

(1997) 07 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16827 of 1994

Pothina Pothanna and Another

APPELLANT

Vs

Special Deputy Collector and Others

RESPONDENT

Date of Decision : 01-07-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 31(2), 34

Citation : (1997) 4 ALT 709 : (1997) 2 APLJ 383

Hon'ble Judges : M.H.S. Ansari, J

Bench : Single Bench

Advocate : P. Raja Rao, for the Appellant; Sumalini Reddy, Learned Counsel for Respondent Nos. 1 and 2 and Govt. Pleader for Land Acquisition, for the Respondent

Judgement

M.H.S. Ansari, J.—Heard.

2. The petitioners are owners of Agricultural land comprised in Sy. No. 262/20 of Madhuravada (v), Chinagadila Mandalam, Visakhapatnam District. An extent of Ac.5.66 cts was acquired for sites and services under L.E.D. Scheme for VUDA under the provisions of the Land Acquisition Act. Section 4 declaration was published in A.P. Gazette - Part I Extraordinary Issue No. 226 dated 2-5-1984 and draft declaration u/s 6 was published on 29-4-1987. The petitioner questioned the validity of the said acquisition and filed W.P.No. 12320 of 1988 which was dismissed on 21-12-1991 and an appeal preferred against the same W.A.No. 52 of 1992 was also dismissed on 5-2-1992 and a SLP in the Hon'ble Supreme Court was also dismissed. The petitioner also filed another W.P.No. 4134 of 1993 which was dismissed on 16-7-1993. During the pendency of the said writ petitions, an Award No. 20 of 1988 dated 27-7-1988 was passed by the 1st respondent and the compensation amount of about Rs. 4,00,259.16 ps. was deposited into the Treasury as the petitioners did not consent to receive the compensation awarded. After disposal of the writ petitions, the petitioner applied for payment of compensation and the same was duly paid by Demand Draft

pursuant to the orders passed by the 1st respondent in Rc.No. 114/87-RI dated 9-9-1993. Each of the petitioners were paid Rs. 2,00,129.58 paise by Demand Drafts by the District Treasury Officer. The petitioner's request for payment of interest from the date of taking possession i.e., 4-3-1992 till 13-9-1993 i.e., the date of payment of compensation not having been considered by the respondents, the above writ petition is filed for directions as to payment of interest for the said period.

3. The facts are not in dispute. In view of the narrow controversy, the facts relevant in the instant case are that the possession of the land in question was taken from the petitioners on 4-3-1992 and the compensation amount was paid to the petitioners on 13-9-1993. The 1st respondent had deposited the compensation amount payable to each of the petitioners in the State Treasury vide Challan Nos. 242/101 and 241/101 dated 11-2-1992 for the reason that the petitioners abstained from receiving the amount.

4. Learned Counsel for the 1st and 2nd respondent Smt. Sumalini Reddy, contended that the petitioners are not entitled to claim any interest as the delay or default in receiving the compensation is attributable to petitioners themselves and they cannot take advantage of their own lapses and defaults. It is further submitted that no sooner the petitioner applied for the amounts and expressed willingness to receive the compensation, appropriate orders were issued for payment of the same to the petitioners. The petitioners, it is contended have disentitled themselves by their own conduct for claiming any interest.

5. Learned Government Pleader for Land Acquisition representing the 3rd respondent - District Collector, supported the aforesaid contentions.

6. Sri P. Raja Rao, learned Counsel for the petitioner, however, submitted that the procedure adopted by the Special Deputy Collector - Land Acquisition Officer (1st respondent) in depositing the amount in Government Treasury was contrary to law and has resulted in deprivation of interest to the petitioners which would have accrued to the petitioners had the amount been deposited before Court as postulated u/s 31 of the Land Acquisition Act and invested by the Court u/s 33 and therefore the petitioners are entitled to interest as per law, it is urged.

7. u/s 31 of the Land Acquisition Act, the Collector on making the Award u/s 11, shall tender the amount of compensation awarded by him to the persons entitled thereto according to the award and shall pay to them unless prevented by some contingencies. Sub-section (2) of Section 31, however, states that if the persons entitled to the compensation under the Award, do not consent to receive it or if there be no person competent to alienate the land or if there be any dispute as to title or as to apportionment of it, the Collector shall deposit the amount of compensation in the Court to which a reference u/s 18 would be submitted. The Court referred to in Section 18 of the Act is the Civil Court.

8. In the instant case, however, the compensation was not deposited in the Court. Instead, it was deposited as the revenue deposits in the Government

Treasury. Sub-section (2) of Section 31 is clearly attracted to the instant case inasmuch as the petitioners had not consented to receive the compensation though they were entitled to receive the compensation under the Award passed by the Collector u/s 11 of the Act. When the petitioners who were entitled to receive the compensation under the Award made u/s 11, did not consent to receive the compensation, it was obligatory on the part of the Collector (Land Acquisition Officer - Respondent No. 1 herein) to have followed the mandate under Sub-section (2) of Section 31 and the compensation amount should have been deposited in the Civil Court. On such deposit, the mandate of Section 31(2) would have been complied with and thereafter the liability of State to pay interest in respect of the said compensation amount would cease.

9. Section 31(2) specifically postulates the situation where if the person entitled to receive the compensation under the Award, does not consent to receive it, then the amount shall be deposited into Court. The Collector (Land Acquisition Officer) is thus enjoined u/s 31 to deposit the amount of compensation in the Court to which reference u/s 18 would be submitted. The conduct of the petitioners is in the circumstances not relevant. The contentions of the learned Advocates for the respondent have accordingly to be rejected.

10. Next, it is contended by the learned Counsel for the respondents that the compensation amount was tendered and thereafter deposited in the Government Treasury and there has thus been compliance with law. The said contention is equally untenable. Deposit, u/s 31(2) of the Act is to be made in Court to which a reference u/s 18 could be submitted. Therefore, depositing the amount in the Government Treasury cannot be said to be in compliance with the statutory mandate. When the statute mandates the performance of a duty in a particular manner, the designated authority is bound to act in compliance therewith and in accordance thereto.

11. What then is the consequence of not depositing the compensation amount in the Court? Answer to the same is to be found in Section 34 of the Act which stipulates that when the amount of compensation is not paid or deposited on or before taking possession of the land, Collector shall pay the amount awarded with interest thereon at the rates specified in the said Section.

12. The liability of the Collector (Land Acquisition Officer - 1st respondent in the instant case) for payment of interest arises in case the amount of such compensation is not paid or deposited in Court. In the instant case, as noticed " above, the compensation amount was not deposited into Court and therefore the provisions of Section 34 of the Land Acquisition Act are attracted. u/s 34, payment of interest is mandatory and it has to be paid at the rate of 9 (nine) per cent per annum from the date of taking possession of the land by the Collector until the date the compensation has been so paid to the claimants under the Award or deposited in the Court. Proviso to Section 34 stipulates that if such compensation is not paid or deposited within a period of one year from the date on which compensation is taken, interest at the rate of 15% per annum shall be

payable from the date of expiry of the said period of one year on the amount of compensation which has not been so paid or deposited. In the light of the above claim of the petitioners for interest at 18% per annum is untenable and interest at the rate as stipulated in Section 34 alone is payable.

13. In the instant case, Award was passed on 27-7-1988 and thereafter possession was taken on 4-3-1992. The compensation to the respective claimants - petitioners herein was made on 13-9-1993. The compensation was not deposited in the Court within the prescribed period of one year from the date of taking possession. The petitioners would therefore be entitled to claim interest on the amount of compensation including solatium at the rate of 9% (nine per cent) for the first year and at 15% (fifteen per cent) per annum for the balance period as stipulated in Section 34 read with its proviso. Accordingly, directions shall issue to the respondents to pay to the respective petitioners interest on the amount of compensation at the rate of 9% (nine per cent) per annum for the first year reckoned from the date of taking possession i.e., 4-3-1992 and thereafter at the rate of 15% (fifteen per cent) upto the date of payment i.e., 13-9-1993.

14. Writ Petition is accordingly allowed in part, with directions, as above. Time for payment is granted upto six months from the date of receipt of a copy of this order.

15. There shall, however, be no order as to costs.