of Sections 23 and 24 of the L. A. Act he has to pay solatium even though it is not claimed by such person.

11. In the above line of reasoning, Jaganmohan Reddy C. J. came to the

conclusion that since solatium u/s 23(2) at the L. A. Act forms part of neither the claim or the award no court-fee is payable on the amount of solatium proportionate to the enhancement claimed in an appeal u/s 54 of the L. A. Act.

12. In Abdul Sultan Hussainbhai Velji Vs. Collector of Ahmednagar, a Division Bench of Bombay High Court also took the view that the words "amount awarded" occurring in Sub-section (1) of Section 7 of the Bombay Court-fees Act, 1959, (which is in pari materia with Section 48 of the Karnataka Court-fees Act) mean the amount awarded u/s 23(1) of the L. A. Act and not the whole amount of compensation. The reasoning of their Lordships for coming to this conclusion, is as follows: Sub-section (1) of Section 25 of L. A. Act provides, inter alia, that when a person having interest in Land has made a claim to compensation the amount awarded to him by the Court shall not exceed the amount claimed by him pursuant to a notice given to him u/s 9 of the L. A. Act. It is impossible to think that the amount claimed by him should include solatium which the Court is under a statutory obligation to give him. There may be a person who claims the exact value of the land acquired. If the Collector finds that the amount claimed is the exact value of such land, he is bound to award solatium in addition to such value of land. There is nothing in the L. A. Act which requires such person to claim solatium before the Collector or the Court. Hence he is not required to claim solatium in the memorandum of appeal in an appeal u/s 54 of the L. A. Act. At any rate, under the L. A. Act, it is possible to read the words "amount awarded" to mean the amount awarded u/s 23(1) of the L. A. Act and that since the Court-fees Act is a fiscal statute, the words, "amounts awarded" should be construed in favour of the subject and the appellant should not be called upon to pay court-fee on solatium proportionate to the compensation claimed in the appeal u/s 54 of the L. A. Act.

13. On the other hand, in Chandulal Pitamberadas Vs. Special Lands Acquisition Officer, Eastern Railways, Ahmedabad, N. V. Vakil. J., took the view that the expressions "the amount awarded" and "the amount claimed" occurring in Section 7(1) of the Bombay Court-Fees Act should be understood as the amount of compensation awarded and the amount of compensation claimed respectively having regard to the context in which those two expressions are used. His Lordship observed that having regard to the fact that law makes the amount of solatium also a part of compensation to be awarded when the person having interest in the acquired land make a claim for an increased amount of compensation, solatium becomes a part of his claim unless he were to state in the memorandum of appeal that he did not claim any amount of solatium that he may become entitled on the increase in the amount that may be awarded u/s 23(1) of the L. A. Act and that so long as solatium is not specifically stated to have been given up, it would remain a part of the claim before the appellate Court. In that view, His Lordship held that court-fee payable on the memorandum of appeal in an appeal u/s 54 of the L. A. Act should be computed on the difference between the amount of compensation awarded and the amount of compensation claimed in the appeal including the amount of solatium

proportionate to the enhanced amount claimed in the appeal.

14. Solatium is in our opinion, merely an adjunct to the main amount of compensation payable u/s 23(1) of the L. A. Act and the claim to solatium stands or falls with the decision on the main claim. As pointed out by Allahabad High Court in Muhammad Sajjad Ali Khan and Others Vs. Secy. of State, awarding the amount as solatium, is a statutory duty and therefore, it (solatium) need not be claimed.

15. In State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others, the Supreme Court considered the question whether in an appeal an appellant is bound to pay court-fee on the amount of pendente lite interest decreed in a suit. In holding that he need not pay court-fee on such interest, this is what the Supreme Court said at page 459:

"On what principle are these amounts not treated as forming part of the value of the subject-matter in dispute in appeal? Such value is to be determined on the substantial allegation in the plaint or from the pleas in the memorandum of appeal with respect to the point in dispute between the parties and sought to be determined by the Court. Such are necessarily the points affecting the rights of the parties sought to be adjudicated by the Court. Claims not based on any asserted right but dependent on the decision of the disputed right and reliefs in regard to which are in the discretion of the Court do not come within the purview of the expression "subject-matter in dispute in plaint or memo of appeal".

16. Though solatium, unlike interest, is not in the discretion of the Court and the Court is bound to award it (solatium), the main reasoning of the Supreme Court, namely, that claims not based on any asserted right but dependent on the decision of disputed right, do not come within the purview of the expression "subject-matter of dispute in the memorandum of appeal", applies to the claim for solatium in an appeal u/s 54 of the L. A. Act.

17. In Kesireddy Appala Swamy and Others Vs. Special Tahsildar, Land Acquisition Officer, Central Railway, Vijayawada, Parthasarathi, J., in his separate opinion concurring with the leading opinion delivered by Jaganmohan Reddy, C. J., gave the following additional reason for the conclusion that no court-fee is payable on solatium proportionate to the enhanced amount claimed in an appeal u/s 54 of the L. A. Act: Section 49 of the Andhra Court-fees Act (which corresponds to Section 49 of the Karnataka Court-fees Act) which is a general provision applicable to appeals, provides for payment of court-fee in respect of the "subject-matter" of appeals and Section 48 of that Act (which corresponds to Section 48 of the Karnataka Court-fees Act) which is intended for a special category of appeals, (namely, appeals against orders, awards and decisions relating to compensation) provides that court-fee is payable on the difference between the amount awarded and the amount claimed. If the words "the amount awarded" should include the entire amount payable to the owner of the land acquired and takes in solatium also, and likewise the words "the amount

claimed" include solatium also, then the entire subject-matter of the appeal becomes the basis of valuation for court-fee and there is no need for the special provision in Section 48 and that Section would be redundant. A construction that leads to the conclusion that there is a superfluity of provisions in a legislative enactment, should be avoided. When the legislature enacts a particular provision in a statute, the presumption is that it is providing for something other than that in the general provision. The only way in which Section 48 of the Andhra Court-fees Act (which corresponds to Section 48 of the Karnataka Court-fees Act) can be interpreted as not to render that Section superfluous, would be to construe the expressions "the amount awarded" and "the amount claimed" as not including solatium.

18. We are in respectful agreement with the above line of reasoning of Parthasarathi, J.

19. For the above reasons, the view taken by the Full Bench of Andhra Pradesh High Court and the Division Bench of Bombay High Court, should, in our opinion, be preferred to the view taken by Gujarat High Court.

20. The answer to the question referred to the Full Bench, should, in our opinion, be as follows:--

"In an appeal u/s 54 of the Land Acquisition Act, seeking for enhancement of the compensation, the amount of statutory allowance proportionate to the amount of such enhancement, need not be included for the purpose of court-fee payable u/s 48 of the Karnataka Court-fees and Suits Valuation Act, 1958."

21. Reference answered in the negative.