(2016) 05 BOM CK 0005

In the Bombay High Court

Case No : First Appeal No. 45 of 2005

Gangadhar Nanaji Milmile APPELLANT

Vs

Western Coalfields Limited RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 17(3)
Land Acquisition Act, 1894 — Section 34

Citation : (2017) 2 ALLMR 275 : (2017) 1 BCR 816 : (2016) 5 MhLJ 634

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : Shri M.P. Khajanchi, Advocate, for the Appellant; Shri M.P. Khajanchi, Advocate, for the Appellant; Shri M.P. Khajanchi, Advocate, for the Appellant; Shri M.P. Khajanchi, Advocate, for the Appellant; Shri M.P. Khajanchi, Advocate, for the Appellant; Shri

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—In all these appeals preferred under Section 20 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 ("said Act" for short) the challenge is to the award passed by the Special Tribunal constituted under Section 14(2) of the said Act to determine the question of enhancement of compensation as provided under Section 73 of the said Act, to the extent it refuses to grant interest as contemplated by Section 34 of the Land Acquisition Act, which according to the appellants is made applicable by Circular dated 12th February, 1986 issued by the Government of India, Ministry of Energy, Department of Coal. In all these matters the claim is for the interest at the rate of nine per cent per annum for a initial period of one year from the date of taking possession of the land and at the rate of fifteen per cent per annum after expiry of period of one year till the amount of compensation is paid or deposited by the acquiring body.

2. The point for determination in all these appeals is as under:

Whether the appellant ? claimants are entitled to interest at the rate of nine percent per annum from the date of taking possession for a period of one year and at the rate of fifteen percent per annum for subsequent years, till the payment or deposit of the amount of compensation by the acquiring body, in terms of Section 34 of the Land Acquisition Act, 1894?

3. All these cases arise out of the acquisition under the Coal Bearing Areas (Acquisition and Development) Act, 1957 and not under the provisions of the Land Acquisition Act, 1894. The provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957 will have to be considered. Section 14 of the said Act deals with determining compensation and subsection (5) therein being relevant is reproduced below:

14. Method of determining compensation.-

(1) .....

(2) .....

(3) .....

(4) .....

(5) The Tribunal shall, after hearing the dispute, make an award determining the amount of compensation which appears to it to be just and specify the person or persons to whom the compensation shall be paid; and in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined insofar as the said provisions or any of them may be applicable.

The aforesaid provision operates only in cases where the compensation is not fixed by agreement between the parties. It is the Tribunal constituted under Section 14(2) which is required to determine the compensation payable for the acquisition of land. In the present case, there was no agreement between the parties, and hence, the compensation in all these cases has been determined by the Tribunal constituted under Section 14(2) of the said Act. The Tribunal rejected the claim for enhancement of compensation and that has not been challenged in all these cases.

4. The Tribunal has directed payment of interest in terms of Section 17(3) of the said Act. Section 17(3) of the said Act, which is reproduced below:

17. Payment of compensation .-

(1) ....

(2) ....

(3) When the amount of compensation is not paid or deposited as required by this section, the Central Government shall be liable to pay interest thereon at the

rate of five per centum per annum from the time the compensation became due until it shall have so paid or deposited.

In terms of the aforesaid provision, when the amount of compensation is not paid or deposited as required by the said provision, the Central Government is made liable to pay interest thereon at the rate of five per centum per annum from the time, the compensation became due until it shall have been so paid or deposited.

In the present case, the Tribunal has awarded interest at the rate of five per centum per annum in terms of Section 17(3) of the said Act.

5. In the present appeal, the claim is for payment of interest as contemplated under Section 34 of the Land Acquisition Act on the basis of the Circular dated 12th February, 1986 issued by the Government of India, Ministry of Energy, Department of Coal. The relevant provision is contained in para 3 of the said circular, which is reproduced below:

(3) Compensation :- The land acquisition authorities should streamline the procedure for payment of compensation in the light of the provisions of the recently amended Land Acquisition Act. It should be ensured that the compensation amount is disbursed to the real beneficiaries within a reasonable time. The Department of Rural Development will separately undertake case studies on the procedure being followed in regard to land acquisition, payment of compensation to affected persons, the time taken to complete the formalities etc. and suggest measures for further improvement in the system. It will be the responsibility of the concerned state governments to remove any encroachments noticed on land notified under the Land Acquisition Act.

In terms of the aforesaid provision the claimants are made entitled for payment of compensation in the light of the provisions of the recently amended Land Acquisition Act.

6. Prior to issuance of this circular, the relevant amendments introduced under the provisions of the Land Acquisition Act are contained in Section 23 (1A), 28 and 34 of the said Act. Subsection (1A) has been introduced under Section 23, whereas provisos are added below Section 28 and 34. By virtue of the circular dated 12th February, 1986, the provisions of Section 23(1A) and 28 of the Land Acquisition Act become applicable to the acquisition made under the provisions of the Coal Bearing Areas Act and the learned Single Judge of this Court has taken such a view in case of Chinnubai wd/o Durgaji Kamble and others v. Western Coalfields Ltd., Chandrapur reported in 2008(2) Mh. L.J. 706. The question is therefore, no longer res integra.

7. The claim in this case is not for the benefit under Sections 23(1A) and 28, but it is for interest in terms of amended provisions of Section 34 of the land Acquisition Act, which is reproduced below:

34. Payment of interest.-

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 [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

Section 17(3) of the Coal Bearing Areas Act covers the period which is also covered by Section 34 of the Land Acquisition. Subsection (3) of Section 17 makes entitlement to interest only at the rate of five per centum per annum from the time the compensation becomes due, until it shall have been so paid or deposited. If the provision of the Circular dated 12th February, 1986 is to be construed as making applicable the amended provision of Section 34 of the Land Acquisition Act to the cases of acquisition under the Coal Bearing Areas Act, it shall clearly run contrary to the provisions of subsection (3) of Section 17 of the said Act. The field is already occupied and unless the provision of Section 17 of the said Act is amended, the circular would not confer the benefit of nine per cent and fifteen per cent interest, as contemplated by Section 34 of the Land Acquisition Act. The claimants are therefore, not entitled to interest in terms of Section 34 of the Land Acquisition Act.

8. So far as the decision of the learned Single Judge of this Court in Chinnubai wd/o Durgaji Kamble cited supra is concerned, the basic facts giving rise to the entitlement of the claimants to interest under Section 34 are absent. It seems that this Court, in the said decision was concerned only with the grant of benefits under Section 23(1A) and Section 28 of the Land Acquisition Act. There is no independent discussion on the applicability of Section 34 of the Land Acquisition Act. In view of this, the simple direction by the Court for payment of interest at the rate of nine percent for the first year and fifteen percent interest per annum for the subsequent years cannot be construed to be the ratio of the decision on the interpretation or applicability. The decision is, therefore, not applicable to the facts of this case.

9. In the result, all these appeals are dismissed. No order as to costs.

