

(2009) 07 KAR CK 0001

In the Karnataka High Court

Case No : R.P. No. 2517 of 2009 in W.A. No. 3855 of 2005

Krishnabai and Others

APPELLANT

Vs

Special Land Acquisition Officer (Claims), Upper Krishna
Project and Another

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 11 (2), 23 (2)

Citation : (2009) ILR (Kar) 4417 : (2011) 3 KarLJ 65 : (2011) 1 KCCR 379

Hon'ble Judges : K. Sreedhar Rao, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : A.A. Magadum, for the Appellant; S.S. Kumman, Government
Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, J.—The land and buildings of the petitioners and others in Kolhar village of Basavan Bagewadi Taluk were notified for acquisition for the purpose of Upper Krishna Project on 01.03.1983. Since they are going to be submerged. The Land Acquisition Officer ("LAO" for short), however, felt that there was no immediate threat of the notified lands and buildings of Kolhar village getting submerged in the near future till 1992. Hence, he proposed to de-notify the land and buildings of the petitioners and others for the present and to issue fresh Notification for acquisition, sometime before the threat of submergence is likely to happen. The petitioners and others wanted that their lands to be acquired immediately and made a request to LAO in that behalf. The LAO, after negotiations with the villagers, passed the consent award u/s 11(2) of the Land Acquisition Act ("the Act" for short) on 31.07.1989 stipulating the following conditions:

a) That they will invest 50% of the total compensation payable to them in National Savings Certificates and will receive the balance 50% in cash.

- b) That they will forgo the 30% solatium amount payable u/s 23(2) of the Act.
- c) That they will not approach the Court for enhancement of compensation or any ground whatsoever, they have accepted an undertaking in writing in this regard.

2. On the said terms, the land and buildings came to be acquired by consent award dated 31.07.1989. The petitioners and other villagers made a representation to the Government for grant of statutory benefit of Solatium at 30. The LAO vide communication No. RD. 25. LAQ. 92 dated 28.06.1993 passed supplementary award on 15.07.1993, granting the benefit of solatium. However, the LAO did not grant interest on the solatium from the date of acquisition. The petitioners aggrieved by the denial of interest, filed W.P. No. 453 -491/04 and other connected petitions seeking fresh reference of the case to the LAC) for re-determination of the compensation and also for grant of interest on the solatium from the date of acquisition.

3. The Learned Single Judge allowed the writ petition in part directing the LAO to pay the interest on Solatium from the date of award. The request for fresh reference u/s 18 of the Act was rejected. The State has preferred W.A. No. 3855/2005 and other connected matters against the order of the Single Judge. This Court, in the writ appeal, confirmed the order of rejection for fresh reference u/s 18 of the Act. but however, directed that on the Solatium, the interest shall be paid from the date of supplementary award and not from the date of the consent award.

4. The respondents in the Writ appeals have filed the review petitions seeking review of the Judgment that the denial of interest on Solatium from the date of consent award is bad in law. In this regard relied on the decision of the Supreme Court in *Sunder Vs. Union of India*, .

5. In the writ petition, the petitioners had filed the copy of the order passed by this Court in W.P. No. 19495/1990 dated 06.12.1990. The said writ petition was filed by the residents of Takkalaki village, which is hardly about 5 Kms away from Kolhar village. The lands and buildings of the petitioners were acquired for the same purpose by consent award. The terms of the consent award are verbatim similar to the case on hand. The writ petition was disposed of with the following directions:

Under Section-11(2) of the Land Acquisition Act, there is no such power is given either to the Government or to the Land Acquisition Officer to impose such terms and conditions, when a person's lands are concerned he cannot be compelled or conceited in the nature of award of compensation, otherwise there will be no meaning to the word "awarding compensation". The person who lost his land be made good by paying its equivalent value namely, the money so that he can make good the loss caused due to the acquisition. Further, the claimant has a right to claim for Solatium and interest as per Section 23(2) of the Land Acquisition Act.

6. Perhaps, in view of the above Judgment, the Government vide communication No. RD.25. LAQ. 92 dated 28.06.1993 directed the LAO to grant Solatium to the landowners of Kolhar village. It appears that the Judgment in W.P. No. 19495/90 was not brought to the notice of this Court at the time of hearing. The Article 14 of the Constitution mandates equality before law and equal treatment in law, merely because the petitioners had opted for consent award is not a ground to deny the just compensation in accordance with law. The terms of the consent given if any cannot be enforced against the petitioners to estop them from seeking the legal compensation. When the property of a person is acquired under the Act, it is the statutory right of such person to get compensation including solatium as per the provisions of the Act, The State should uniformly grant the compensation including solatium with interest thereon in accordance with law under the L.A. Act to all the persons whose properties are acquired without hostile discrimination. The fundamental right under Article-14 is inalienable and cannot be waived. In that view, the petitioners cannot be discriminated and denied compensation in law.

7. The decision of this Court in W.P. No. 19495/1990 and the question of constitutional right of the petitioner was not argued and considered. In that view, we are of the opinion, that the petitioners are entitled to interest on solatium from the date of the consent award i.e., 31.7.1989 and not from the supplementary award. Accordingly, the review petitions are allowed.