
(1999) 10 KL CK 0078
In the High Court Of Kerala
Case No : O.P. No. 368/98

Kochukutty and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 28-10-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 28A, 34

Citation : (1999) 2 KLJ 1095

Hon'ble Judges : G. Sasidharan, J

Bench : Single Bench

Advocate : Anchal C. Vijayan and B. Suresh Kumar, for the Appellant; C.K. Pavithran (Govt. Pleader), for the Respondent

Judgement

G. Sasidharan

1. Properties belonging to the petitioners in these original petitions have been acquired for the Kallada Irrigation Project. Petitioners are aggrieved for the reason that interest as provided under S. 34 of the Land Acquisition Act was not granted when award was passed under S. 28A of the Land Acquisition Act. Applications under S. 28 A of the Act were filed by the petitioners since enhanced compensation was granted by the reference court for the lands acquired under the very same notification. Rule 12A(vi) of the Land Acquisition (Kerala) Rules provides that when there is re-determination of the amount of compensation under Sec. 28A of the Land Acquisition Act on the basis of the award passed by court in respect of property covered by the very same notification no interest shall be paid for the amount awarded under Sec. 28A. When passing award under Sec. 28A of the Land Acquisition Act interest was not awarded on the compensation amount in the light of the fact that there is prohibition under the above Rule in awarding interest on the amount of compensation payable under Sec. 28A of the Act. O.P. No. 24357 of 1998 was amended by incorporating a prayer for quashing Rule 12A(vi) of the Land Acquisition (Kerala) Rules. In all the original petitions, there is a prayer for directing respondents to disburse interest

as provided under Sec. 34 of the Land Acquisition Act on the enhanced compensation awarded under Sec. 28A of the Land Acquisition Act.

2. The contention raised by the 2nd respondent is that when awarding compensation under Sec. 28A of the Land Acquisition Act, no interest can be awarded since there is clear provision in the Land Acquisition (Kerala) Rules which says that no interest shall be paid for the amount awarded under Sec. 28A of the Act. It is in the light of the above contention raised by the 2nd respondent that a prayer was incorporated in OP. No. 24357 of 1998 by way of amendment to quash the above Rule.

3. Section 34 of the Land Acquisition Act provides that when the amount of 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 9% per annum from the time of taking possession till payment of compensation. The proviso to Sec. 34 says that if 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 15% per annum has to be paid from the date of expiry of the 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. The petitioners would claim that Sec. 34 is applicable to a case in which enhancement in compensation is awarded under Sec. 28A of the Land Acquisition Act.

4. Section 28A was incorporated in the statute by way of amendment for the purpose of giving benefit to those who could not claim compensation on making an application under Sec. 18 for making a reference to court. The above section provides that when the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Sec. 11, in spite of the fact that other persons from whom property have been acquired have not made applications to the Collector under Sec. 18 will be entitled to get the compensation payable to them redetermined on the basis of the amount of compensation awarded by court provided a written application to the Collector is made by them within three months from the date of award of the court. The purpose of including Sec. 28A in the Act is for giving equal benefit to the persons from whom properties have been acquired. A person who files an application under Sec. 18 and gets a reference made to court for considering the question of enhancement of compensation may be able to get enhanced compensation. At the same time, a person who did not make an application under Sec. 18 of the Land Acquisition Act for making reference to court will be getting for compensation much less than what the other person is getting for the reason that he did not approach the acquisition authority by filing an application under Sec. 18 of the Act. It is for the purpose of bringing about equality among the persons from whom properties are acquired under the same notification, in the matter of giving compensation that Sec. 28A of the Act has been incorporated in the statute by way of amendment. So, the question to be considered here is whether when Sec. 28A of the Act has been incorporated in the Act with the

above object, can the State Government make Rules by saying that Sec. 34 of the Act which provides for payment of interest on the amount of compensation is not applicable to cases in which redetermination of compensation is made under Sec. 28A of the Act. A reading of Sec. 28A would make it clear that when redetermination of compensation payable to a person from whom property has been acquired is made under Sec. 28A on the basis of the amount of compensation awarded by court on a reference, all the benefits that would be available to a person who gets enhancement in compensation on the basis of an award of court have to be given to a person to whom compensation payable is redetermined under Sec. 28A of the Act.

5. When possession of the property is taken in pursuance of the land acquisition proceedings the person to whom the property belongs is deprived of the right to be in possession of the property. So the compensation payable for acquisition becomes payable to the owner of the property at the time of taking possession of the property from him. So, the owner of the property has a right to get the value of the property at the time when he is dispossessed of the property for the purpose of acquisition. Section 34 also provides that when the amount of compensation is not paid or deposited on or before taking possession of the land the Collector has to pay interest on the amount fixed by the Collector at the rate of 9% per annum from the date of taking possession until the amount is paid. It is manifest from what is said in Sec. 34 that the owner of the property is entitled to get interest from the date of taking possession of the property from him and such a provision is made for the reason that on taking possession of the property from the owner he is deprived of enjoying the property and taking income from the property. In the case of a person whose property had been acquired and who did not file an application under Sec. 18 of the Land Acquisition Act for making reference to court and for that reason did not get enhancement in compensation fixed by court, interest on the compensation redetermined under Sec. 28A has to be paid from the date of taking possession of the property. What is redetermined under Sec. 28A of the Land Acquisition Act is the compensation which would have been paid to the owner of the property at the time of taking possession of the property from him. There is no difference between a person who by approaching a court on reference made to it on his application gets enhancement in compensation and a person who gets the compensation redetermined under Sec. 28A of the Act because what is being paid to the owner of the land on the strength of award passed by court enhancing the compensation and what is paid to the owner on redetermining the compensation under Sec. 28A on the basis of an award passed by court is the compensation the owner of the property is entitled to get for the reason that his property is acquired. That compensation is one which would have been paid at the time of taking possession of the property and hence there is no justification for denying interest on compensation redetermined under Sec. 28A of the Act. Sec. 34 of the Act is applicable to a case in which compensation is redetermined under Sec. 28A of the Act.

6. In Union of India and another Vs. Pradeep Kumari and others, the Supreme

Court in considering the question whether interest could be awarded on additional amount of compensation payable to the owner of the land on redetermining the compensation under Sec. 28A, held that Sec. 34 of the Land Acquisition Act would be applicable to cases in which compensation is redetermined under Sec. 28A of the Act.

7. There is no provision in the Land Acquisition Act which says that Sec. 34 of the Land Acquisition Act is not applicable to cases in which compensation to the land owner is redetermined under Sec. 28A of the Act. What has to be understood from the provision in the Land Acquisition Act is that Sec. 34 of the Act which provides for payment of interest is applicable to the cases in which compensation payable to the land owner is redetermined under Sec. 28A of the Act. The provision in Rule 12A (vi) of the Land Acquisition (Kerala) Rules that no interest shall be paid for the amount awarded under Sec. 28A is against the provisions of the Land Acquisition Act and hence it has to be struck down. Rule 12A(vi) of the Land Acquisition (Kerala) Rules, 1990, is struck down on finding that the petitioners in the original petitions are entitled to interest as provided in Sec. 34 of the Land Acquisition Act on the amount of compensation redetermined under Sec. 28A of the Land Acquisition Act. There shall be a direction to the respondents to pay interest to the petitioners on the amount of compensation redetermined as provided in Sec. 34 of the Land Acquisition Act.

Original Petitions are allowed as above.