

(1985) 07 KL CK 0019

In the High Court Of Kerala

Case No : Income-tax Reference No's. 65 and 66 of 1979

Peter John

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-07-1985

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 5(1)
Kerala Land Acquisition Act, 1961 — Section 30
Land Acquisition Act, 1894 — Section 11, 26, 28, 34

Citation : (1986) 157 ITR 711

Hon'ble Judges : Bhaskaran, C.J;Fathima Beevi, J;Bhaskaran Nambiar, J

Bench : Full Bench

Advocate : P.G.K. Warriyar, for the Appellant; P.K. Raveendranath Menon and N.R.K. Nair, for the Respondent

Judgement

Bhaskaran, C.J.—The counsel for the assessee having canvassed the correctness of the decision of this court in M. Jairam Vs. Commissioner of Income Tax, and George Paul Puthuran Vs. Commissioner of Income Tax, , the question of law arising from the decision of the Appellate Tribunal has been referred to a Full Bench by the Division Bench, before which the matter came up for hearing at the first instance. The question of law referred to this court by the Income Tax Appellate Tribunal, Cochin Bench, u/s 256(2) of the Income Tax Act, 1961, pursuant to the direction by this court in the judgment dated February 28, 1978, in O. P. Nos. 4770 and 4772 of 1975, reads as follows ;

" Whether, on the facts and in the circumstances of the case, as per the ratio of the Supreme Court decisions in Dr. Shamlal Narula Vs. Commissioner of Income Tax, Punjab, and Rm. Ar. Ar. Rm. Ar. Ramanathan Chettiar Vs. Commissioner of Income Tax, Madras, , the land acquisition interest of Rs. 80,253 included by the Income Tax Officer u/s 5(I)(b) of the Income Tax Act, 1961, in the total income for 1968-69 assessment, accrued de die in diem from the date of taking possession of the lands during the years 1961 and 1962 up to March 31, 1968, inclusive and, therefore, only Rs. 12,626 which accrued de Me in diem during the

concerned previous year of 366 calendar dates from April 1, 1967, to March 31, 1968, inclusive should have been included in the total income for 1968-69 assessment and the balance interest of Rs. 67,627 should be similarly included on accrual basis u/s 5(l)(b) of the I.T. Act, 1961, in the income for the six assessment years from 1962-63 to 1967-68 inclusive, as had already been done by the Income Tax Officer by his orders dated June 6, 1972, for the 1967-68 and 1969-70 assessments ? "

2. The accounting years for the assessment years 1967-68 and 1968-69 are the years ended March 31, 1967, and March 31, 1968, respectively. Certain lands of the assessee were compulsorily acquired and after settlement of compensation, taken possession of somewhere in 1961 and 1962. Dissatisfied with the quantum of compensation, the assessee got the matter referred to the civil court which during the financial year ended March 31, 1968, relevant to the assessment year 1968-69, passed decrees awarding higher compensation and also interest u/s 30 of the Kerala Land Acquisition Act, 1963 (corresponding to Section 28 of the Land Acquisition Act I of 1894 (Central Act) (hereinafter referred to as "the Act"), on such excess compensation and ending with the date of payment by the Government of such excess compensation. The total interest on such excess compensation from the date of taking over possession to March 31, 1968, came to Rs. 80,253. This excess compensation as well as interest on such excess compensation was actually paid by the Government to the assessee only much later. The assessment being on accrual basis, the dates of payment are not material.

3. The case of the assessee is that such interest on such excess compensation accrues immediately after the date of dispossession and from year to year and that what the civil court did was only to quantify such interest and that it is not a case where the interest accrues only on the date on which the court decrees it. So, according to the assessee, for the assessment year 1967-68, the interest that accrued will be Rs. 12,682 and for the assessment year 1968-69 a sum of Rs. 12,626. The assessee offered these amounts for assessment in those two assessment years. But the Income Tax Officer took the view that interest on such excess compensation accrues for the first time only with the decree awarding excess compensation, that is, on the date of the decree and so the total interest from such excess compensation for the period commencing from the date of taking over possession to the date of the decree has to be assessed in the assessment year relevant to the date of the decree. In that view of the matter, the aggregate sum of Rs. 80,253 was assessed for the assessment year 1968-69. The assessee having voluntarily offered Rs. 12,682 as interest income for the assessment year 1967-68, the Income Tax Officer made a protective assessment of that amount for the assessment year 1967-68 also.

4. The assessee appealed against the assessment for both the years. The Appellate Assistant Commissioner confirmed the assessment for 1968-69. So he deleted the interest from the protective assessment for the assessment year

1967-68. The assessee appealed to the Tribunal for the assessment year 1968-69, contending that only Rs. 12,626 should be brought to tax for the assessment for 1968-69. The Department as a protective measure appealed to the Tribunal for the year 1967-68. The assessee presented a cross-objection for the assessment year 1967-68 pleading that the Appellate Assistant Commissioner should not have deleted the Interest amount in that assessment year. The Tribunal for reasons stated in its order upheld the view of the Income Tax Officer and sustained the assessment for the assessment year 1968-69. It, therefore, dismissed the departmental appeal as well as the cross-objection of the assessee for the assessment year 1967-68. Annexure A is a copy of the order of the Tribunal. In the reference order, it has been pointed out by the Tribunal that assessment for the assessment year 1969-70 was never the subject-matter of appeal before the Tribunal.

5. Before proceeding to examine the two Kerala decisions, the correctness of which was canvassed by the counsel for the assessee, let us try to have a clear idea as to what the expressions " compensation " and " interest " in the context of the Land Acquisition Act represent and at what point of time compensation interest accrues or is deemed to accrue. In the scheme of the Act, compensation represents what is paid to the rightful owner for his having been dispossessed of the land which the Government took possession on acquisition. It is the equivalent of the market value of the property taken possession of by the Government, determined in accordance with the provisions of Sections 23 and 24 of the Act. Compensation is awarded by the Land Acquisition Officer (Collector) u/s 11 of the Act; in the event of the land owner not being satisfied with the quantum awarded by the Land Acquisition Officer, he takes up the matter to the civil court on reference u/s 18 of the Act. The civil court dealing with such reference in exercise of the power u/s 26 of the Act goes into the question as to whether the Land Acquisition Officer (Collector) had correctly determined the compensation, guided by the facts and standards mentioned in Sections 23 and 24 and if it is found that there was any shortage in what was awarded by the Land Acquisition Officer, directs him to pay the balance compensation. The right to receive compensation is a statutory right; and that comes into being the moment the Government takes possession of the property acquired. It is a right *debitum in praesenti*, not *inchoate* or dependent on the quantification of the compensation, either by the Land Acquisition Officer u/s 11 of the Act or by the court u/s 26 of the Act.

6. Interest is separate from compensation. In the words of the Supreme Court in *Dr. Shamlal Narula Vs. Commissioner of Income Tax, Punjab*, interest, whether it is statutory or contractual, represents "the profit the creditor might have made if he had the use of the money or the loss he suffered because he had not that use. It is something in addition to the capital amount though it arises out of it.....The statutory interest payable u/s 34 is not compensation paid to the owner for depriving him of his right to possession of the land acquired, but that given to him for deprivation of the use of the money representing the

compensation for the land acquired ". To the owner of the property who is deprived of it on it being acquired and taken possession of by the Government, interest is paid to compensate him for the deprival of the use of the amount awarded by way of compensation on account of delay in payment of compensation. In other words, interest payable is on the amount of compensation awarded or decreed from the date on which it was payable by the Government till the date of actual payment. This is on the analogy of certain amount belonging to the land owner being lent to the Government and the Government being liable to pay interest on such debt from the date of the debt till the discharge thereof. In other words, it has to be treated as a debt on which interest is due from the date on which the debt was incurred.

7. When does the compensation accrue or when is it deemed to accrue ? It is well settled that the owner of the property is entitled to compensation from the date on which he is dispossessed of the property on acquisition. This is because what the Land Acquisition Officer does is to offer to purchase the property for the market value and when in the process he takes possession of the property at whatever stage it might be, the owner of the property is deprived of the income and enjoyment of the property from that time. Whether the offer in regard to the quantum of compensation is accepted by the land owner straightaway or finally settled by the court is a different question touching on the quantum of compensation, not of the right to receive compensation. We are here on the question as to from which date the land owner is entitled to receive it. There could be absolutely no doubt that both statutorily and in equity, the land owner has a right to receive compensation on the day on which he is dispossessed of the property. That right arises immediately on dispossession and does not await quantification of the compensation by the Land Acquisition Officer or by the court. The position is so clear that we do not consider it necessary to lengthen the judgment by citing decisions of the various High Courts. We would, however, set at rest doubts, if any, by extracting the relevant passages from the very recent decision of the Supreme Court in *Joginder Singh and Others Vs. State of Punjab and Another*, by Pathak & Thakkar JJ :

" The High Court seems to have proceeded on the view that the right to this amount of Rs. 17,919"30 as compensation arose to the appellants only from the date of its judgment.

We are of opinion that the High Court has erred.....The right to compensation arises when the land vests in the State while its quantification may be concluded much later. Although the process of quantification may pass through several stages, from the Land Acquisition Officer to the District Judge and thereafter to the High Court, the process of quantification is merely one of computing the value of the land on the principles enacted in the Land Acquisition Act. All along, however, the right to the, compensation so quantified refers back to the date of acquisition. The additional amount of compensation awarded by the District Judge or by the High Court represents the difference between the true value of

the land on the one hand and the actual amount awarded on the other which fell short of the true value. The owner of the land is entitled to be paid the true value of the land on the date of taking over of possession. Since, however, the true value is usually determined only after it is computed through a multi-tiered process passing through different levels of a hierarchical judicial structure, by the very nature of things, it takes some time before the true value can be finally determined. The fact that it is determined later does not mean that the right to the amount comes into existence at a later date. And if, as the High Court has held, interest at 6% per annum runs from the date possession was taken in the case of compensation determined by the learned District Judge, there is no reason why the same rate should not be applied from the date possession was taken in the case of the enhancement effected by the High Court."

8. By the decision of the Supreme Court in *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, it is well-settled that there are no separate rights, one a right to receive compensation and the other, a right to receive extra or further compensation. Upon acquisition of his lands, under the Land Acquisition Act, the claimant has only one right, which is to receive compensation for the lands at their market value on the date of the relevant notification and it is this right which is quantified by the Collector u/s 11 and by the civil court u/s 26 of the Land Acquisition Act. It is true that u/s 11, the Collector after holding the necessary inquiry determines the quantum of compensation by fixing the market value of the land, and in doing so is guided by the provisions contained in Sections 23 and 24 of the Act, the very provisions by reference to which the civil court fixes the valuation. It is also true that the Collector's award is, u/s 12, declared to be, except as otherwise provided, final and conclusive evidence as between him and persons interested. Even so, it is well-settled that in law the Collector's award u/s 11 is nothing more than an offer of compensation made by the Government to the claimants whose property is acquired.

9. Now, the question is, when does the right to receive interest accrue or is deemed to accrue ; could it be at a point of time other than the date on which the right to receive compensation accrues ? It could not be, as we have already noticed that the right to receive compensation accrues on dispossession of the land owner from the property on acquisition. He has a right in praesenti to receive compensation, though it might actually be quantified or paid at a later stage. If the entire compensation or true compensation as the Supreme Court would have it in *Joginder Singh and Others Vs. State of Punjab and Another*, to which the land owner was entitled, on a correct evaluation on the basis of the standards and guidance under Sections 23 and 24, was paid the moment he was dispossessed of the property, no question of right to interest would survive. It is only where the compensation payable is not paid on the date when it was actually due, in order to compensate the loss arising out of the deprivation of the use of the amount, that interest is paid till the date of actual payment. That the right to receive interest arises on the date of dispossession on which date the

land owner is entitled to 7 per cent compensation, admits of no doubt. In fact, the position is placed beyond the pale of controversy when the Supreme Court said in *Joginder Singh and Others Vs. State of Punjab and Another*,

" And if, as the High Court has held, interest at 6% per annum runs from the date possession was taken in the case of compensation determined by the learned District Judge, there is no reason why the same rate should not be applied from the date possession was taken in the case of the enhancement effected by the High Court. "

10. If we have correctly understood Sri P. K. Ravindranatha Menon, the counsel for the Revenue, it is not the case of the Revenue that interest is payable in terms of an award u/s 11 or of a decree u/s 26 of the Act, from the date of the award or from the date of the decree, but from the date of dispossession. The impression we have gained is that in the case of the interest on compensation under an award, the Revenue concedes that it has to be spread over the years between the date of dispossession and that of actual payment. A difference, however, is sought to be drawn between the interest granted on compensation awarded by the Land Acquisition Officer u/s 34 on the one hand and interest granted by the decree of the court u/s 28 of the Act, on the other. In the former case, it is submitted, the interest runs automatically, the Land Acquisition Officer having no option in the matter, whereas there is an element of discretion vested in the court in granting the interest on the additional compensation u/s 28 of the Act. Shri Gopalakrishna Warriyar, the counsel for the assessee, submitted that this approach suggested by the Revenue is both illogical and unreasonable. He would submit that really the court had no discretion in the matter, it being a statutory right vested in the land owner to receive compensation and also interest thereon from the moment he is dispossessed of the property till the compensation is actually paid to him. According to him, much confusion in thinking has been caused by the expression " may " in Section. 28 in contrast to the word " shall " in Section 34 of the Act in regard to the grant of interest. To appreciate the argument of Sri Warriyar, we would extract Sections 28 and 34 of the Act:

" 28. Collector may be directed to pay interest on excess compensation.--If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into court:

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into court after the date of expiry of 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 such excess or part thereof which has not been paid

into court before the date of such expiry.

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. "

11. According to Sri Warriyar, the expression " may " used in Section 28 of the Act has the same force as that of "shall " in the context; and in effect and substance, no discretion is vested in the court to deny interest once the additional or enhanced compensation which really means the balance compensation due to the land owner (assessee) (which ought to have been awarded by the Land Acquisition Officer himself) has been declared by that court. Citing the decision of the Supreme Court in *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, , he submitted that the entire compensation awarded has to be treated as an integrated whole and the right to interest accrues on the entire amount from the date of dispossession, irrespective of the date or stages when the quantification takes place or is completed. Placing reliance on the decision of the Supreme Court in *Satinder Singh and Others Vs. Amrao Singh and Others*, he submitted that when the owner of the property was dispossessed pursuant to the order of compulsory acquisition, an agreement with the acquiring authority to pay interest on the amount of compensation was implied. Confronted with the observations of the Supreme Court in paragraph 7 at page 469 of the report in *Raghitbans Narctin's case*, AIR 1967 SC 465 wherein, construing the provisions in Section 28 of the Act, it was stated as follows :

" In its plain language the discretion that is conferred on the court is whether, in the given circumstances of a particular case, the court should award interest or not. The words " may direct" mean that it is discretionary on the part of the court to grant or refuse to grant interest. But the words following those words, viz., " the Collector shall pay interest on such excess at the rate of six per centum per annum" would mean that once the discretion to grant interest is exercised, there is no further discretion and the interest, if awarded, has to be at the rate of six per centum per annum. This also appears to be the construction of Section 28 so far understood....."

12. Shri Warriyar submitted that the question whether direction to pay interest was not directly and substantially in issue in the case the Supreme Court considered and, therefore, the observations extracted above, need not be taken

as those binding on the High Court under Article 141 of the Constitution. For this purpose, he cited the decision of the Supreme Court in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , wherein in paragraph 141, at page 164, occurs the following observations of the Supreme Court:

" The court was not called upon to decide and did not decide that Article 366(22) was a provision relating to a covenant within the meaning of Article 363. It is difficult to regard a word or a clause occurring in a judgment of this court, divorced from its context, as containing a full exposition of the law on a question when the question did not fall to be answered in that judgment. "

13. Quoting passages from Maxwell on the Interpretation of Statutes, Shri Warriyar also submitted that it was well-settled that the use of the word " may " in a statutory provision would not by itself show that the provision was discretionary. It might be used as a conventional courtesy and yet intended to be mandatory in nature. A decision of the Full Bench of the Jammu & Kashmir High Court in Collector v. Habib-Ullah-Din, AIR 1967 J & K 44, was also cited. We are not, however, persuaded to take a view that the observations contained in Raghubans Narain's case AIR 1967 SC 465, is not binding on us under Article 141 of the Constitution. We would, therefore, proceed on the basis that on the question, to grant or not to grant interest u/s 28 of the Act, the court has a discretion, whereas it is not so with the Collector (Land Acquisition Officer) u/s 34 of the Act. For the reasons we have already stated in the foregoing paragraphs, we would, however, hold that in spite of the court having a discretion in the matter, once it grants interest, it does not assume a quality different from that of interest allowed under Section 34 of the Act for taxation purposes. The whole argument in regard to different points of time at which interest accrues appears to proceed from a basic error in the understanding that right to compensation is not one but several, whereas it is not so, as clearly laid down by the Supreme Court in Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others,

14. We find little force in the contention of Shri Menori that until and unless in the decree, a provision for the grant of interest is made by the court, right to receive interest does not arise or accrue in favour of the land owner (assessee). We have already noticed that the settled legal position is that the interest relates back to the date of dispossession of the property on which date compensation becomes payable whatever be the time taken to finally settle the quantum of compensation. Even assuming that the court had the discretion not to grant interest, once it is granted, the right to receive interest relates back to the date of dispossession as is the case in the case of interest awarded by the Land Acquisition Officer (Collector) u/s 34, It has also to be borne in mind that a perusal of the contents of the decree would invariably go to show that the interest granted and to be worked out by the court is not from the date of the decree but from the date of dispossession of the property and actually interest

runs from day to day and accrues for the purpose of taxation in every year intervening the date of dispossession and the date of actual payment of compensation.

15. A large number of decisions had been cited by Sri Menon and Sri Warriyar. The legal position which we are concerned with appears to be so well-settled by the decision of the Supreme Court to which we have already made a reference, that we do not consider it necessary to examine each one of them in detail. The decisions cited before us include Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah, ; Commissioner of Income Tax Vs. Dr. Sham Lal Narula, ; T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, ; Joyanarayan Panigrahi Vs. Commissioner of Income Tax, ; Addl. Commissioner of Income Tax Vs. Virendra Singh, ; Commissioner of Income Tax Vs. Sri Ram Gopal, CIT v. Santi Devi [1983] 139 ITR 489; The Commissioner of Income Tax, New Delhi Vs. Deokinandan and Sons, ; Fazilka Electric Supply Co. Ltd. Vs. Commissioner of Income Tax, ; K. Sadasiva Krishan Rao Vs. Commissioner of Income Tax, Andhra Pradesh, ; Commissioner of Income Tax, Andhra Pradesh Vs. V. Janardhan Reddy and Others, ; Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax, ; Commissioner of Income Tax, Tamil Nadu-IV Vs. M.K. Kr. Muthukaruppan Chettiar, ; Commissioner of Income Tax Vs. Raja S.N. Bhanja Deo, ; M. Jairam Vs. Commissioner of Income Tax, ; George Paul Puthuran Vs. Commissioner of Income Tax, ; Topandas Kundanmal Vs. Commissioner of Income Tax, Gujarat, and Commissioner of Income Tax Vs. His Highness Maharaja Yashwant Rao Pawar, .

16. In the light of the foregoing discussions, our conclusion is that interest on compensation awarded with respect to the land acquired under the Land Acquisition Act runs from day to day, accruing from the date on which the Government took possession of the land, that being the date on which the land owner's right to receive the entire compensation arises, though determined and paid later. In this view, the contrary view expressed in M. Jairam Vs. Commissioner of Income Tax, ,, that interest on compensation awarded by the court u/s 28 of the Act accrues only on the date of such decree is clearly wrong. The decision in E.D. Sassoon and Company Ltd. Vs. The Commissioner of Income Tax, Bombay City, can be clearly distinguished, it being a case in which the right to receive the remuneration or commission accrued in favour of the managing agents on the completion of the year when the balance-sheet and profit and loss account were drawn up and trade results ascertained, not from the beginning of the financial year, day by day, or month by month. Our Division Bench has stated that it found tempting the logic of reasoning in Commissioner of Income Tax Vs. Smt. Sankari Manickyamma, extending to the question of accrual of interest, the principle enunciated in Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax, that the (additional) compensation decreed by the District Court, High Court and the Supreme Court accrued only on the dates on which the decrees or orders were passed by the respective courts. It is not necessary to discuss in detail to establish that these decisions, relied on by the Division

Bench, do not represent the correct law on the question in the light of the decisions of the Supreme Court which we have already adverted to.

17. The Karnataka High Court in paragraphs 15 and 16 at pages 707 in the decision reported in Commissioner of Income Tax Vs. A.B.V. Gowda (Deceased) (By L/R. Yeshoda Gowda), , has observed that the Division Bench of this court which decided M. Jairam Vs. Commissioner of Income Tax, while relying on the judgment in Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah, did not appear to have understood the true import of the decision of that High Court (Mysore High Court). We do not feel persuaded to go further into this controversy, except to state that to the extent it runs counter to the decision of the Supreme Court, to which reference has already been made, it is clearly wrong. The reasons advanced by the Division Bench for not agreeing with the reasonings in T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, which is based on the principles laid down by the Supremo Court in COMMISSIONER OF Income Tax, MADRAS Vs. K. R. M. T. T. THIAGARAJA CHETTY and COMPANY., are not convincing. A detailed discussion about the other decision of our High Court in George Paul Puthuran Vs. Commissioner of Income Tax, referred to in the reference order does not call for any consideration in depth, inasmuch as that merely follows the decision in M. Jairam Vs. Commissioner of Income Tax, and dissents from the contrary view expressed by the Allahabad High Court in Addl. Commissioner of Income Tax Vs. Virendra Singh, .

18. The result, therefore, is that we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the Revenue.

19. A copy of this judgment under the signature of the Registrar and seal of the High Court would be sent to the Income Tax Appellate Tribunal, Cochin Bench.