

(1996) 06 KAR CK 0030
In the Karnataka High Court
Case No : M.S.A. No. 77 of 1995

The Asst. Commr. and LAO

APPELLANT

Vs

Kappe Erappa and Another

RESPONDENT

Date of Decision : 17-06-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 12 (2), 18, 23 (1A)

Citation : (1997) ILR (Kar) 440 : (1997) 1 KarLJ 128

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : R.K. Hatti, GP, for the Appellant;

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—Admit. It is taken up for final hearing. Heard Learned Government Pleader.

This appeal arises from the Judgment and Order dated 3.12.1993, delivered by R.S. Futane, District Judge, Bellary, in Miscellaneous Appeal No. 35/1991, along with other appeals. The Miscellaneous Appeal No. 35 of 1991, had been filed challenging the Judgment and Order dated 26.6.1991, passed by the Civil Judge, Hospet, in a Land Acquisition Case No. 80 of 1984, and the Learned District Judge, Bellary, affirmed that Judgment and Order of the Learned Civil Judge.

2. The Learned Civil Judge, in a Reference u/s 18 of the Land Acquisition Act, for short, the "Act", namely, Land Acquisition Case No. 80/1984, fixed the market value at Rs. 10,000/- per acre for the land under acquisition and held that the claimant will be entitled to the compensation amount to be fixed at the market value. In addition thereto, the Learned Civil Judge after looking and considering the material on record, recorded the finding of fact to the effect and held that, though in Ex.P4 - the award, the date mentioned is 20.3.1982, but the Civil Judge held that, that appears to be the date on which the draft was prepared and sent for approval The Civil Judge further, held that after the award was approved

by the State Government's Authority, that is, the Deputy Commissioner, it was passed and pronounced on 19.3.1983. The Learned Civil Judge referred Ex.P11 that is the notice, which is required to be issued u/s 12(2) of the Land Acquisition Act, that while pronouncing the award, the Land Acquisition Officer it is provided shall issue notice to the persons or parties neither present personally nor present through their representative at the time of the pronouncement of the award.

So, taking into view and consideration that notice Ex.P11 on record, the Civil Judge observed, that award notice was issued by the Land Acquisition Officer to the claimant u/s 12(2) of the Act on 18.3-1983, and finally opined, that the notice u/s 12(2) - Ex.D3, per se reveals that award was pronounced on 19.3.1983. The Learned Civil Judge observed as under:

"If really the date of passing and pronouncement of award was 20.3.82, then there was absolutely no necessity for LAO to mention in Ex.D-3 the notice issued u/s 12(2) of L.A. Act as the award has been passed and pronounced on 19.3.83. This Ex.D-3 is the original notice u/s 12(2) of L.A. Act, and duly signed by LAO-cum-Assistant Commissioner. So, when he stated in it that he passed and pronounced the award on 19.3.83, that date is the date of award and not the date mentioned in award as 20.3.82. So, the case was pending on the file of L.A.O. as on 19.3.83, as such, the claimant is entitled for additional market value at 12% p.a."

3. The Civil Judge rejected the contention raised on behalf of the State that since possession has been taken earlier on 1.10.1976, that is, prior to the date of issuance of notification u/s 4(1) so, claimant was not entitled to additional amount u/s 23-1A. The notification in this case u/s 4(1) had been issued on 2.11.78. The Civil Judge held that even if the possession had been taken prior to the date of notification u/s 4(1), the claimant had been entitled to additional market value u/s 23(1-A) of the Act after placing reliance on a decision of the Bombay High Court reported in State of Maharashtra and Another Vs. Nanabhai Rathod and Others, . The Civil Judge held that the claimant will be entitled to the amount u/s 23(1-A) from the date of notification till the date of passing of the award. In addition thereto, the Civil Judge has granted the claimant other statutory reliefs as provided u/s 23(2) of the Act.

Having felt aggrieved from the order of the Civil Judge, the present appellant preferred the appeal, that is Miscellaneous Appeal No. 35 of 1991. In that Miscellaneous Appeal, a contention was raised before the Appellate Court that the award was dated 20.3.82 and not 19.3.1983 and the Learned Civil Judge, committed serious error in holding that the date of award is 19.3.1983.

4. The Learned District Judge considered the matter and affirmed the finding of the Civil Judge holding that the finding of the Civil Judge was that really the award was made on 19.3.1983, and not on 20.3.1982, and held that the finding was correct and did not suffer from any error. Further, the Learned District Judge observed that there is clear-cut evidence on record to show that award had been

passed on 19.3.1983, as per original notices issued to various claimants, who are respondents in all these appeals and the date of award is clearly shown as 19.3.1983 and held as follows:

"Hence, this being the position, I do not find any force in the argument of the Learned District Government Pleader to hold that the date of the Award should be taken as 20.3.82 and further that, the claimants respondents are not entitled for the additional benefit of the market value pertaining to Section 23(1)(A) of the Land Acquisition Act. Hence, I fully endorse and uphold the findings of the Learned Civil Judge, in this behalf of the matter also and hold that the Learned Civil Judge, has not committed any error as such in doing so and accordingly, Point No. 2, is answered."

The Learned District Judge maintained the order of the Learned Civil Judge given in the Land Acquisition Case No. 80/1984. Having felt aggrieved from the Judgment and Order of the Learned District Judge in-Misc. Appeal No. 35/1991, the Assistant Commissioner and Land Acquisition Officer, Bellary, has come up in this Second Appeal u/s 54(2) of the Act, namely, M.S.A.No. 77/1995.

5. In spite of service of notice, none has appeared in this appeal for the respondents, though Sri R.K. Hatti, Learned Government Pleader appeared for the Appellant. The only point that has been urged before me is that the Learned Civil Judge erred in conferring or giving benefit of Section 23(1-A) of the Act on the ground that the award should be taken to have been made on 20.3.1982 - as the date appears from Ex.P4 and not on 19.3.1983, as found and held by the Civil Judge and the 1st Appellate Court, the Learned Government Pleader explained the point by saying that if the award has been given before 30th April, 1982, in view of the Supreme Court's decision in K.S. Paripoornan Vs. State of Kerala and Others, , the benefit of Section 23(1-A), would not be available, even if it is taken that the award has been given on 20th of March, 1982 and not on the date wrongly held by the Civil Judge, as 19.3.1983. The Learned Government Pleader made reference to K.S. PARIPOORNAN v. STATE OF KERALA. As regards the question that whether award has been made on 20.3.1982 or 19.3.1983, in my opinion this is a pure finding of fact which has concurrently been arrived at by the two Courts below after considering the material on record in the light of the law. Section 12(2) no doubt, required that while pronouncing the award, the Land Acquisition Officer shall give notice u/s 12(2) of the Act to the parties or claimants, who are not present or whose representatives are not present and the Court in this connection considered the notice issued, in which the Court has mentioned that it is mentioned, that the award is passed on this day. So, this is a question of appreciation of evidence. In the matter of appreciation of evidence, this Court does not interfere with the concurrent findings of the authorities, howsoever erroneous the findings of fact may be, unless it is shown that the findings has been the result of the substantial error of law. In this case, no substantial error of law has been pointed out, so date of award is to be taken as 19.3.83, as held by the Courts below and that on this date, the award had been

pronounced and given.

6. In view of the language of Section 30 Sub-section 1(a) as the proceedings were pending and the award had not been given before 30th April, 1982, definitely Section 23(1-A) did apply. The other contention in this regard urged by the Learned Government Pleader, is to the effect that as possession had been taken by the Land Acquisition Officer or the authorities before the issuance of notification u/s 4(1) of the Land Acquisition Act, the claimant was not entitled to the benefit u/s 23(1A) of the Act. The Learned Government Pleader contended that as in this case possession of the land was taken on October 1st, 1976, while notification u/s 4(1) of the Land Acquisition Act, had been published on 2.11.1978, the claimant - respondent had not been entitled to the grant of benefits u/s 23(1-A) of the Act. Learned Government Pleader tried to place reliance on a Division Bench decision of this Court in the case of Asst. Commissioner-cum-Land Acquisition Officer Vs. Mallaiah, , in which the Division Bench appears to have no doubt, laid it down that:

"the amount awardable u/s 23(1-A) of the Land Acquisition Act, is not awardable for the land, the possession of which has been taken by the Deputy Commissioner (Land Acquisition Officer) prior to preliminary notification u/s 4(1) of the Land Acquisition Act published in the Gazette respecting such lands."

The Learned Government Pleader placed much reliance on this decision in support of his contention that as possession of the land had been taken much before the issuance of notification u/s 4(1) of the Act, that is, notification dated 2.11.1978, sometimes in 1976. So claimant has not been entitled to additional sums u/s 23(1-A) of the Act.

7. I have applied my mind to the contention of the Learned Government Pleader with all due respects to the members of the Division Bench's decision, I do not think it just and proper to follow the above Division Bench's decision, as subsequently in another case, this issue having gone from this Court to the Supreme Court in the case of ASSISTANT COMMISSIONER, GADAG v. MATHAPATHI BASAVANNEWWA ILR 1995 KAR 3484, their Lordships of the Supreme Court laid down the law as under:

"5. But strict construction leads to unjust result, hardship to the owner and defeats legislative object. Take a case like one in hand. Possession was taken long before publication of the Notification. In the meanwhile the owner was deprived of enjoyment of his property, in other words, if the possession is taken earlier and Notification is issued later but the Award is subsequently made, the owner or the claimant is entitled to the compensation from the date of taking possession till date of the Award, though possession was taken before the Notification u/s 4(1) was published. The expression "whichever is earlier" has to be construed in that backdrop and the claimant would be entitled to additional amount from the date of taking possession.

6. In this case, since advance possession was taken before the publication of

Notification u/s 4(1), which was never questioned by the owners in a Court of Law, the claimants, by necessary implication are entitled to the payment of the additional amount by way of compensation from the date of taking over the possession for loss of enjoyment of the land. A different situation may arise where the claimants themselves may question the Notification and its invalidity is upheld by the Court. Thereunder, the claimants may not be entitled to the additional compensation since they are not willing to surrender the possession under the Notification and the State did not in law come into possession under the Notification referred to in Section 23(1-A).

7. Therefore we are of the considered view that though the Notification u/s 4(1) was issued after taking possession of the acquired land from the owners of the land, the owners of the land would be entitled, in the case at hand, to additional amount at 12 per cent per annum of market value from the date of taking possession though Notification u/s 4(1) was published later."

8. In another decision, the matter had come up before their -Lordships of the Supreme Court, namely, in the case of Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, , involving the same question that has arisen in this case. In paragraph-3 of the decision, their Lordships of the Supreme Court observed as under:

"In other words, the owner of land, who has been deprived of the enjoyment of the land by having been parted with possession, the Act intended that the owner be compensated by awarding an additional amount calculated at the rate of 12 per centum per annum on the enhanced market value for the period between the date of notification and the date of award or date of taking possession of the land whichever is earlier. Admittedly, possession having already been taken on 15.2.1965, before publication of the notification u/s 4(1) on 6.3.1980, the award of additional amount for the period from 6.3.1980 to 30.9.1983, i.e., the date of making the award u/s 11 is perfectly correct. In addition to other statutory benefits, the owner also is entitled to the additional amount, but to give in award additional amount from 15.2.1965, i.e. from the date of taking possession, though apparently earlier in point of time mentioned in Section 23(1-A), in effect it amounts to giving retrospective effect to Sub-section (1-A) to Section 23 under the Amendment Act 68 of 1984, even though the Amendment Act was prospective and the transitory provision had only retro-limited activity.

4. Therefore, we hold that the claimants would be entitled to additional amount of the enhanced market value at 12% per annum from the date of publication of the notification u/s 4(1) till the date of the award, since possession had already been taken before the Amending Act has come into force."

9. In view of these two decisions of their Lordships of the Supreme Court, it appears that the law laid down by the Division Bench in the case of ASSISTANT COMMISSIONER & LAO v. MALLAIAH does not operate and as, under Article 141 of the Constitution, it is mentioned that the law declared by the Supreme Court

will be binding on all the Courts in the territory of India, as such in view of the law declared by the Supreme Court in my opinion, there is no substance in the contention of the Learned Government Pleader to the effect that because possession had been taken much earlier than the issue of notification u/s 4, Petitioner is not entitled to any benefits u/s 23(1-A), therefore, this contention of Learned Government Pleader is rejected and it is held that the Civil Judge and the Appellate Court rightly held that the claimant has been entitled to additional sum u/s 23(1-A) of the Act.

10. Thus considered I am of the opinion, that the Learned Civil Judge, did not commit any error of law or jurisdiction in conferring the benefit and awarding additional compensation u/s 23(1-A) to the claimant and the Appellate Court also did not commit any error in maintaining that order. Hence, this appeal is without merit and as such is hereby dismissed.