

(1974) 08 KAR CK 0006

In the Karnataka High Court

Case No : Misc. First Appeal No. 204 of 1974

The Land Acquisition Officer

APPELLANT

Vs

P.S. Suryanarayana Rao and Another

RESPONDENT

Date of Decision : 27-08-1974

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 23 (2), 28, 4 (1)

Citation : AIR 1975 Kar 71 : (1975) 1 KarLJ 148

Hon'ble Judges : G.K. Govinda Bhat, C.J.;M.K. Srinivasa Iyengar, J

Bench : Division Bench

Advocate : N. Venkatachala, IInd Addl. Government Advocate, for the Appellant; H.K. Vasudeva Reddy, for the Respondent

Judgement

G. K. Govinda Bhat, C.J.—This appeal by the Special Land Acquisition Officer, Chickballapur, is directed against the Award and decree dated 29-9-1972 in L. A. C. No. 3 of 1969 on the file of the Court of the Civil Judge, Kolar, by which the compensation awarded by the Land Acquisition Officer for the lands acquired was enhanced.

2. Four acres and odd of wet lands comprised in Survey Nos. 44 45 46/1, 46/2 and 47 of Balareddipalli Village, Bagepalli Taluk in Kolar District, were acquired for the restoration of a tank pursuant to the preliminary notification u/s 4(1) of the Land Acquisition Act, published in the Mysore Gazette dated 27-6-1963. Even before the preliminary notification, possession of the lands had been taken in the year 1952 by the Public Works Department. Before the Land Acquisition Officer the claimants had claimed compensation for the lands at Rs. 8,000/-an acre; they had also claimed Rupees 2,000/- an acre as crop compensation from the date of taking possession of the lands in 1952 till payment. The Land Acquisition Officer, in the Award made u/s 11 of the Act, fixed the compensation for the lands at Rupees 4,000/- an acre on the basis of a mahazar prepared. He also awarded Rupees 412-50 an acre as crop compensation for a period of 15 years. The claimants were dissatisfied with that Award and therefore sought reference u/

s 18, to the Civil Court. Before the learned Civil Judge, 2 witnesses were examined on behalf of the claimants, and they are P. W. 1 and P. W. 2. They stated that possession of the lands had been taken in the year 1952; that the lands are two crop wet lands on which sugar-cane also could have been grown. No evidence of transactions of sale of similar lands was produced and it was stated that no such transactions had taken place. According to P. W. 1, the income from the lands was Rs. 1,300/-an acre. According to P. W. 2, the income was 30 pallas of paddy per acre and if sugar-cane was grown, it was 40 quintals of jaggery per acre. The Land Acquisition Officer was not examined and no other witness was examined either on his side.

The learned Civil Judge awarded Rs. 4,500/- an acre as the market value of the lands acquired in the year 1963.

3. On the basis of the evidence on record, which has remained un rebutted, it cannot be contended successfully that what has been awarded is exclusive or unreasonable. The lands, as stated earlier, are wet lands capable of yielding 2 paddy crops in a year. It cannot at all be said that the market value of such a land was less than Rs. 4,500/- an acre in the year 1963.

4. The serious objection on behalf of the appellant is to the award of Rs. 1,000/- an acre as crop compensation for the period commencing from the date of taking possession in the year 1952 till payment of the compensation.

5. The Court below has awarded in addition to crop compensation, interest u/s 28 of the Land Acquisition Act at 6% from the date of taking possession of the lands till the date of payment. Section 34 of the Act provides that interest shall be paid at 5% from the date of taking possession of the land until the amount is paid or deposited. When a land, is taken possession of prior to the commencement of acquisition proceedings and the owner of the land is deprived of his possession, he is entitled to interest on the compensation amount from the date of taking possession. The right to receive interest from the date of taking possession takes the place of the right to retain possession. When an owner of a land is deprived of his land, he should be put in possession of the compensation immediately; if not, in lieu of possession taken by compulsory acquisition, interest should be paid to him on the said amount of compensation from the date of taking possession. That is the principle laid down by the Supreme Court in *Satinder Singh and Others Vs. Amrao Singh and Others*, This Court, in *Subhadra Bai v. State of Mysore* (1973) 1 Mys LJ 175 : (AIR 1973 Mys 13) has taken the view that in similar circumstances, the deprived owner of the land is entitled to interest from the date of taking possession till the date of payment. Therefore, under law, the claimants could have been awarded interest only at the rate provided u/s 34 from the date of taking possession until the date of payment. In the instant case, the initial mistake was made by the Land Acquisition Officer by awarding crop compensation and what has been awarded by the Land Acquisition Officer is in excess of the interest which the claimants would have otherwise been entitled to. Since the Court cannot interfere with what has been awarded by

the Land Acquisition Officer, that part of the award of the Land Acquisition Officer will stand. But the Court cannot award interest from the date of taking possession, when the Land Acquisition Officer has awarded crop compensation.

6. In the result, the appeal is allowed in part. The award and the decree of the Court below are modified as follows:--

The market value of the lands acquired as determined by the Court be low is confirmed. The claimants are entitled to solatium u/s 23(2) of the Act on the said amount. They will not be entitled to any interest on the compensation amount either u/s 34 or u/s 28 of the Act, since the Land Acquisition Officer has awarded crop compensation at Rs. 412-50 an acre, from the date of taking possession till the date of payment, which will stand. The enhancement of crop compensation made by the Court below is hereby set aside. The parties will bear their own costs in this appeal.

7. Appeal partly allowed.