

(1996) 10 BOM CK 0046

In the Bombay High Court

Case No : First Appeal No. 73 of 1991 with Cross-Objections

Satchidanand Kakodkar and Others

APPELLANT

Vs

Special Land Acquisition Officer and Others

RESPONDENT

Date of Decision : 30-10-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 28, 34, 4

Citation : (1997) 4 ALLMR 71 : (1997) 99 BOMLR 45

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Judgement

F.I. Rebello, J.—The appellants by this Appeal partly challenge the Award dated 18th April, 1991 in Land Acquisition Case No. 69/88. The State Government has also filed cross-objections which are dated 23rd September, 1991. In the Appeal Memo the main contention of the appellants is that interest ought to have been paid to the appellants from the date of taking possession of the land which was 29th September, 1979 and further special compensation u/s 23(1-A) of the Land Acquisition Act, 1894, also should be paid from the said date. In the cross-objections the State Government challenged the enhancement of the market value.

2. The Government by Notification dated 13th August, 1984, u/s 4 of the Land Acquisition Act, which was published in the Government Gazette dated 14th August, 1984, acquired several pieces of land at Kakora, Quepem Taluka, for the purpose of construction of Nanda lake at Kakora. Amongst the plots acquired, two plots belonged to the appellant herein which were parts of survey No. 380/1 admeasuring 290 sq. mts. and survey No. 379/1 admeasuring 1150 sq. mts. The Land Acquisition Officer in his Award fixed a flat rate of Rs. 3/- sq. mt. The appellant herein sought a Reference u/s 18 of the Land Acquisition Act, regarding enhancement of compensation and which was referred to the District Judge and came to be numbered as Land Acquisition Case No. 69/88. The Reference Court allowed the Reference and fixed the value of the acquired plot in Survey No.

379/1 at Rs. 9,332 /-. In so far as plot bearing Survey No. 380/1, the Reference Court was pleased to fix Rs. 30/- per sq. mt. To this the Reference Court added solatium at the rate of 30% and additional compensation of 12% from the date of Notification u/s 4 of the Land Acquisition Act till the date of the Award of the Collector or till the date of taking possession of the land, whichever was earlier. Some severance charges at the rate of Rs. 3.60 per sq. mt. for non-acquired land has also been paid. The State Government was directed to pay interest at the rate of 9% for the first year from the date of taking possession of the land and 15% for subsequent period till the date of final payment. It may be mentioned that the appellants had claimed that possession had been taken from them in the year 1978. They had also produced an Award passed in Land Acquisition Case No. 70/88 where the Reference Court held that possession had been taken over on 29th September, 1979.

3. Shri Padiyar appearing for the appellants, contends that the Reference Court erred in not holding that possession was taken from him in the year 1978 or, at least on 29th September, 1979, which date is the date of taking possession as held by the Reference Court in Land Acquisition case No. 72/88. Land Acquisition Case No. 72/88 pertains to the same Notification and for the same purpose. Shri Padiyar thereafter points out that if this date is considered, then the appellants are entitled to interest from the said date on the compensation from 29th September, 1979. Shri Padiyar also points out that he is entitled to special compensation u/s 23(1-A) of the Land Acquisition Act also from the date of taking possession, i.e. 29th September, 1979. It may be mentioned that the Notification u/s 4 though dated 13th August, 1984, the case is that possession was taken much earlier, at least on 29th September, 1979, which date has been accepted in Land Acquisition Case No. 72/88 by the Reference Court.

4. Shri Bharne, Additional Government Advocate appearing for the State, i.e. the respondent herein, submits that the appellants are not entitled to interest and special compensation u/s 23(1-A) from the date of taking possession. He points out that interest is payable from the date of taking possession and the compensation u/s 23(1-A) would be payable from the date of the Notification. He further points out that interest is only payable not on the entire compensation, but only on the market value as determined u/s 23(1) of the Land Acquisition Act. He further points out that at any rate, in this case no evidence has been led to show that possession was taken before the Award and consequently, this Court need not go into the aspects of interest and compensation u/s 23(1-A) of the Land Acquisition Act. Shri Bharne also points out that the Court erred in enhancing the compensation to what had been awarded by the Land Acquisition Officer.

5. Having heard learned Counsel, let me deal with the point as to whether there is material on record to sustain the enhancement of compensation as done by the Reference Court. The Reference Court insofar as plot surveyed under No. 379/1 admeasuring 1150 sq. mts. has been pleased to fix compensation at Rs.

9332/- based on the yield of the land. The Reference Court relied on the expert evidence of the Deputy Director of the Department of Agriculture. The objection of the Additional Government Advocate Shri Bharné to the said evidence is that the Report was prepared much later after the Notification, and as such, it is the contention that the said Report should not be considered. Shri Jose Rebello is a Registered Valuer. He has retired as Deputy Director of Agriculture. In his evidence he has deposed to the nature of the land. He states that he inspected the property in August, 1989. It has further come in evidence that his first posting in Quepem was in 1939 and tanks of Sheldem and Kakora were coming within his jurisdiction that on many occasions he had been to the site and therefore, he knew the paddy fields as well as the tanks. He has given his assessment of the yield. The Reference Court has accepted this evidence and fixed the compensation based on the yield. To my mind it is not possible to say that the said findings of the Reference Court are based on no material and/or are so perverse which a Court could not have arrived at. The finding by the Reference Court in respect of survey No. 379/1 is therefore sustained.

Insofar as the compensation regarding survey No. 380/1 is concerned, the Reference Court referred to the evidence of the expert who had fixed the compensation at Rs. 25/-. The Reference Court for the bund considering all the material fixed the value at Rs. 30/-per sq. mt. Taking the value of the land as assessed and the evidence of the expert, the sum of Rs. 30/- fixed for the bund cannot be said to be unreasonable. I have therefore, no hesitation in accepting the findings by the Reference Court in respect of Survey No. 380/1 is concerned, that being the compensation for the bund only.

6. The next contention is regarding the date of possession. The original appellant in his examination-in-chief set out that in fact the respondent had taken over the land somewhere in the year 1978 itself. In cross-examination the only question put to him is that he had not filed any suit against the Government when the Department started doing work in the property and flooded it. The original appellant had relied on the Award in Land Acquisition case No. 72/88 where as already set out, the Award is in respect of land acquired under the said Notification and for the same purpose where the Reference Court arrived at the conclusion that the date of taking possession is 29th September, 1979. In view of the deposition of the original appellant himself coupled with the findings given by the Reference Court in Land Acquisition Case No. 72/83, I am of the opinion that the date 29th September, 1979, should be fixed also in respect of the appellants' land as it forms part of the same land, and is taken for the same public purpose.

7. That takes me to the question as to whether the appellants are entitled to interest from the date of taking possession. This matter need not detain me for long. The Apex Court in *Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others*, has observed as under:-

When compensation is determined u/s 23(1), its quantification, though made at different levels, the liability to pay interest thereon arises from the date on which

the quantification was so made but it relates back to the date of taking possession of the land till the date of deposit of interest on such excess compensation into the Court.

Thus, there cannot be any doubt that interest would be payable from the date of taking possession.

8. The other argument is in respect of compensation u/s 23(1-A). A Division Bench of this Court in the case of State of Maharashtra and Another Vs. Nanabhai Rathod and Others, was considering a case where possession was taken before the Notification u/s 4 of the Land Acquisition Act. The Division Bench was considering payment of interest u/s 34 and compensation u/s 23(1-A). The Division Bench held that insofar as the interest is concerned, it is payable from the date of possession, but insofar as the compensation u/s 23(1-A) is concerned, it is referable from the date of the Notification. Thereafter the Apex Court in its judgment dated January 11, 1995 in Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, has held that the special compensation u/s 23(1-A) is concerned, is payable for the period between the date of Section 4(1) Notification and the date of Award and not from the date of taking possession. In the case of Astekkar Naganaatha Rao and Others etc. Vs. The Assistant Commissioner and Land Acquisition Officer and others etc., in the matter of special compensation allowed the claimants special compensation from the date of possession. However, from the body of the judgment it can be seen that the said payment was made on suggestions for negotiations made by the Court and it has not laid down the law.

9. The Apex Court thereafter in the case of Assistant Commissioner, Gadag Sub-Division, Gadag Vs. Mathapathi Basavannekwa and others, delivered on August 17, 1995, has held that the claimant is entitled to additional amount from the date of taking possession till the date of making the Award. In this case also possession was taken before the Notification was issued u/s 4. This view has been reiterated in the case of State of Himachal Pradesh and others Vs. Dharam Das, delivered on August 25, 1995. The Apex Court also held that the additional amount u/s 23(1-A) is payable from the date of possession.

10. Thus, from the judgments noted above it can be seen that the Apex Court in Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, has taken one view. The said judgment is of a Bench of two Judges. The said judgment was delivered on January 11, 1995. The Apex Court thereafter in two other judgments one delivered on August 17, 1995, in Assistant Commissioner, Gadag Sub-Division. Gadag v. Mathapathi Basavannekwa and Ors. (supra) and the other delivered on August 25, 1995, State of H.P. A Ors. v. Dharam Das (supra) has taken the view that the payment of compensation u/s 23(1-A) of the Land Acquisition Act is referable to the date of possession. These two judgments are also of a Bench of two Judges.

11. Shri Bharne has tried to point out that it is only in a judgment of the Division

Bench of this Court in State of Maharashtra and Anr v. Nanhhai Rathod and Ors., reported in State of Maharashtra and Another Vs. Nanabhai Rathod and Others, where both the interest and compensation u/s 23(1-A) had been considered together, that the Apex Court had, in all three judgments which are aforesaid, not considered Section 34 and Section 23(1-A) together; and if this had been done considering the scheme of the Act as also Section 23(1-A), the position would emerge that interest is payable from the date of possession, whereas compensation, u/s 23(1-A) is payable from the date of Notification.

12. As there is an apparent conflict of judgments between the earlier Bench of the Apex Court and the subsequent two judgments, and the Division Bench judgment of this Court, I called on the Advocate General to address on the said point. Insofar as the interest part is concerned, the Advocate General argued that interest is payable from the date of taking possession. He points out that interest is payable to the owner in consideration of his right to possession which he is deprived of when possession is taken from him. He thereafter points out that in view of the later judgments of the Apex Court on special compensation u/s 23(1-A) the later judgments will have to be followed.

13. It is true that in all the three judgments of the Apex Court what was in issue was the payment of compensation u/s 23(1-A). The issue of interest did not at all arise in the matter. However, in the later judgment of the Apex Court as I pointed out in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, the Apex Court has considered the question of the date from which interest is payable. Earlier also, the same view had been taken and in fact a Division Bench of the Karnataka High Court in the case of Hindustan Aeronautics Limited, Bangalore Vs. Muniswamy Reddy deceased by L.Rs. 1(a) M. Narayana Reddy and others, has relied on the judgment of the Apex Court in the case of Satinder Singh and Others Vs. Amrao Singh and Others, and of the Privy Council in the case of Inglewood Pulp and Paper Co. v. New Brunswick Electric Power Commission reported in AIR 1929 P.C. 287 for the same view. The date of payment of special compensation u/s 23(1-A) of the Land Acquisition Act has also been decided in the judgments cited in paragraph 10. In the earlier judgment the date of payment is from the date of Notification and in the subsequent judgment, it is from the date of possession.

14. As the Apex Court has pronounced the law, there is an apparent conflict of judgments. I am bound by the view taken by the Apex Court in its subsequent judgments, they being later judgments. The judgment of the Division Bench of this Court was much earlier. Subsequent to the said judgment, the judgments of the Apex Court on Section 23(1-A) have been pronounced. To that extent the judgment of the Division Bench considering the judgment of the Apex Court no longer holds the field.

15. That takes me to the last submission of Shri Bharne, based on the judgment in Prem Nath Kapur's case (supra). Shri Bharne, Additional Government Advocate points out that interest u/s 34 is not payable insofar as solatium and

special compensation u/s 23(1-A) of the Land Acquisition Act are concerned. For that purpose he relies on the judgment in Prem Nath Kapur's case. Shri Padiyar, learned Counsel appearing on behalf of the appellants, contends that a different view from the view taken in Prem Nath Kapur's case had been taken by the Apex Court in the case of Union of India v. Shri Ram Mehar and Ors. reported in (1973) 1 S.C. 109. It is further his contention that thereafter the Apex Court in Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, considered the judgment of the Apex Court in Union of India v. Ram Mehar (supra). The Apex Court therein has observed as under:-

But "Market value" and "compensation" are distinct expressions and have been used as such in the Land Acquisition Act. The key to the meaning of the word "compensation" is to be found in Section 23(1) and that consists of market value and solatium on market value which is stated to be the consideration for the compulsory nature of the acquisition. Therefore, this Court held that the term "market value" has acquired a definite connotation in judicial decision. If the words "market value" and "compensation" were intended by the Legislature to have the same meaning, it is difficult to comprehend why the word "compensation" in Sections 28(a) and 34 and not "market value" was used. So market value cannot be equated to compensation. The market value is, therefore, only one of the components in the determination of the amount of compensation. If the Legislature has used the words "market value" in Section 4(3) of the Amending Act, it must be held that it was done deliberately and what has intended was that interest should be payable on the market value of the land and not on the amount of compensation. Otherwise, there is no reason why the Parliament should not have employed the word "compensation" in the aforesaid provision of the Amended Act. Webster Comparative Dictionary at page 267, defines "compensation" as (1) the act of compensating of (2) that which compensates payment.

The Apex Court thereafter in the case of Narain Das Jain (Since Deceased) by Lrs. Vs. Agra Nagar Mahapalika, Agra, has observed as under:-

Solatium being part of compensation must fetch statutory interest from, the date of dispossession of the landowner till date of payment.

16. The judgment in Prem Nath Kapur's case was decided on November 29, 1995. The attention of the Apex Court was not invited to the cases in Union of India v. Ram Mehar (supra), Periyar and Pareekanni Rubbers Ltd (supra) and Narain Das Jain (supra). However, the matter once again come up before the Apex Court in the case of Preetam Singh (Dead) by L.Rs. and others Vs. Assistant Director of Consolidation and others, . The said judgment was delivered by the Apex Court on January 24, 1996. The Apex Court consisting of a Bench of three Judge has considered the judgment in Periyar and Pareekanni Rubbers Ltd. The Apex Court also noted the Judgment in Prem Nath Kapur and Anr. v. National Fertilizers Corpn. of India Ltd. and Ors. The Apex Court in the said judgment has noted that in Periyar and Pareekanni Rubbers Ltd. 's case neither the provisions

of Section 23(1) of the Land Acquisition Act were considered nor the distinction of the above provisions were brought to the notice of the Court at that time. As the judgment in Yadavrao P. Pathade's case has expressly approved the judgment in Prem Nath Kapur's case, I am bound to follow the judgment in Prem Nath Kapur's case as approved in Yadavrao Pathade's case.

I therefore hold based on the said judgment that no interest is payable on solatium.

17. For the aforesaid reasons, the appeal is partly allowed. The appellants are entitled to special compensation u/s 23(1-A) of the Land Acquisition Act, from the date of possession and not from the date of notification as awarded by the District Court. The cross-objections are dismissed. The Bank Gurantec furnished by the appellants to be returned to the appellants on the expiry of 90 days from today. In the circumstances of the case, each party to bear its own costs.