
(1988) 09 OHC CK 0039
In the Orissa High Court
Case No : First Appeal No. 155 of 1980

State of Orissa

APPELLANT

Vs

Lokanath Patra

RESPONDENT

Date of Decision : 19-09-1988

Acts Referred:

Land Acquisition Act, 1894 — Section 28, 34

Citation : (1989) 67 CLT 178

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : G. Rath, General and S.K. Das, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—This is an appeal u/s 7 (3) of the Orissa Development of Industries, Irrigation. Agriculture. Capita 1 Construction and Re-settlement of Displaced Persons (Land Acquisition) Act. 1948 (hereinafter referred to as the Act"). In spite of valid service of notice of the appeal, claimant Respondent has not entered appearance.

2. This appeal is confined only in respect of direction for payment of interest on the compensation awarded.

3. There was no provision under "the Act or the Rules made thereunder prior to 1957 for payment of interest on the amount of compensation awarded. In 1957 only, Rule 23 was added to the rules made to the Act with regard to interest. It reads as follows:

The competent authority at the time of payment of the compensation amount to the person or persons entitled thereto shall also pay interest at the rate of six per centum per annum on the said" amount for the period between the date of taking possession of the hind and the. date notified for making the payment Provided that no interest shall run on the amount assessed and deposited by the

said authority with notice to the owner to take payment, from the date of the said deposit:

4. It is true that in a Division Bench decision of this Court reported in *State of Orissa v. Banamali Babu* ILR 1961 Cutt. 451. It was held that the Arbitrator can award interest as a part of the compensation amount just before the delivery of judgment in that case, Rule 23 was brought to the notice of the Division Bench which was not relied upon as the award under consideration in that case was prior to 1957 and the amendment to the rules was not retrospective in operation. It was held that the amendment to the rules may be taken as an indication of the acceptance of the principle that interest is payable. The Division Bench decision would have no application to the present case since the award is post 1957.

5. Arbitrator appointed under the Act is a Tribunal. He is to exercise that power which is vested under the Statute and in the manner it is provided for. This aspect was not considered in the decision of the Division Bench. As a Tribunal it can exercise the ancillary power but has no inherent power. Thus where a matter is entrusted to another authorising under the Statute Tribunal cannot exercise the same power. This principle is laid down in the decision reported in *State of Orissa represented by Commissioner of Sales Tax, Orissa v. Member, Sales Tax Tribunal and Anr.* I.L.R 1971 Cutt. 1325. In this case, the question was with regard to exercise of power of stay under the Sales Tax Act by the Tribunal hearing Second Appeal." It was held that the power to grant stay having been vested with the Commissioner, Tribunal has no power to grant stay. Applying the said principle to the present case, it can safely be held that under Rule 23 Power to pay interest being vested in the competent authority, Arbitrator has no power to direct payment of interest on the compensation. Rule 23 is similar to Section 34 of the Land Acquisition Act. There is no power similar to Section 28 of the Land Acquisition Act. This is also an added ground. Division Bench was not called upon in that case to consider the effect of absence of a provision in the Act similar to Section 28 of Land Acquisition Act. Sub-section (4) of the Section 7 of the Act provides that in the award the amount of costs incurred in the proceeding and by what persons and in what proportions they are to be paid are to be stated. When specific provisions have been made for the compensation and for costs to be determined by the Arbitrator, the absence of such specific power with regard to interest becomes important. This aspect was also not brought to the notice of the Division Bench. However, as stated earlier *State of Orissa v. Banamali Babul* (supra) is distinguishable as the said decision was dealing with a case of an award prior to the coming into force of Rule 23 in 1957. I am inclined to hold that Arbitrator has no power to give direction.

6. There is also no scope for award of interest under Rule 23 by the Arbitrator, in view of the fact that the facts with regard to preconditions for award of interest are not required to be enquired into by the Arbitrator for determination of the compensation. After Rule 23 came into force interest is not part of the

compensation as in *State of Orissa v. Banamali Babu* (supra), when there was no provision. It is to be paid on the amount of compensation. In this view the Arbitrator ought to have left the matter to the competent authority who is supposed to act in accordance with Rules.

7. Even if it is assumed that the Arbitrator has power to give a direction under the scheme of the Act and the Rules the claimant has notice of the deposit. It is for the claimant to prove that he had no notice so that he would get the interest on the compensation under Rule 23. Under the scheme of the Act and the Rules, made thereunder after Notification u/s 3 a copy of the notice is to be served on the owner or the occupier of the land u/s 4 (1). Whom such a notice is published u/s 4 the land proposed to be acquired vests absolutely on the State Government free from all encumbrances. Thereafter the competent authority may proceed to take possession as provided u/s 4. After vesting u/s 5 any person interested may file his objection to the acquisition as provided u/s 6. On consideration of the objection, the competent authority may either dismiss the objection, or release the land from acquisition as provided u/s 6. When it is decided by the competent authority to release the land under acquisition, he is to determine compensation as provided u/s 7. Under Rule 4 the competent authority is to give public notice inviting claims to compensation for all interests. Thereafter, enquiry is to be made under Rule 5 by the competent authority and he is to make a record in writing of the compensation which in his opinion should be allowed for the land. Thereafter, payment is to be offered in respect of the amount of compensation determined by notice in writing. In case the person does not agree to accept the compensation offered by the competent authority the same shall be deposited as a revenue deposit in his favour and the case is to be referred to the State Government for adjudication by the Arbitrator as provided under Rule 9. Thus, the claimant expressing his disagreement, has notice to take the amount of compensation. Proviso to Rule 23 makes it clear that the amount assessed and deposited by the competent authority would not carry any interest from the date of the deposit in case the owner has been noticed to take the payment, As has already been stated under Rule 5 (2) the competent authority would offer the payment of the amount and the same is to be deposited as a revenue deposit only when the person does not agree to accept the compensation offered. This in effect is the notice to take payment. Thus, in respect of the amount of Rs. 3,121,19 paise deposited on 24-3-1962. claimant had notice to take payment and he is not entitled to interest thereon. The claimant is however, entitled to interest for the excess amount awarded from the date of taking possession till the date of payment.

8. In the result the appeal is allowed to the extent indicated above. There shall be no order as to costs.