

(2007) 07 AHC CK 0187
In the Allahabad High Court

Ram Nath and Others

APPELLANT

Vs

The Special Land Acquisition Officer, Irrigation, The Executive
Engineer and State of U.P.

RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 28, 34, 4, 48

Citation : (2007) 4 AWC 3604

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Prakash Krishna, J.—The only point mooted in the present appeal is whether a land owner is entitled to get interest from the date of possession of the land acquired by the State Government where possession was taken by the State Government even before the issuance of notifications under Sections 4 and 6 of the land Acquisition Act.

2. The facts in brief are as follows:

Chak No. 433 area 260 links situate in Village Katghar Lalganj, Tappa Haveli, Pergana Deogaon, Tahsil Lalganj, District Azamgarh was acquired by the State Government for construction of Tikargarh Minor Canal Division 23. The notification u/s 4 of the Land Acquisition Act is dated 15.9.1984 and the notification u/s 6(1) is dated 29th of September, 1986. The Special Land Acquisition Officer by his award dated 23rd of September 1986 determined the prevailing market value of the land acquired on the relevant date i.e the date of publication of notification u/s 4(1) of the Land Acquisition Act. The appellants herein were not satisfied with the award of the Special Land Acquisition Officer and the matter was referred to the Civil Court for determining the market value. The 5th Additional District Judge, Azamgarh in L.A.R. No. 12 of 1988 found that the claimant appellants are entitled for compensation at the rate of Rs. 50,000/- per acre, solatium at the rate of 30 percent and the interest at the rate of 9 per

cent by the award dated 16.5.1989. A review application No. 29 of 1989 was filed by the claimant appellants for reviewing the aforesaid order on the ground that they are also entitled to 12 per cent additional compensation on the amount of compensation and the interest at the rate of 9 per cent per annum and thereafter 15 per cent per annum on the amount of compensation or apart thereof which has not been paid or deposited in accordance with the Section 28 of the Land Acquisition Act. The said review application has been allowed by the order under appeal on the ground that the claimant appellants are entitled to 12 per cent additional compensation and interest at the rate they claimed from the date of notification u/s 4(1) of the Act Still being not satisfied the above appeal is at the instance of the claimant appellants.

3. Shri J.A. Kazami, learned Counsel for the claimant-appellants in support of the appeal submits only one point. The argument is that the possession of the land in question was taken by the State Government in the year 1977 i.e. before the commencement of the acquisition proceedings under the Land Acquisition Act and therefore the interest on the compensation amount should be granted to him from the date of taking actual possession i.e. the year 1977. The learned standing counsel on the other hand contends that claimant appellants are entitled to get interest as per provisions of the Land Acquisition Act. On a true and proper construction of the various provisions of the Land Acquisition Act the claimant appellant cannot get interest amount from the date of taking possession if the possession was taken prior to the initiation of land acquisition proceedings.

4. Considered the respective submission of the learned Counsel for the parties. The point involved in the above appeal is no longer res integra and has been set at rest by various judgements of the Apex Court, referred by the learned standing counsel.

5. In Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr, it has been held that the land owner is entitled to additional compensation from the date of notification up to the date of award even if possession of the land was taken prior to the issuance of the notification u/s 4 of the Act. Interpreting Section 23(1-A) it was held that starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per cent per annum on the market value, is the date of publication of notification u/s 4 of the Act. The terminal point for the purpose is either date of award or the date of taking possession, whichever is earlier. In that case possession of the land was taken prior to the publication of Section 4 notification. It was held that, that terminal was not available and the only terminal that was available was the date of award.

6. In R.L. Jain (D) by Lrs. Vs. DDA and Others, the question involved in the present appeal directly came up for consideration therein. The possession was taken before notification issued u/s 4(1) of the Land Acquisition Act. The Apex Court after considering the scheme of the Land Acquisition Act held that taking possession before notification without authority cannot be recognised for the

purposes of the Land Acquisition Act. It was held that there are only two sections in the Act which specifically deal with the subject of taking possession of the acquired land. It distinguished its earlier judgement delivered in *Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat*, and held as follows:

In case the land owner 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 land owner. It is fully open for the land owner 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 land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of Section 48 of the Act lends support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.

7. The Apex Court in no uncertain terms has laid down that where possession is taken prior to the acquisition proceedings a party may have right to claim compensation or interest for the period prior to notification u/s 4(1) of the Land Acquisition Act, but such a claim would not be either u/s 34 or Section 28 of the Land Acquisition Act. The interest under these sections can only start running from the date the compensation is payable. In view of the law as settled by the Apex Court as indicated above, there is no substance in the argument of the learned Counsel for the appellants.

8. However, it has been further held in those decisions that the land holder will be entitled to get compensation/damages for the period commencing from the date of taking possession to the date of a notification u/s 4(1) of the Act and the Apex Court remanded the matter to the District Magistrate for determination in the case of *Land Acquisition Officer and Anr. v. Hemanagouda and Ors.* (2005) 12 SCC 443. In para 8 of the report it has been held as follows:

In view of the fact that there was an apparent conflict of judicial decisions on the issue of the interpretation of Section 34 till it was resolved in *R.L. Jain* case, we do not think it appropriate to deprive the respondents of their rights, if any, to receive rent or damages from use of the property prior to the date of acquisition. The issue whether the market rate granted under the award pursuant to the acquisition proceedings would amount to such compensation is not determined by us at this stage. Accordingly, we dispose of the appeals by setting aside the decision of the High Court on the ground that no interest on the awarded amount was payable u/s 34 in respect of possession taken prior to the notification u/s 4(1). However, we remand the matters back to the relevant Land Acquisition Authority in Karnataka (Haveri Division) before whom the respondents will be at liberty to raise a claim for rent or damages for any use of the property as claimed.

prior to the date of acquisition, The Collector will determine the dispute if so raised after notice to the State Government.

9. The learned Counsel for the appellant has placed reliance on the following cases:

1. Channarajamanni Vs. Union of India and Others,

2. D-Block Ashok Nagar (Sahibabad) Plot Holders Association Vs. State of U.P. and others,

3. Commissioner of Income Tax, Punjab, Jammu and Kashmir and Himachal Pradesh, Patiala Vs. Dr. Sham Lal Narula, Patiala,

10. These cases need no discussion as they are besides point.

11. In view of the above discussion, the appeal is allowed in part to the limited extent. The matter is remanded back to the Special Land Acquisition Officer, Irrigation Department, Azamgarh to determine the amount of compensation towards the rent/damages to which the appellant may be entitled for the use of property as claimed prior to the date of acquisition. The Special Land Acquisition Officer will determine the dispute if so raised after notice to the State Government. The appeal with regard to the rest is dismissed.

12. In the result appeal is allowed in part, as indicated above. No order as to costs.