

(2002) 08 KAR CK 0041

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4611 of 2000

Shekarayya Ningayya Tavarageri and Others

APPELLANT

Vs

The Assistant Commissioner, Special Land Acquisition Officer,
Bagalkot and Another

RESPONDENT

Date of Decision : 05-08-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 18 (1), 23, 28, 34

Citation : (2002) 5 KarLJ 134

Hon'ble Judges : N.S. Veerabhadraiah, J

Bench : Single Bench

Advocate : S.A. Kalagi and P.H. Gotkhindi, for the Appellant; M. Narayanappa, High Court Government Pleader for Respondent-1 and B. Patil, for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

N.S. Veerabhadraiah, J.—This is the claimants' appeal being dissatisfied with the determination of the market value in L.A.C. No. 40 of 1998, on the file of the II Additional Civil Judge (Senior Division), Bagalkot, dated 30-9-2000, determining the market-value at Rs. 75,000-00 per acre.

2. The lands of the claimants measuring 9 acres 18 guntas in Sy. No. 334/1, 24 guntas in Sy. No. 335/1 and 6 acres 1 guntas in Sy. No. 336/1, situated at Hungund Village was acquired for house sites by a notification dated 20-2-1986 followed by another notification dated 10-4-1986. The possession was taken on 19-3-1987. The Land Acquisition Officer determined the market-value at Rs. 6,000-00 per acre. Being dissatisfied with the quantum of compensation, the claimants filed an application u/s 18(1) of the Land Acquisition Act (hereinafter referred to as "the Act" for short) for referring the matter to the Civil Court. On reference, the learned Civil Judge (Senior Division), Bagalkot, determined the compensation at Rs. 75,000-00 per acre on the basis of the compensation awarded by this Court in M.F.A. No. 1891 of 1995, dated 6-8-1999. The

claimants being dissatisfied with the quantum of compensation have come up with this appeal for enhancement and also claiming interest as provided under Sections 28 and 34 of the Act with an application under Order 6, Rule 17 of the CPC.

3. Learned Counsel for the appellants submitted that he is restricting his claim only to the extent of award of interest as provided under Sections 28 and 34 of the Act and he is not claiming any enhancement of compensation in the light of the judgment passed in M.F.A. No. 1891 of 1995, determining the market-value at Rs. 75,000-00 per acre from this Court, which has become final.

4. Now the question that has to be considered is:

(1) Whether the application filed under Order 6, Rule 17 of the CPC for claiming further interest under Sections 28 and 34 of the Land Acquisition Act deserves to be allowed? If so, whether the appellants are entitled for the interest as claimed under Sections 28 and 34 of the Land Acquisition Act?

5. In this regard, the learned Counsel for the appellants relying on the case of *Sunder Vs. Union of India*, contended that the claimants are entitled for interest in accordance with Section 28 and also u/s 34 of the Act on the amount awarded under the provisions of Section 23 of the Act. Therefore, prayed to award interest. Secondly, relying on the decision of this Court in *Neelavva B. Soppinamath and Others Vs. State of Karnataka and Another*, contended that the claimants are entitled for interest as provided u/s 28 of the Act, from the date of taking possession of the lands. Therefore, prayed to award the interest in accordance with law.

6. On the other hand, the learned Government Pleader Sri M. Narayanappa for respondent 1 contended that the appellants are not entitled for any interest as provided under Sections 28 and 34 of the Act and the amendment application filed is highly belated. So also, the learned Counsel appearing for the Town Municipal Council, Hungund, contended that the application filed under Order 6, Rule 17 of the CPC is highly belated and therefore, not entitled for any interest.

7. The application under Order 6, Rule 17 read with Section 151 of the CPC came to be filed on 24-7-2002, praying permission for amendment of the claim of interest under Sections 28 and 34 of the Act.

8. In the case of *Sunder*, supra, at para 23 it is observed as follows:

"In deciding the question as to what amount would bear interest u/s 34 of the Act, a peep into Section 31(1) of the Act would be advantageous. That sub-section says:

"(1) On making an award u/s 11, the Collector 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 someone or more of the contingencies mentioned in the next sub-section".

The remaining sub-sections in that provision only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per Sub-section (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof."

9. The Apex Court has made very clear the expression "awarded amount" includes the compensation determined in accordance with Section 23 of the Act. When the law itself enables the claimants to claim compensation, merely because of the reason that the application filed is belated, itself is not a ground to reject the claim. The Act itself provides for award of interest in accordance with Section 34 of the Act. Therefore, the claimants are entitled to claim interest on such amount as provided u/s 34 of the Act. Therefore, in my opinion, the application deserves to be allowed to claim interest in accordance with law.

10. This Court while considering a similar question in the case of Neelavva B. Soppinamath's case, *supra*, relying on the earlier decision of the Supreme Court in *Union of India and another Vs. Pradeep Kumari and others*, observed that the claimants are entitled to be paid interest for a period from the date of taking possession of the land to date of deposit of additional amount. In that view of the matter, the claimants are also entitled to claim interest from the date of taking possession. In this case, the possession of the lands in question came to be taken on 19-3-1987. The said fact is not in dispute by the respondents. Therefore, it is from that date i.e., 19-3-1987, the claimants are entitled for the interest amount as provided u/s 28 of the Act and so also entitled to claim interest as provided u/s 34 of the Act on the compensation awarded in accordance with Section 23 of the Act, in the light of the judgment of the Apex Court. Accordingly, to that extent, the appeal is allowed.

The Court fee paid in excess is ordered to be refunded.

The parties shall bear their own costs.