
(2003) 07 KAR CK 0073
In the Karnataka High Court
Case No : Writ Petition No. 27096-107 of 2003

Mehboob Sab and Others

APPELLANT

Vs

The Special Land Acquisition Officer

RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 28 A, 28 A (2), 34

Citation : (2003) ILR (Kar) 3120 : (2003) 6 KarLJ 41 : (2004) 3 KCCR 327 SN

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : Basavaraj Kareddy, for the Appellant; Shashidhar S. Karmadi, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Rangavittalachar, J.—Though the matters are listed for preliminary hearing, with the consent of the learned Counsel appearing for the parties, the matters are finally disposed of.

2. Sri Shashidhar S. Karmadi, learned Government Pleader takes notice for the respondent.

3. The question that falls for consideration is, whether an applicant seeking for re-determination of an award u/s 28-A of the Land Acquisition Act (here-in-after referred to as an "Act" for brevity) is entitled to the statutory interest u/s 34 of the Act from the date of making an application or from the day he is dispossessed.

4. The Land Acquisition Officer in all these cases following the decision in Smt. Iravva and Others Vs. The Assistant Commissioner, Dharward Division and LAO and Another, rendered by the learned Single Judge of this Court has held that "the applicant is entitled for interest only from the date of making his application."

5. Before referring to the decision relied upon by the Land Acquisition Officer, it is

necessary to refer to the consistent Judicial Pronouncement of this Court and that of the Supreme Court on the point, the Hon''ble Supreme Court, in the case of Union of India and another Vs. Pradeep Kumari and others, on this question, has held that:

"It is permissible for a Collector u/s 28-A(2) of the Land Acquisition Act to award interest as per Section 34 on the additional amount of compensation awarded by him."

6. This Court, in a series of Writ Petitions in the case of SAROJINI BAI AND OTHERS vs SPECIAL LAND ACQUISITION OFFICER, W.P. NOS. 26749-757 / 2001 DD on 17.7.2001 relying on the decisions of the Supreme Court, has held as under:

" The matter is covered by the decision of the Supreme Court in Union of India and another Vs. Pradeep Kumari and others, . The Supreme Court held that in regard to re-determination of the amount of compensation u/s 28-A, Section 34 of the Land Acquisition Act, 1984, would be applicable and therefore, it is permissible to the Land Acquisition Officer to award interest u/s 34 on the additional amount of compensation awarded by him. It is seen that the respondent has not followed the said decision. There is no justification in restricting the interest only from the date of application and not from the date of taking possession to which petitioners will be entitled, u/s 34 of the Act."

and this decision has been followed later in W.P.Nos. 38152-54/ 2000 and connected cases decided on 10.6.2002 and the case in NEELAVVA B. SOPPINAMATH vs STATE OF KARNATAKA, W.P. NO. 30980 / 2001 DD 3.9.2001. Therefore, the settled position of law from the decided cases of the Supreme Court and this Court is that a person, who makes an application u/s 28-A of the Act for re-determination of the award, is entitled for interest on the additional sum awarded u/s 28-A(1) of the Act as per Section 34 of the Act i.e. from the date of taking possession of the property by the acquiring body.

7. However, in Iravva's case, this Court has held at para 8 as follows:

" I consider that having regard to the special facts and circumstances of this case, that it would not be fair to burden the State with the heavy burden of interest even if the petitioners are entitled to the enhanced interest for the period after a date on which the applications were made by them to the Land Acquisition Officer. Accordingly, the petitioners would not be entitled to interest even if they are entitled to enhanced compensation upto 30.12.1986 and 2.12.1986 respectively. I need to record here that I am upholding the objection canvassed by the learned Government Advocate and the learned Advocate who represents Respondent No. 2 when they have pointed out that irrespective of the fact that the petitioners may be entitled to the enhanced compensation, that the respondents should not be burdened with the payment of heavy interest for several years because the applicants came forward at a very late stage. This objection to my mind, is reasonable and it is on that basis that I have prescribed

the cut-off date."

8. As the learned Single Judge himself has pointed out " that because of the special facts and circumstances of the cases, the cut off date is being indicated from the date of application", therefore, the decision in Iravva's case should be construed as applicable to the peculiar facts of the said case only as the learned Judge himself has indicated it cannot be held as having laid down the general principles of law applicable to all cases.

9. In the light of the discussions made above, having regard to the decision of the Supreme Court and the consistent view of this Court indicated above, in all cases where an application for re-determination of an award is filed u/s 28-A of the Act, the applicant is entitled to interest as per Section 34 of the Act on the re-determined award in excess to compensation awarded from the date of taking possession of the property.

10. Since the Land Acquisition Officer has failed to follow the decision of the Supreme Court and this Court referred to above, the order of the Land Acquisition Officer to the extent of awarding the interest from the date of filing of the application is set aside. He is directed to award interest on the excess of amount of compensation awarded to all the petitioners from the respective days they were dispossessed from the property.

11. Writ Petitions are allowed.