

(2005) 12 KAR CK 0009

In the Karnataka High Court

Case No : Miscellaneous First Appeal No's. 6327 to 6331, 6727, 6729 and 6732 of 2002

H.M.T. Watches Limited

APPELLANT

Vs

Gopala Bhatta and Another

RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Constitution of India, 1950 — Article 31, 31A
Land Acquisition Act, 1894 — Section 18 (1), 23 (1-A)

Citation : (2005) 12 KAR CK 0009

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : K. Sribhoomi Yesaswini, for Kasturi Associates, for the Appellant; N. Srinivasa and M.R. Shashidhar for Respondent 1 in M.F.A. No. 6727 of 2002, S. Mruthyunjaya, for Respondent 1 in M.F.A. No. 6329 of 2002 and for Respondent 1 (1-8) in M.F.A. Nos. 6327, 6330 and 6331 of 2002, K.R. Kumar, for Respondent 1 in M.F.A. No. 6729 of 2002 and for Respondent 1 in M.F.A. No. 6732 of 2002, B. Shivakumar, for Respondents 1 and 2 in M.F.A. No. 6328 of 2002 and V. Bychappa, Govt. Pleader for Respondent 2 in M.F.A. Nos. 6727, 6327, 6329 to 6331, 6729 and 6732 of 2002 and for Respondent 3 in M.F.A. No. 6328 of 2002, for the Respondent

Judgement

N.K. Patil, J.—These appeals are directed against the common judgment and award dated 29-1-2002 in LAC Nos. 31/89, 3/87, 125/81, 15/86, 129/81, 127/81, 11/86 and 9/86 respectively on the file of the Principal Civil Judge (Senior Division) and Chief Judicial Magistrate, Tumkur only insofar as it relates to awarding additional amount at 12% per annum on the enhanced market value u/s 23(1-A) of the Land Acquisition Act, 1894 from the date of preliminary notification to the date of award or the date of taking possession, whichever is earlier.

2. The appellant is the beneficiary of the acquisition initiated by the State for the purpose of Karnataka Industrial Areas Development Board vide preliminary notification dated 1-12-1977 issued by the Competent Authority. The Land

Acquisition Officer, by taking into consideration all the relevant factors, has passed the award. Not being satisfied with the said award, the claimants-respondents herein filed applications u/s 18(1) of the Land Acquisition Act for enhancement of compensation and requested the LAO to refer the matter to the jurisdictional Reference Court. The Reference Court, in turn, after appreciation of the oral and documentary evidence and placing reliance on Exs. P. 1 and P. 2. has determined the market value at Rs. 32,000/-per acre and Rs. 30,000/- per acre respectively and has also awarded benefits u/s 23(1-A) of the Land Acquisition Act. The grievance of the appellant is that the Reference Court has committed a gross error by awarding additional amount at 12% per annum on the enhanced market value u/s 23(1-A) from the date of preliminary notification to the date of award or the date of taking possession, whichever is earlier.

3. I have heard the learned Counsel for the appellant and the learned Government Pleader for the 2nd respondent-LAO.

4. After careful perusal of the judgment and award, I find that the Reference Court has committed a gross error by awarding additional amount at 12% per annum on the enhanced market value u/s 23(1-A) of the Land Acquisition Act from the date of preliminary notification to the date of award or the date of taking possession, whichever is earlier. It is significant to note that the lands in question have been notified and acquired for the benefit of the appellant vide preliminary notification dated 1-12-1977. The final notification has been issued on 23-2-1978 and the award has been passed on 24-6-1978. Section 23(1-A) of the Act came into effect from 24-9-1984. If the award is passed on or before 30-4-1982 before the commencement of this Act, the claimants are entitled to the benefits u/s 23(1-A) of the amended Land Acquisition Act. In the instant case, the award has been passed on 24-6-1978 and therefore, the additional amount of 12% per annum awarded by the Reference Court is not permissible. The learned Counsel for the appellant has submitted that in view of the judgment of the constitutional Bench of the Apex Court in the case of K.S. Paripoornan Vs. State of Kerala and Others, , the claimants are not entitled to the benefit u/s 23(1-A) of the amended Land Acquisition Act. There is some substance in the submission made by the learned Counsel for the appellant. It is worthwhile to extract the relevant portion of the judgment at paragraphs 78 and 79 which reads thus:

The choice of 30-4-1982, the date on which the original Bill was introduced in Parliament, cannot be said to be arbitrary and confining the ambit of retrospectivity so as to exclude awards made by Collector prior to 30-4-1982, would not render the provisions of Section 30(1) of the amending Act unconstitutional. The question of expanding the field of retrospectivity so as to cover all the awards made by the Collector prior to the commencement of the amending Act irrespective of the date when they were made, therefore, does not arise.

We find no merit in this contention. As appointed in Atma Ram Vs. The State of

Punjab and Others, , the object underlying Article 31-A is to facilitate agrarian reforms and it extends protection to laws bringing about such reforms. The principal Act is not a law relating to agrarian reform as contemplated in Article 31-A of the Constitution. It is pre-constitutional legislation which was saved by Sub-clause (a) of Clause (5) of Article 31 from any attack on the ground of violation of the right conferred by Clause (2) of Article 31 of the Constitution. The second proviso to Clause (1) of Article 31-A has, therefore, no bearing on the interpretation of Sub-section (1-A) of Section 23 and Section 30(1) of the amending Act.

The law laid down by the Apex Court in the case cited supra is directly applicable to the facts and circumstances of the case on hand. In the instant case, as rightly pointed out by the learned Counsel for the appellant, the award has been passed on 24-6-1978 and therefore, I am of the considered view that the additional amount at 12% per annum awarded by the Reference Court is unsustainable and the same is liable to be set aside.

5. Having regard to the facts and circumstances of the case as stated above, these appeals are allowed in part. The judgment and award dated 29-1-2002 passed by the Reference Court insofar as it relates to awarding additional amount at 12% per annum on the enhanced market value u/s 23(1-A) from the date of preliminary notification to the date of award or date of taking possession, whichever is earlier, is hereby set aside.

6. The learned High Court Government Pleader is permitted to file memo of appearance within two weeks from today.