

(1985) 02 KAR CK 0014
In the Karnataka High Court
Case No : CRP No. 1632 of 1981

Shantha Kumara Swamigalu

APPELLANT

Vs

Spl. Land Acquisition Officer

RESPONDENT

Date of Decision : 28-02-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 153
Karnataka Land Acquisition Act, 1961 — Section 31, 32, 33, 34

Citation : (1985) ILR (Kar) 1766

Hon'ble Judges : Kulkarni, J

Bench : Single Bench

Advocate : S.V. Raghavaohar, for the Appellant; Shivraj Patil, for the Respondent

Final Decision : Allowed

Judgement

Kulkarni, J.—This is a revision by the claimant against the order dated 20-3-1981 passed by the XIII Additional Judge, City Civil Court, Bangalore, in L.A.G. 1435 of 1980 dismissing the interim application filed by the claimant under Sections 151, 152 and 153 of the Code of Civil Procedure.

2. Survey No. 96/1 of Saneguruvanahally measuring 5 acres 14 guntas belonging to the claimant D.B. Shantha Kumara Swamigalu, Matadhipathi of Shankara Devaru Mutt, was acquired by the Land Acquisition Officer. The Land Acquisition Officer awarded compensation at the rate of Rs. 10,000/- per acre. Thus the amount of compensation awarded came to Rs. 55,832-50. It included solatium also. Subsequently, the Land Acquisition Officer referred the matter to the Civil Court u/s 18 of the Land Acquisition Act. The Civil Court enhanced the compensation to Rs. 15,000/- per acre and the total compensation came to Rs. 92,287/50 including the statutory allowance. The Court passed an order regarding interest to the following effect-

"The claimant is entitled to interest at 5% per annum on the enhanced compensation of Rs. 36,455/- from 24-7-1972 the date of taking possession."

According to the petitioner, he had not received the compensation of Rs. 55,832-50 awarded by the Land Acquisition Officer. The contention of the Land Acquisition Officer that he has deposited the said amount in the office of the Tahsildar, who is a Muzrai authority, is no payment to the claimant at all. Therefore, the statutory interest ought to have been given on the entire amount of compensation, but not on the enhanced compensation only. Hence, according to him, the Civil Court committed an error apparent on the face of mistake, because Section 34 of the Land Acquisition Act is a statutory mandate imposed on the Court. Thus, he filed the present application under Sections 151, 152 and 153 of the Code of Civil Procedure, requesting that interest should be awarded on the entire compensation amount of Rs. 92,287-50.

3. It was resisted by the respondent Land Acquisition Officer.

4. The Court below did not accept the contention of the plaintiff and rejected the application. Hence, the revision by the claimant.

5. According to the respondent Land Acquisition Officer, he deposited the compensation amount of Rs. 55,832-50 in the office of the Tahsildar, who was a Muzrai Officer and as Shankar Devaru Mutt is administered by him.

6. Section 31 of the Land Acquisition Act reads as -

"(1) On making an award u/s 11, the Deputy Commissioner shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Deputy Commissioner shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount ;

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18: "

Section 32 of the Land Acquisition Act reads, as -

"(1) If any money shall be deposited in Court under sub-section (2) of the last preceding Section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall -

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or.

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit ;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied -

(i) in the purchase of such other lands as aforesaid ; or

ii) in payment to any person or persons becoming absolutely entitled thereto."

Section 33 of the Land Acquisition Act reads as -

"When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding Section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be."

Therefore, Sections 31 to 33 (both inclusive) lay down that if the land acquired does not belong to any person, or if it belongs to a person having only limited interest or belongs to a person without having any right to alienate the same, the amount shall be deposited by the Land Acquisition Officer in Court, and it is for the Court to consider as to whether such amount should be invested in any Government securities and whether any interest accruing thereof should be paid to any person. Therefore, the contention of the Land Acquisition Officer that he deposited the compensation amount of Rs. 55,842-50 in the office of the Tahsildar, who was the Administrative Officer of Muzrai Department, cannot be considered to be a payment at all within the meaning of Sections 31 to 33 of the Karnataka Land Acquisition Act. A payment to a third person, though he may be a public servant, is no payment at all within the meaning of Sections 31 to 33. Therefore, even if the Land Acquisition Officer has deposited the money in the office of the Tahsildar, it cannot be considered to be a payment at all, to the claimant and it cannot be considered to, be a deposit in the Court as contemplated by Sections 31 to 33.

7. Sri Shivaraj Patil urged that the claimant is not entitled to interest at 5 per cent per annum on the amount of Rs. 55,832-50, which had already been deposited in the office of the Tahsildar. Section 34 of the Land Acquisition Act reads, as -

"When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Deputy Commissioner shall pay the amount awarded with interest thereon at the rate of five per centum per annum from the

time of so taking possession until it shall have been so paid or deposited."

Therefore, Section 34 is a mandate. There is no discretion vested in the authority. The award of interest at the rate of 5 percent per annum from the time of taking possession cannot be denied by any Court or the Land Acquisition Officer at all. Therefore, under these circumstances, the Claimant is entitled to get 5 per cent interest per annum not only on the enhanced compensation amount awarded by the Civil Court, but also on the amount awarded by the Land Acquisition Officer himself. The total amount of compensation awarded comes to Rs. 92,287-50. Therefore, the claimant is entitled to get future interest at the rate of 5 percent per annum on Rs. 92,287-50 from the date of taking possession i.e., from 24-7-1972 till the amount is deposited in Court.

8. Sri Shivaraj Patil further urged that an application under Sections 151, 152 and 153 of the CPC in such cases is not maintainable. That such an application under, Sections 151, 152 and 153 of the CPC is maintainable as laid down in (1) Travancore Cochin State v. Chacko Alexandar and Other, AIR 1950 TC 121, (2) State of Madhya Pradesh Vs. Man Mohan Swaroop, (3) Janaki Nath Roy, Narendra Nath Roy and Co. Ltd. (in liquidation) Vs. Sambhu Nath Mullick and Others, (4) Jayakrishna Mangaraj Mohapatra Vs. State of Orissa and Another,

9. Therefore, under these circumstances, the order passed by the Court below is set aside. The revision is allowed. The Land Acquisition Officer is directed to deposit the entire amount of Rs. 92,287-50 with interest thereon at 5 per cent per annum from the date of taking possession i.e., 24-7-1972 till he deposits the same in Civil Court. The Civil Court itself shall determine as to whether the said money should be deposited as required by Sections 31 to 33 and as to whether it should make any order regarding payment of interest accruing thereof to the claimant or not.