(1996) 06 KAR CK 0046

In the Karnataka High Court

Case No : Miscellaneous Second Appeal No. 83 of 1996

Erappa APPELLANT

Vs

State Through Special Land Acquisition Officer, Upper Krishna Project, Aurad, Gulbarga District RESPONDENT

Date of Decision : 26-06-1996

Acts Referred:
Land Acquisition Act, 1894 — Section 23(1A)

Citation : (1997) 2 KarLJ 534

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. This second appeal under Section 54(2) of the Land Acquisition Act arises from the judgment and decree dated 11-1-1996 delivered by the Principal District Judge, Gulbarga, in Land Acquisition First Appeal No. 90 of 1994. The learned District Judge vide his judgment and decree dated 11-1-1996 dismissed the appeal filed by the State. The lower Appellate Court has also rejected the contention of the claimant respondent''s Counsel that compensation which has been awarded to him was too low and did not allow him to raise any point on the ground that he has not filed any cross-objections.

2. The notification under Section 4 of the Land Acquisition Act was published on 14-12-1987. The petitioner''s land was acquired and the Land Acquisition Officer awarded compensation at the rate of Rs. 3,000/- per acre. From the award of the Land Acquisition Officer the claimants moved an application for reference under Section 18 of the Land Acquisition Act (for short ''the Act''). On reference being made the Civil Judge modified the award by providing that the market value of the land acquired shall be determined at the rate of Rs. 12,500/- per acre. The Civil Judge further held that as the possession of the land had been taken on 5-2-1987 is an undisputed fact, before the publication of notification under Section 4 of the Act, which notification was published on 14-12-1987, the claimant was not entitled to claim the additional compensation at the rate of 12 per cent per annum on the market value for the period specified in Section 23(1-A) of the Act. Feeling aggrieved by the decision of the Civil Judge dated 29th

January, 1994, the respondent i.e. the State or the Special Land Acquisition Officer preferred the appeal.

3. The claimant did not file any cross appeal or cross-objection and as mentioned earlier the learned District Judge while dismissing the appeal did not entertain the claim of the petitioner with reference to the question of compensation or additional compensation under Section 23(1-A) of the Act. The claimant having felt aggrieved by the order of the Civil Judge and that of the District Judge filed the Second appeal in this Court.

4. I have heard Sri S.P. Shankar learned Counsel for appellant and Smt. L.Y. Premavathi learned Counsel for respondent. Only one point has been raised by the learned Counsel for appellant. The learned Counsel for appellant contended that Section 23(1-A) read along with Section 23 provides what has to be awarded towards compensation and what statutory benefits have to be given to compensate the person whose land is acquired. The learned Counsel submitted that the statute provides when the land is acquired then it is the duty of the State to pay the compensation and confer other statutory benefits to which he is entitled under the law. The learned Counsel submitted that even if cross-objections or cross-appeal was not field that did not deter or debar his right to get or to be awarded the statutory benefit that Act provides to be conferred. He submitted that possession of the land had been taken on 5-2-1987. The notification under Section 4(1) of the Land Acquisition Act had been published on 14-12-1987. The learned Counsel urged that the claimant had been entitled to be awarded the additional amount at the rate of 12 per cent p.a. on the market value determined by the District Judge. He submitted that Section 30(b) of the Amending Act 68 of 1984 very clearly provides that in cases where acquisition proceedings commenced by issuance of notification after the commencement of Act 68 of 1984, the petitioner would be entitled to additional amount of compensation. He clarified his contention by submitting that once the proceedings have commenced after amending the Act came in force then while giving the award the authorities and LAO, Court etc. have to award along with compensation the additional sum of 12% p.a. on the market value under provision of Section 23(1-A) of the Act. He submitted that therefore his client would have been entitled to additional compensation either from the date of taking possession i.e. from 5-2-1987 in all equity as the claimant had been deprived of his enjoyment of land from that date till the date of award, or at least from the date of notification dated 14-12-1987 till the date of giving of the award by the Land Acquisition Officer i.e. 11-8-1989. The award in this case had been given on 11-8-1989.

5. The contention of the learned Counsel on behalf of appellant has been hotly contested by the learned Government Counsel. The learned Government Counsel Smt. L.Y. Premavathi contended that when possession had been taken earlier to the notification under Section 4 the claimant had rightly been held not entitled to additional benefits under Section 23(1-A) of the Act and in support of her

contention the learned Government Pleader relied on the decision of this Court in Assistant Commissioner-cum-Land Acquisition Officer v Mallaiah, 1991(4) Kar. L.J. 101. I have applied my mind to the contention made by the learned Counsel for both parties.

Section 23(1-A) reads as under:

"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 under Section 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". The use of expression ''the Court shall in every case award'' per se shows that a duty has been fastened or an obligation has been put on the Court to award the additional amount at the rate of 12 per centum as mentioned in Section 23(1-A) of the Act. The powers of Appellate Court are same as that of original Court. As the powers are same the same obligation and duties are also cast in the case of first Appellate Court as that of original Court. It leads to say that firstly it is the duty of the Court of reference to have awarded the amount under Section 23(1-A). If it appears from the order of the Civil Judge that it has failed to award what is legally due it is the duty of the first Appellate Court to rectify the order so that no injustice is done to the person whose land has been acquired and he is not being deprived of the additional compensation which the law ordains to be awarded. In this view of the matter, in my opinion the lower Appellate Court erred in law in not applying its mind to this aspect of the matter though effort was made to raise the point in the course of arguments by the Counsel for the claimant before the first Appellate Court. The lower Appellate Court is too technical in saying that no cross-objections or cross-appeal has been filed. This is no excuse. If that question of illegal failure of Court-below to perform legal obligation was raised that in the circumstances of the case it was the duty of the Trial Court to award additional sum 12% p.a. of market value under Section 23(1-A) and the Civil Judge failed illegally and acted illegally in not awarding it, it was the duty of the first Appellate Court to consider that question and decide it.

6. In this case, because the notification has been issued subsequent to the amendment, i.e. subsequent to the date of enforcement of the amendment Act, the amended law was applicable including sub-section (1-A) of Section 23 of the Act. The notification under Section 4 of the Land Acquisition Act had been issued on 14th December, 1987. Therefore the law as after amendment will be applicable. In view of this amendment the Court was required to consider and award what is provided for under sub-section (1-A) of Section 23 of the Act. That it is the duty to award additional amount thereunder to the claimant or to the person whose land has been acquired. In the present case, in my opinion the claimant has been entitled to the statutory benefit that has been provided under Section 23(1-A) of the Act i.e. 12 per centum per annum on the market value for

the period specifically specified in the sub-section (1-A) of Section 23 of the

Act by use of expression for the period commencing on and from the date of publication of notification under Section 4(1) in respect of such land to the date of award of the Collector of the date of taking possession of the land whichever is earlier. The explanation added to sub-section (1) is not very material for the purpose of this case. The legislature, legislating the law clearly indicated its intention that amount calculated at the rate of 12 per centum per annum has to be awarded on the market value and for which period, it has specified that period by use of expression quoted above. The earlier expression indicates, the date from which the period is to be computed or to be counted and the latter expression ''to'' the specified date indicates the last day i.e. the date upto which that period is to run i.e. on which date that period is to come to an end i.e. last date of period. The period in between these two dates is relevant under the sub-section for which period the person will be awarded 12 per centum per annum on the market value. The latter period i.e. the ending of period i.e. last date, has been divided into two or has been referred to with reference to either of two incidents, i.e. either the date of award or the date of possession. Here a reading of ''whichever is earlier of the two i.e. the date of award or date of taking possession. The seriatim in which the two dates i.e. of publication and awards have been put in the section indicates that it refers to the date subsequent to the date of commencement of period which is the date of notification under Section 4(1) of the Act. That as regards the date of commencement of the period there is no alternative provided. It is very definitely and clearly provided that the commencement date of the period for which the amount is to be awarded is to be the date of publication of notification under Section 4 of the Act and the last date or ending dates may be one of the two mentioned lateron viz., the date of taking possession or date of award and the further specified it by expression "whichever is earlier". The expression ''whichever is earlier'' only controls the date up to which the period is to be counted i.e. last date of the period. The last date of the period may be one of the two dates (mentioned later) and that one whichever is earlier viz., either the date of taking possession or of passing of award.

7. The learned Counsel for the appellant contended that in this case the claimant had surrendered the land on 5-2-1987 voluntarily i.e. the date before the notification and so he has been entitled in equity to get compensation for the land of which he had been deprived from enjoyment though it might be earlier to the notification under Section 4 of the Act. I am unable to accept this contention. In the case of Mir Fazeelath Hussain and Others v Special Deputy Collector, Land Acquisition, Hyderabad, AIR 1995 SC 1424, the argument of the learned Counsel in that case was that higher rate of interest may be ordered to do equity between the parties. The Bench of three Judges of the Supreme Court rejected that contention. Their Lordships observed:

"It has also been submitted by Sri Madhava Reddy that higher rate of interest may be ordered to do equity between the parties. We are unable to concede, as, had the present been a case of non-awarding of any interest, we would have done so, because, interest in such cases may become payable on equity for it is meant to make good the loss suffered by a person due to delayed payment. This view has been reiterated recently by this Court in Kalimpong Land and Building Limited v State of West Bengal, JT (1994)6 SC 102, in which payment of interest was ordered, even when acquisition was under Requisitioning and Acquisition of Immovable Property Act, 1952, which statute has made no specific provision, unlike the Act at hand, for payment of interest. But equity has no role when the question relates to rate of interest. Whether the rate of interest should be 6% or 9% is not a matter which would require invocation of Court''s equitable jurisdiction. The same has to be governed by statutory provision.... But 6% has been the rate for a very long period insofar as the Act is concerned as the enhancement came only in 1984 whereas the Act is of 1894. So, we are not satisfied if equity demands granting of relief in question".

After having made reference to the above mentioned case of Mir Fazeelath Hussain, their Lordships of the Supreme Court in the case of State of Himachal Pradesh and Others v Dharam Das, AIR 1996 SC 127, pleased to observe-

"It is settled legal position that when the statute deals with payment of interest to the claimants either under Section 31 or Section 28 of the Act, the Court has no power to award interest in a manner other than the one in which the statute prescribes payment............................. A part from these two provisions, there is no other provision under the Act empowering the Court to award interest on equitable grounds, in addition to statutory rates of interest prescribed under the Act. Equitable consideration has no role to play in determination of the compensation and the manner of awarding interest as enjoined under the Act. The Act is to be administered in the manner laid in the Act and in no other way. As a concomitance, the equity jurisdiction of the Court is taken out and the Act enjoins the Court to grant interest as per the statutory rates specified in the Act".

These principles of law with reference to the rate of interest are equally applicable with same force in the matter of awarding compensation on the market value or additional amount under Section 23(1-A) of the Act. It is also one of the well-settled principle of law, that when power is given to the Court for being exercised and the manners prescribed, for exercise of that power had been subjected to conditions then the power conferred has to be exercised only in accordance with the requirements of law condition and manner prescribed and not otherwise. As observed by the Supreme Court in the case of Dharam Das, supra, equity jurisdiction is taken out in such cases where the law prescribes limits. Under Section 23(1-A) of the Act the Legislature provided that, Courts shall also determine the additional amount for the period specified in the Act which is to commence on and from the date of notification under Section 4 of the Land Acquisition Act and that period has to come to an end. It has been indicated by expression ''to the date of award or date of taking possession whichever is earlier'' means, so far as the ending period is concerned, if there are two dates i.e. date of taking possession and date of award are different, then in that case the earlier date is to be preferred as the date on which the period for which the amount is to be granted has to come to an end. But so far as the date of commencement of the period is concerned the reading of the section per se reveals it provides no alternative. In this view of the matter, I am of the opinion that the claimant-appellant has been entitled to compensation from the date of notification i.e. 14-12-1987 to the date of award i.e. the date on which the notice of juring the award was issued. The award has been given so that the notice under Section 12 of the Act was issued to the claimant. There can be no doubt about this position.

8. As regards the next contention of the learned Counsel for appellant that as the possession has been taken from the petitioner earlier to the issuance of notification under Section 4 of the Act he had not handed over possession gratitiously and so he was entitled for compensation for that period i.e. from the date of taking possession to the date of award. In my opinion so far as the land acquisition proceedings are concerned the petitioner in this proceedings will not be entitled to claim but his claim may lie separately. The Land Acquisition Act will apply to payment of compensation in the proceedings for the period commencing from issuance of notification to the date of culmination of the acquisition proceedings. But so far as the possession taken earlier it may not control the operation, because it does not provide any remedy for such situation to petitioner under the Act. When I so observe I find support, from the decision of the Supreme Court in Special Tahsildar (Land Acquisition), P.W.D. Scheme, Vijayawada v M.A. Jabbar, AIR 1995 SC 762, for my view that the petitioner is entitled to the compensation from the date of notification till the date of award only. In this case their Lordships have observed -

"In other words, the owner of the land who has been deprived of the enjoyment of the land by having been parted with possession, the Act intended that the owner be compensated by awarding an additional amount calculated at the rate of 12 per centum per annum on the enhanced market value for the period between the date of notification and the date of award or date of taking possession of the land whichever is earlier. Admittedly, possession having already been taken on February 15, 1965, before publication of the notification under Section 4(1) on March 6, 1980, the award of additional amount for the period from March 6, 1980 to September 30, 1983, i.e. the date of making the award under Section 11 is perfectly correct. In addition to other statutory benefits, the owner also is entitled to the additional amount but to give award additional amount from February 15, 1965, i.e. from the date of taking possession, though apparently earlier in point of time mentioned in Section 23(1-A), in effect it amounts to giving retrospective effect to sub-section (1-A) to Section 23 under the Amendment Act 68 of 1984. Even though the Amendment Act was prospective and the transitory provision had only retro limited activity.

Therefore, we hold that the claimants would be entitled to additional amount of the enhanced market value of 12% per annum from the date of the publication of the notification under Section 4(1) till the date of the award, since possession had already been taken before the Amending Act has come into force".

9. The case relied by Sri S.P. Shankar viz.,Assistant Commissioner, Gadag Sub-Division, Gadag v Mathapathi Basavannewwa and Others, AIR 1995 SC 2492, no doubt supports his contention for compensation from the date of taking possession i.e. the taking of possession earlier to Section 4 notification to the date of award. But in this decision their Lordships of the Supreme Court had tried to apply the doctrine of equity and have observed whichever is earlier has to be construed in that background. The decisions in Dharam Das case, supra and Mir Fazeelath Hussain''s case, supra, have not been brought to their Lordship''s notice where the three Judges Bench decision of their own Court which laid down that, equitable consideration has no role to play for determination of compensation and the manner of awarding interest enjoined by the Act and that the Act is to be demonstrated in the manner laid in the Act and no other way. Accordingly, it appears that as the attention of their Lordships was not invited to the earlier decision in the case of M.A. Jabbar, supra, which is directly on the point in which case also possession had been taken long before the issuance of notification under Section 4 and in that case their Lordships observed that the person is entitled to additional amount only from the date of publication of notification until the date of award since possession has already been taken and as the decision in Mathapathi Basavannewwa''s case, supra, appears to be based on non-consideration of the earlier decisions of the Supreme Court referred to above, it appears to be proper to follow the decision which had been given earlier by the Supreme Court in M.A. Jabbar''s case, supra, which runs in consonance with the principle and dictum laid down by the three Judges Bench of their Lordships of Supreme Court. So in this case it has been held that the appellant is entitled to be awarded compensation at the rate of 12 per centum on the market value from the date of notification under Section 4 till the date of giving of the award i.e. issuance of notice of award under Section 12(2) of the Act.

10. The appeal is thus finally disposed off.

