
(1997) 04 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1504 of 1995

Jaldu Raja Visala Subba Rao and Others

APPELLANT

Vs

District Collector (LA) and Others

RESPONDENT

Date of Decision : 03-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 18, 23, 30, 34

Citation : (1997) 3 ALT 34

Hon'ble Judges : Y. Bhaskar Rao, J;B.V. Ranga Raju, J

Bench : Division Bench

Advocate : M. Ravindranath Reddy, for the Appellant; G.P., for the Respondent

Final Decision : Dismissed

Judgement

Y. Bhaskar Rao, J.—This writ appeal is filed assailing the judgment of the learned single Judge dated 4-11-1995 in Rev. W.P.M.P. No. 30488 of 1995 in W.P. No. 11600 of 1994, rejecting grant of relief of interest as prayed for in the writ petition as per Section 34 of the Land Acquisition Act (in short "the Act").

2. The facts of the case are that the land of the appellants was acquired. Draft notification u/s 4(1) of the Act was published on 27-7-1981 and the Award was passed on 21-1-1984. There was a dispute regarding the apportionment of compensation and hence the matter was referred to the Civil Court u/s 31(2) of the Act. The appellants also sought a reference u/s 18 of the Act and the same is pending. The appellants filed a writ petition seeking a direction for payment of the additional amount of compensation u/s 23 of the Act and 30% solatium u/s 23(2) of the Act and interest u/s 34 of the Act, stating that the grant of additional amount of compensation, solatium and interest are provided by the statutory provisions of the Act. Non-grant of the said amounts is in violation of the statute. Therefore, they filed the writ petition to invoke the statutory obligation of the land acquisition officer.

3. In the counter affidavit filed in the writ petition by the 3rd respondent-Society, it was contended that the award was passed on 21-1-1984. Thereafter, after waiting for 9 years, the appellants-writ petitioners approached the 2nd respondent for payment of enhanced solatium and interest. It is further contended that as the references made under Sections 18 and 30 of the Act are pending, the claimants can claim the same before the Civil Court before whom references are pending.

4. The learned single Judge after considering the rival contentions allowed the writ petition directing to pay the additional market value u/s 23(1-A) and solatium u/s 23(2) of the Act. The learned single Judge rejected the request for grant of interest on the ground that there is a dispute regarding taking of the possession of the land and the petitioners may seek the said relief before the reference Court pending under Sec. 18 of the Act. Aggrieved by that judgment, the present writ appeal is filed.

5. The learned Counsel for the appellants Mr. M.V. Ramana Reddy, contended that the interest is payable as per Section 34 of the Act and the same is statutory obligation on the authorities and the non-payment of the same is violation of the directions u/s 34 of the Act, and therefore, the appellants/claimants are entitled for the interest.

6. It is contended by the Government Pleader that the reference u/s 18 is pending before the Civil Court and therefore, it is open to the appellants to claim the same before the Civil Court. When there is effective alternative remedy available to the appellants, they can seek the relief in the proceedings before the Civil Court. The writ petition is, therefore, not maintainable.

7. In view of the above contentions, an important question of law that arises for consideration is whether the High Court while exercising the power under Article 226 of the Constitution of India, can award interest when an effective alternative remedy of reference is available and the same is pending before the Civil Court.

8. To appreciate the above contentions, it is apposite to look into the relevant provisions of the Land Acquisition Act. Section 4 contemplates the publication of the notification of the acquisition of the land giving the details of the land and the persons to whom it belongs. Section 6 provides for publication of declaration. When there is an urgency for acquisition of land, the authorities have to invoke the urgency clause u/s 17(4) of the Act and in such case, the enquiry u/s 5-A has to be dispensed with. Section 9 contemplates notice to the interested persons. Section 10 contemplates power to require and enforce the making of statement as to names and interests. Section 11 contemplates award enquiry and passing of the award. Section 12 provides the notice of the award to the claimants. Section 16 provides power to take possession of the land. Section 17 provides special powers in case of urgency. Section 18 contemplates reference to Civil Court. It is relevant to extract Section 18(1) of the Act:

"Any person interested who has not accepted the award may, by written

application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested."

Section 23 provides for determination of the compensation and Sec. 23(1-A) provides for payment of additional market value. Section 30 provides dispute as to apportionment among the claimants and the reference regarding the same to the Civil Court. Section 34 provides for payment of interest. As per Section 34 of the Act, interest is payable at the rate of 9% per annum from the time of taking possession until it shall have been paid, for a period of one year from the date of taking possession and thereafter at the rate of 15% per annum from the date of expiry of the said one year till the amount is deposited. Thus, the payment of interest is provided for first year at the rate of 9% per annum from the date of taking of possession and thereafter at the rate of 15% per annum until the amount is paid. In the present case, the learned Single Judge found that there is a dispute regarding taking of possession and on what date the possession was taken is not clear.

9. As per the provisions of Section 34 of the Act, interest is payable from the date of taking possession of the land, and therefore, the calculation of the interest mainly depends on the date of taking possession. In the present case, references Under Sections 18 and 30 of the Act are pending before the Civil Court. When reference is made to the Civil Court, the parties can claim all the benefits available to them under the Act, in the reference proceedings. The learned Senior Counsel Mr. M.V. Ramana Reddy contended that any reference made u/s 18 of the Act, is only for compensation and interest does not include compensation. Therefore, it is not a bar to claim interest by filing a separate writ petition and there is statutory obligation on the authorities to pay interest.

10. It is a fact that the word "compensation" is mentioned in Section 18 of the Act. But by reading of Section 23 of the Act, it is made clear that while awarding compensation, the Court has to take solatium and additional amount of compensation and other damages and amounts mentioned under Sec. 23 of the Act. Therefore, the word "compensation" is a wide term which includes all the benefits which the claimants are entitled under the Act. Therefore, it is the duty of the claimant to claim the amounts before the reference Court when they seek the reference. It is a fact that there are no fetters on High Court while exercising the power under Article 226 of the Constitution of India, as held by the Division Bench of this Court in Chirra Pulla Reddy Vs. The State of A.P. and Others, . But in that case no reference was pending, whereas in the present case, reference is pending. In Government of A.P. Vs. Naganaboina Venkataiah and Others, , a Division Bench of this Court to which one of us (Justice Y. Bhaskar Rao) was a member, has held that when the claimants are not satisfied with the amount of compensation, solatium and additional amount awarded, they have to approach Civil Court seeking reference u/s 18 and not High Court by filing writ petition.

The general proposition is that whenever the claimants are not satisfied with the award of compensation, market value, solatium, interest and additional amount, they have to seek a reference u/s 18 of the Act. Once they seek a reference, the same will be decided by the Civil Court. After seeking a reference, they cannot come to the High Court under Article 226 of the Constitution of India by way of writ petition and claim amounts. Therefore, we are not able to agree with the contentions of the learned Counsel for the appellant.

11. The learned Counsel for the appellants secondly contended that there is a statutory obligation as per Section 34 of the Act for grant of interest. As held by the Supreme Court in *Burmah Construction Company v. State of Orissa* AIR 1952 SC 1320, there is a statutory obligation on the authorities to award compensation and where the authorities failed to enforce the statutory obligation, the same can be challenged under Article 226 of the Constitution of India. There is no dispute about the proposition. It is always open to a person whose statutory rights are violated, to approach the High Court under Article 226 of the Constitution. But, where an effective alternative remedy is already sought and is pending before the Civil Court, the said person cannot again agitate before the High Court under Article 226 of the Constitution. The learned Counsel for the appellants relied on the judgment of this Court in *RF (Rasat and Farhat) Charitable Trust, Hyderabad Vs. Special Deputy Collector (General) Land Acquisition, Hyderabad and others*, and unreported decision in *W.A. No. 1557 of 1987*, dated 12-2-1989, for the proposition that the High Court is empowered to grant relief wherever there is violation of statutory Rules or Provisions. There is no dispute about the said proposition. In the present case, the appellants already sought a reference and the same is pending before the Civil Court. However, as held by the learned Single Judge, there is a dispute about the date of taking possession of land. Therefore, the better forum is Civil Court to decide on what date the possession is taken and from what date they are entitled for the interest. Therefore, we do not see any merit in the appeal and it is accordingly dismissed.