

(2009) 06 GAU CK 0038

In the Gauhati High Court

Case No : Writ Petition (C) No. 34 (SH) of 2005

Michak Sangma

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 15, 16, 17, 18

Citation : (2010) 1 GLR 289 : (2009) 4 GLT 995

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : A. Paul and K. Paul, for the Appellant; N.D. Chullai, for the Respondent

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—This writ petition has been filed by the petitioner for directing the state-respondents to; (1) pay compensation for the 210 bighas of his land acquired by them for construction of the road from Rongkhan to Bajmara, (2) pay interest at the rate of 12% per annum from the actual date of taking possession of the said land, i.e., 3.11.1990 and (3) quash the notification dated 17.10.2003 and the letters dated 22.9.2004 and dated 26.10.2004 issued in connection therewith.

2. Though many facts are pleaded by the petitioner, I will only refer to those facts which are really necessary for determination of the points in controversy. The petitioner is the wife of the late Nawla Marak, who was the Nokma of Arenggre Akhing at the relevant period of time. According to the petitioner, sometime in the year 1990 her husband was approached by some officials of the State-respondents seeking his permission to construct the public road from Bajmara to Rongkhan by assuring him that he would be paid compensation for the land in accordance with the Land Acquisition Act, 1894. Apparently with his permission, the Public Works Department, North Division, Tura started

construction of the road and completed the same. It is the case of the petitioner that in the course of construction of the road, some 210 bighas of land belonging to her husband was taken possession of, and was put to public use. But when no compensation was paid to her husband, he filed WP(C) No. 196(SH) of 1999 before this Court for directing the State-respondent to initiate land acquisition proceeding pertaining to the said land. This Court by the judgment and order dated 2.10.2003 allowed the writ petition and directed the State-respondents to initiate the land acquisition proceeding and complete the entire exercise including payment of the compensation due within three months. After some delay, the State respondents issued the notification u/s 4 of the Land Acquisition Act, 1894 ("the Act" for short), which was followed by the notification u/s 6 showing the area of the land being acquired to be 1.219 hectares or 9 bighas 0 katha and 11 Lessa as against 210 bighas of land alleged to have been taken possession of by the State-respondents. Ultimately, the Deputy Commissioner, West Garo Hills by the notice dated 29.6.2004 informed the petitioner (as her husband had died in the meantime) that a sum of 2,75,709.22 p. had been awarded to her and might receive the same if the same was acceptable to her. The petitioner accepted the award "under protest" as evident from her letter dated 27.7.2004 and received the awarded amount. In that letter, she claimed payment of interest at the rate of 12% per annum on the market value of her land so acquired u/s 23(1A) of the Act with effect from the date of taking possession of the land. Her repeated representations made thereafter also proved futile which prompted her to file this writ petition for appropriate reliefs.

3. While opposing the writ petition, an affidavit-in-opposition has been filed by the State-respondents. It is asserted by the answering respondents that as per the joint enquiry report dated 5.3.2003, the actual area of the land utilized for construction of the road in question is 9 bighas and 11 Lessa and not 210 bighas as claimed by the petitioner. It is also stated by the respondents that the interest on the award was calculated w.e.f. the date of publication of the Notice u/s 4 of the Act and that there is nothing to show that the land in question was utilized by them w.e.f. 3.11.1990 i.e., from the date on which the PWD started clearance for construction of the road, etc.

4. The first point for consideration is whether the petitioner is, u/s 23(1A) of the Act, entitled to interest at the rate of 12% per annum from the date of actual taking over of possession of the land of the petitioner? Section 23(1A) of the Act is in the following term:

(1-A) In addition to the market value of the land, as above provided, the court shall in every case award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, Sub-section (1), in respect of such land to the date of the award of the collector or the date of taking possession of the land, whichever is earlier.

Explanation: In computing the period referred to in this Sub-section, any period

or periods during which the proceedings for the acquisition of the land was held up on account of any stay or injunction by the order of any court shall be excluded.

5. It may be noted that this Sub-section was introduced by the Land Acquisition Act (Amendment) Act, 1984. This provision plainly says that in every case the court shall award interest as additional compensation at the rate of 12 per centum per annum on the market value of the land for the period commencing on and from the date of publication of the notification u/s 4(1) to the date of the award of the collector or the date of taking possession of the land, whichever is earlier. The crucial words used are "for the period commencing on and from the date of the publication of the notification u/s 4(1) or the date of taking possession of the land, whichever is earlier". Thus, the interest at the rate of 12 per centum per annum shall have to be calculated (i) from the date of the notification u/s 4(1) or (b) from the date of taking possession of the land. The submission made by Miss A. Paul, the Learned Counsel for the petitioner, is that as possession was taken in 1990, which is prior to the date of notification u/s 4(1) of the Act, the petitioner is entitled to interest at the rate of 12 per centum per annum from 1990. This incidentally was decided by a three-Judge Bench of the Apex Court in *R.L. Jain (D) by Lrs. Vs. DDA and Others*, while considering the scope of Section 34 of the Act. Section 34 of the Act reads, thus:

34. Payment of interest. - When the amount of such compensation is not paid or deposited on or before taking possession or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the taking of so taking possession until it shall have been so paid or deposited: Provided that if such 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 fifteen per centum per annum shall be payable from the date of expiry of such 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 relevant portions of the judgment are found at paragraphs 12 and 16, which are quoted below:

The expression "the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum from the time of so taking possession until it shall have been paid or deposited" should not be read in isolation divorced from its context. The words "such compensation" and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. "Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification u/s 4(1) and other amounts like statutory sum under Sub-section (1-A) and solatium under Sub-section (2) Section 23. The heading of Part II of the Act is "Acquisition" and there is a sub-heading "Taking possession" which

contains Sections 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Section 16 or 17 of the Act. These are the only two sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly, the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification u/s 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification u/s 4(1) it would not be in accordance with Section 16 or 17 and will be without any authority of law and consequently cannot be recognized for the purposes of the Act. For parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Section 16 or 17 of the Act. The words "so taking possession" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification u/s 4(1) of the Act which is dehors the provisions of the Act.

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In this connection it be apposite to refer to Sub-section (1A) of Section 23 of the Act which enjoins payment of an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of publication of the notification u/s 4(1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. There are two decisions of this Court, wherein same controversy arose, namely, whether the claimant would be entitled to additional at the rate of twelve per centum on the market value where possession has been taken over prior to publication of the notice u/s 4(1). In *Special Tahsildar (LA), PWD Schemes v. M.A. Jabbar* which has been decided by a Bench of two Judges (K. Ramaswamy and Sujata v. Manohar, JJ.), it was held the claimant would not be entitled to this additional sum for the period anterior to publication of notice u/s 4(1). However, in *Asst. ComMr. , Gadag Sub-Division v. Mathapathi Basavannewwa* also decided by a two Judge Bench (K. Ramaswamy and B.L. Hansaha, JJ), it was held that even though notification u/s 4(1) was issued after taking possession of the acquired land the owners would be entitled to additional amount at twelve per centum per annum from the date of taking possession though notification u/s 4(1) was published later. For the reasons already indicated, we are of the opinion that the view taken in *Special Tahsildar* is legally correct and the view to the contrary taken in *Asst. ComMr.* is not in accordance with law and is hereby overruled.

6. In my opinion, though the point directly in issue in the aforesaid case was on the interpretation of Section 34 of the Act, yet the observations made by the Apex Court with respect to Section 23(1A) of the Act are in the nature of obiter dicta and are thus binding upon this Court. Therefore, the petitioner is not entitled to interest calculated at the rate of 12 per centum per annum from the date of taking possession of the acquired land. Incidentally, the Apex Court in

that case indicated the remedy open to a landowner, who has been dispossessed of his land prior to the issuance of the notification u/s 4 of the Act. This is what it said:

18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification u/s 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.

7. Coming now to the prayer of the petitioner for payment of compensation for the 210 bighas of the land allegedly acquired by the State-respondents, it may be recalled that the award was passed by the Collector, Land Acquisition for payment of compensation in respect of about 1.219 hectares or 9 bighas and 11 Lessa, which was the area of land sought to be acquired in terms of the notifications issued u/s 4 and 6 of the Act. When the notice u/s 9 of the Act was issued upon the petitioner, she was required to (1) state the nature of her interests in the land and the amount and particulars of her claim to compensation for such interests and (2) her objection (if any) to the measurements made u/s 8. Thus, the petitioner was given an opportunity to make objection against the measurement made of the area of land to be acquired. It was at that stage that she ought to have objected the measurement of her land being acquired and claimed that it was not 1.219 hectare or 9 bighas and 11 Lessas but 210 bighas, which was being affected by the acquisition proceeding. If the award was finally made for 1.219 hectare and not 210 bighas of her land, her remedy, after receiving the compensation under protest, was to approach the Collector for passing the award to invoke the provisions of Section 18 of the Act for making a reference to the Land Acquisition Court. This was not apparently done by her. Moreover, her applications dated 27.7.2004 and dated 8.9.2004, which are at Annexures-7 and 8, would indicate that she never made any application u/s 18 of the Act for reference questioning the correctness of the award or for enhancement of the compensation. Nor did she raise any question on the true area of land being acquired for construction of the road. All that she prayed for was to "re-calculate the interest payable to me and sent to the Government for necessary approval of payment". u/s 18 of the Act, she has the right to require the Collector that the matter be referred for determination of the court on her objection to the measurement of the land, the amount of

compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. The amount of compensation necessarily includes the interest payable u/s 23(1A) of the Act. It is now too late in the day to raise these issues in a writ petition. In any event, after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This is the law laid down by the Apex Court in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, in para 29:

29. It is thus well-settled that when there is an inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third-party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.

8. In my opinion, the observations extracted in the foregoing completely answer the various points raised by the Learned Counsel for the petitioner. There is thus no merit in this writ petition, which is accordingly dismissed. However, considering the facts and circumstances of the case, I pass no order as to costs.