

(2013) 10 KAR CK 0205

In the Karnataka High Court

Case No : Writ Petition No. 46149 of 2013 (LA-RES)

Mudalagiri Gowda and K.V. Suresha

APPELLANT

Vs

The Special Land Acquisition Officer

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Land Acquisition Act, 1894 — Section 18(1), 34, 4(1)

Citation : (2014) 1 AKR 196 : (2013) ILR (Kar) 5582 : (2013) 6 KarLJ 391 :
(2014) 1 KCCR 269

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : S.C. Vijaya Kumar, for the Appellant; R.B. Satyanarayana Singh, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—Petitioners contend that their father was the owner of land bearing Sy. No. 199/1 measuring 30 guntas of Kodigenahalli, Kasaba Hobli, Gubbi Taluk. A preliminary notification dated 14.02.2002 was issued for acquisition of the said land for formation of Hemavathy Canal. This was followed by a final notification dated 05.03.2003. Respondent passed an award determining the compensation. Their father sought reference of the matter u/s 18(1) of the Land Acquisition Act for enhancement of the compensation. The reference was registered as LAC. No. 491/2006 on the file of the Senior Civil Judge and JMFC, Gubbi. The reference Court has enhanced the compensation in terms of judgment and award as per Annexure-B dated 19.10.2012. Petitioners made an application u/s 152 of the CPC seeking correction of the award. The contention put forth by the petitioners is that possession of the land was taken on 03.04.1998. Therefore, they are entitled for interest from the said date. Interest was awarded only from the date of preliminary notification dated 14.02.2002. The application was dismissed by the trial Court by its order at Annexure "D" dated 06.02.2013. Petitioners have challenged the validity of the

said order in this writ petition.

2. Sri S.C. Vijaykumar, learned counsel for the petitioners submits that possession of the land has been taken on 03.04.1998. Though the preliminary notification was issued on 14.02.2002, petitioners are entitled for interest on the compensation amount from the date of taking possession i.e., 03.04.1998. The dismissal of the application by the court below to that extent is incorrect.

3. Learned HCGP appearing for the respondent submits that petitioners are not entitled for interest from the alleged date of taking possession of the land. They are entitled for interest from the date of issuance of preliminary notification.

4. Having regard to the contentions urged, the question for consideration is whether the petitioners are entitled for interest from 03.04.1998, the date on which the State Government alleged to have been taken possession or from the date of issuance of notification u/s 4(1) of the Land Acquisition Act dated 14.02.2002?

5. Section 34 of the Land Acquisition Act, 1894, provides for payment of interest, which is as under:

34. Payment of interest: When the amount of such 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 nine per centum per annum from the time 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 the said 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.

6. It is clear from the scheme of the Land Acquisition Act that payment of interest u/s 34 is statutory in nature and is mandatory. The payment of interest arises consequent on the acceptance of the compensation awarded. Thus award of interest is consequential and automatic.

7. In Union of India (UOI) Vs. Budh Singh and Others, , the Hon''ble Supreme Court after analyzing the provisions of the Land Acquisition Act has held as under:

The parameter for initiation of the proceedings is the publication of the notification u/s 4(1) of the Act in the State Gazette or in an appropriate case in District Gazette as per the local amendments. But the condition precedent is publication of the notification u/s 4(1) in the appropriate gazette. That would give legitimacy to the State to take possession of the land in accordance with the provisions of the Act. Any possession otherwise would not be considered to be possession taken under the Act.

8. Subsequently, a three Judge Bench of the Hon''ble Supreme Court in R.L. Jain

(D) by Lrs. Vs. DDA and Others, has held as under:

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.

9. It is thus clear that the parameter for initiation of proceedings is the date of publication of notification u/s 4(1) of the Act. The condition precedent is publication of notification u/s 4(1) in the appropriate gazette and that would give legitimacy for the State in accordance with the provisions of the Act. The Act is a self-contained Code and good conscience cannot be extended in awarding interest, contrary to the provisions of the statute. In case, possession is taken earlier to the date of preliminary notification, interest is payable only from the date of preliminary notification. The petitioner is entitled for rent or damages for use and occupation of the land from the date of taking possession till the date of the preliminary notification. Since the award has already been passed by the reference Court, payment of rent or damages for the alleged possession of the land from 03.04.1998 till the date of issuance of 4(1) notification dated 14.02.2002 cannot be determined in these proceedings at this stage. Therefore, liberty is reserved to the petitioners to file an application before the respondent seeking rent/damages for the alleged use and occupation of the land by the State Government from 03.04.1998 till 14.02.2002. If such an application is filed, the respondent is directed to consider the same and pass appropriate orders thereon in accordance with law. With these observations, the writ petition is dismissed. No costs.