(2004) 07 KAR CK 0059

In the Karnataka High Court

Case No : Writ Petition No''s. 453-491 of 2001 and etc.

Sri Krishnabai and Others APPELLANT

Vs

The Special Land Acquisition Officer and Another RESPONDENT

Date of Decision : 30-07-2004

Acts Referred:

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

Citation : (2004) ILR (Kar) 4158 : (2004) 6 KarLJ 138 : (2004) 4 KCCR 476 SN

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : G. Gangireddy, for the Appellant; K.P. Ashok Kumar, AGA and Kempanna, HCGP, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—In these set of petitions the petitioners have sought to direct the 1st respondent to grant statutory benefits including interest of 12%, 9% and 15% on the solatium on awarded amount under Sections 23, 23 (1-A) & Section 34 of the Land Acquisition Act (for short ''the Act''); for further direction to the respondents to grant all other benefits for which they are entitled under the Act and to refer the matter to the Civil Court for higher compensation u/s 18 of the Act.

2. According to the petitioners their properties were acquired by the Government for the construction of the Almatti dam by issuing preliminary notification u/s 4(1) dated 2.12.83 and final notification u/s 6 on 31.6.96; the land Acquisition Officer having regard to the facts and circumstances of the case and out of urgency entered into an agreement and finalized the acquisition and agreed to pay compensation amount to the petitioners and others whose landed property was acquired and of course at the time of settlement the following conditions were said to be inserted

(i) Land owners should invest 50% of compensation in N.S.C and to take the balance 50% in cash;

(ii) They should forego 30% solatium under Land Acquisition Act; and

(iii) They should not approach the Court for enhancement of compensation on any ground whatsoever.

Accordingly, as per the above conditions, there was said to be a consent award passed in all these cases. Although the Land Acquisition Officer has not awarded solatium of 30% or the interest on the amount as contemplated u/s 23 & 23(1-A) & Sub-section 34 of the Act in view of the agreement, but subsequently petitioners said to have made applications to the Government stating that they are entitled for all the benefits on the agreed amount of compensation. After prolonged deliberations, on the direction of the Government the Land Acquisition Officer has granted 30% solatium on the award amount in the year 1993 by Award dated 15.7.03 of which the annexures are annexed to the Writ Petitions; although the solatium amount of 30% has been granted no interest has been granted as contemplated u/s 23 and 23(1-A) of the Act and also no statutory benefits having been granted to the petitioners and others. Thereafter, after payment of solatium amount of 30% petitioners and others have made several representations to the respondents to pay all the statutory benefits as contemplated u/s 23 & 23(1-A) and also u/s 34 of the Act. Hence these petitions.

3. On behalf of the respondent authorities statement of objection has been filed. While questioning the maintainability of the Writ Petitions it is submitted that the award has been passed with the agreement of the petitioners, that if the petitioners were not agreeable to the conditions imposed on them, consent award would not have been passed. As per the agreed terms, the petitioners were not entitled for 30% Solatium at the time when the original award was passed in 1989. Further, it is submitted that the possession of acquired properties has not been taken, after the pronouncement of the award as per Section 16(2) of the Act. Hence, they are not liable to pay interest but the petitioners have received 30% solatium and 12% additional market value as per provisions of Section 23 & 23(1-A) of the Act. As such the petitioners are not entitled for interest in view of the ruling of this Court in Writ Appeal No. 5642 of 1998 dated 7.9.1999 and also indicating the amount of compensation awarded in each case, it is submitted that the petitioners have been paid 30% of solatium and 12% of the Additional Market value from the date of 4 (1) notification. Accordingly, sought for dismissal of the petitions.

4. Heard the learned Counsel appearing for the petitioners and the learned HCGP for the State.

5. It is the submission of the learned Counsel appearing for the petitioners that when there is modification of the original agreement that was entered into and that when the petitioners have been awarded solatium, the question of relying back on the agreement does not arise. As such, as per the provisions of, the Act, the petitioners are entitled for interest on the solatium and other statutory benefits awarded. In support of his contention he relied upon the decision of the

Apex Court reported in KARNATAKA ELECTRICITY BOARD v. THE STATE OF KARNATAKA AND OTHERS ILR 2002 KAR 2033 wherein it is held at paras 10 & 11 thus:

"We also agree with the learned Single Judge that the difference in the compensation awarded by the LAO and the agreement is not much. Further, as the appellant had agreed to pay to the claimants solatium amount to be fixed by the LAO, therefore, award granting solatium cannot be said to be, in any way, illegal or erroneous. However, as there is no specific agreement on payment of interest in the facts of the present case, the award passed by the LAO granting the same cannot be justified. Further, as the appellant had agreed to pay consideration amount at the rate of Rs.14,250/- per guntas for 2/ 3rd area of the schedule property, it was not open to the LAO to award compensation for one half area of the schedule property.

In that view of the matter, award passed by the LAO requires to be modified accordingly. It is ordered that the claimants shall be paid compensation at the agreed rate of Rs. 14,250/-per guntas for 2/3rd area of the schedule property and not 50% thereof. As directed by the LAO, claimant also would be entitled to get 30% of solatium and on the said amount of solatium, they would be entitled to have interest in view of the decision rendered by the constitution bench of this Court in Sunder Vs. Union of India, . However, the award directing that the appellant shall pay interest @ 9% per annum for the first year and @ 15% per annum for the subsequent years from the date of issue of notice u/s 4(1) of the Land Acquisition Act on the amount of compensation is set aside."

Accordingly contended that by virtue of the ratio laid down by the Apex Court in KEB''s case and also in view of the ratio laid down in Sunder Vs. Union of India, the petitioners are entitled for the award of interest on the additional benefits.

6. The learned Counsel for the petitioners has relied upon a ruling reported in Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat, to contend that interest on the compensation amount can be claimed at any stage of proceedings under the Act. Further the learned Counsel for the petitioners also relied upon the ruling of the Apex Court in SUNDER v. UNION OF INDIA to contend 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.

Accordingly, contended that the petitioners are entitled for the interest and the solatium and other statutory benefits awarded to them by virtue of the modified second award passed in respect of the land acquired by the respondents subsequent to the first award passed based on the agreement of consent.

7. Per contra the learned Government Advocate has submitted this is not a case of compulsory acquisition and if it is compulsory acquisition only the petitioners would be entitled to all the statutory benefits including interest as enunciated by the Apex Court from time to time. Further contended that the petitioners are not

entitled for the interest and the statutory benefits as it was not contemplated in the agreement as this is being a consent award and also tried to rely upon the judgment of the Apex Court in this regard reported in ILR 2002 KAR 2033 and submitted that when there is an agreement between the parties the award would be passed only in accordance with the agreement and question of granting of interest on the additional amount does not arise.

8. Having heard the learned Counsel for the respective parties, the point that would arise for consideration is:

1) Whether the petitioners are entitled for award of interest on the additional benefits awarded to them?

2) Whether the petitioners are entitled to seek reference to the Civil Court for higher compensation u/s 18 of the Act?

9. In the argument submitted on behalf of the Government, what is sought for is that award of interest on solatium was not a part of agreement, as such the petitioners are not entitled for interest on the solatium.

9-A. However, it appears that although there was a bar in the original agreement to grant 30% of solatium i.e. the petitioner shall forego 30% solatium. But subsequently on the representation given by the petitioners to the Government, the Government has directed payment of 30% solatium on the market value fixed. Now according to the petitioners, the agreement is modified. As such they are entitled for the interest on the said amount.

10. As directed by the LAO the claimants also would be entitled to get 30% solatium. On the said solatium they would be entitled to have interest in view of the decision rendered by the Constitution Bench of the Apex Court in Sunder''s case.

11. The Government Advocate appearing for the respondents has submitted that this is not a case of compulsory acquisition. However, in the instant case as noted above, there is 4 (1) and 6 (1) notification issued as per the provisions of the Act and, only at the time of award there was shown to be negotiations. But according to the petitioners, there was a compulsion on them as they were not free to agree for the suggestions made to them. Ultimately they had to concede for the settlement. But however, in so far as the present case is concerned, having regard to the facts and circumstances of the case, as is laid down by the Apex Court it is not a case of voluntary sale or transfer, rather it is a compulsory acquisition. Once a case is held to be acquisition compulsory in nature, as laid down in Sunder''s case, the benefit flows to the petitioners as held in para 11 of KEB''s case cited above and the petitioners would also be entitled to interest on solatium.

12. One more relief sought for by the petitioners is to refer the matter to the Civil Court for enhancement of compensation u/s 18 of the Act. This Court in W.A.5642/98 D.D. 7.9.19994 has held that since it is a consent award passed by

the L.A.O. the parties are not entitled to seek reference u/s 18 of the Act to the Civil Court to determine higher compensation relying on the decision of the Apex Court in the case of State of Gujarat, etc. Vs. Daya Shamji Bhai, etc., . In view of the above, the question of referring the matter u/s 18 of the Act to the Civil Court does not arise.

13. The counsel for the respondent /State relied upon KEB'' s case supra and tried to contend that there is no specific clause in the agreement for payment of interest. In the facts of the present case it is seen that there is a compulsory acquisition for the purpose of upper Krishna Project. However, before passing the award, there is shown to be an agreement entered into between the land owners and Collector. As such, the agreement is restricted in so far as compensation is concerned. The present case is one of compulsory acquisition, whereas in KEB''s case the KEB had entered into negotiations with the land owners even prior to the issuance of Section 4(1) & 6(1) notification of the L.A. Act after having identified the property which was suitable for their purpose. Having negotiated and entered into an agreement, thereafter notifications were issued as required u/s 4(1) & 6(1) of the LA. Act, the award was then passed in terms of the said agreement. In the instant case, unlike in KEB''s case, there is only an agreement between the land owners and the Collector in so far as the award is concerned. Under the circumstances, it cannot be said that the facts of KEB'' s case are squarely applicable to the case on hand to invoke the same. Hence, petitioners would be entitled to interest on the solatium award passed. Although in the original agreement between the land owners and the Collector there was an agreement to forego solatium, but subsequently there were representations given and then it was agreed to pay solatium. Under the circumstances, as held in Sunder''s case the petitioners are entitled to interest on solatium. It is also clear that when the compensation amount is not paid or deposited as per the award, the Government shall pay on the award amount with interest. Since the State in its objections filed has stated that already the petitioners have been paid further benefits like solatium and the additional market value from the date of notification, what remains is that they are entitled to interest on solatium.

14. In view of the decision rendered by the Constitution Bench of the Apex Court in Sunder''s case, the Supreme Court reiterated the said Judgment in KEB''s case and accordingly has held that the claimants were entitled to interest on the solatium amount.

15. Thus, it is to be held although in the original agreement, there was a clause that the petitioners shall forego solatium but subsequently on the representation given by the petitioners, Government has considered to award solatium and once solatium is awarded that amounts to modification of the agreement and the clause to forego solatium is modified, as such it amounts to novation of the contract and ultimately the petitioners would be entitled to interest on solatium as rendered in Sunder''s case.

16. One more contention of the learned Government Advocate is that although

the award has been passed since possession has not been taken, the petitioners are not entitled to claim interest on the award amount and the question of paying interest arises only when possession is taken as per Section 16(2) of the Act.

17. However, per contra learned Counsel for the petitioners submitted that the petitioners are entitled for payment of interest from the date of award, not only on the award amount but also on solatium.

18. In the decision of the Apex Court reported in SMT. LILA GHOSH (DEAD) THROUGH LR v. STATE OF WEST BENGAL6 at para 9 it is held as under:

"Even though the authority in Shree Vijay Cotton and Oil Mills Ltd., appears to support the claimants, it is to be seen that apart from mentioning Sections 28 and 34, no reasons have been given to justify the award of interest from a date prior to commencement of acquisition proceedings. A plain reading of Section 34 shows that interest is payable only if the compensation, which is payable, is not paid or deposited before taking possession. The question of payment or deposit of compensation will not arise if there is no acquisition proceeding. In case where possession is taken prior to acquisition proceedings a party may have a right to claim compensation or interest. But such a claim would not be either u/s 34 or Section 28. In our view interest under these sections can only start running from the date the compensation is payable. Normally this would be from the date of the Award. Ofcourse, there may be cases u/s 17 where by invoking urgency clause possession has been taken before the acquisition proceedings are initiated. In such cases, compensation, under the land Acquisition Act, would be payable by virtue of the provisions of Section 17. As in cases u/s 17 compensation is payable interest may run from the date possession was taken. However this case does not fall into this category."

19. Further, in W.P.23191-199/02 disposed of on 01/08/20027 by my esteemed brother P. Vishwanath Shetty J, it is held that the petitioners are entitled to payment of interest on the compensation awarded and also on solatium from the date of award till the date of deposit or payment as the case may be. In the said case His Lordship has relied upon the ruling of the Apex Court reported in The State of Madras Vs. K.N. Shanmugha Mudaliar and Others, ; NEELAVVA B. SOPPINAMATH AND OTHERS v. STATE OF KARNATAKA AND OTHERS ILR 2002 KAR 99. In view of the above, the Writ Petitions have to be allowed in part.

Accordingly, these Writ Petitions are allowed, but in part. The petitioners are entitled to interest on solatium as held in Sundar''s case, supra, from the date of award till deposit or payment. However, the prayer to refer the matter to the Civil Court'' for seeking enhancement is rejected. No order as to costs.

