

(2005) 02 KAR CK 0029

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3904 of 2003

The Special Land Acquisition Officer, Karnataka Industrial
Areas Development Board and Another

APPELLANT

Vs

Ningappa Siddappa Chikkannavar alias Sheatsanadi (Dead)
by L.Rs and Others

RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (4)
Land Acquisition Act, 1894 — Section 23 (1A), 4 (1)

Citation : (2005) ILR (Kar) 2987 : (2005) 2 KarLJ 445 : (2005) 1 KCCR 631

Hon'ble Judges : B.S. Patil, J;A.M. Farooq, J

Bench : Division Bench

Advocate : P.V. Chandrashekar, for the Appellant; J.S. Shetty, for
Respondent-1(a, b, c, e, f, g and h) and S.G. Kulkarni, for Respondent-3, for the
Respondent

Judgement

1. This appeal is by the Special Land Acquisition Officer, Karnataka Industrial Areas Development Board, Dharwad and the KIADB, appellants 1 and 2 respectively challenging the judgment and award passed by the Reference Court in LAC No. 41 of 1993, dated 20-3-2002.

2. The entire grievance of the appellant is confined only to the question relating to award of additional amount at 12% per annum u/s 23(1-A) of the Land Acquisition Act, 1894 from the date of Preliminary Notification i.e., 3-3-1975 to the date of passing of the award i.e., 18-3-1992.

3. In view of the narrow compass in which the matter lies, we do not consider it necessary to go into the details of the factual matrix of this case. However, essential facts sans unnecessary details required for disposal of this appeal can be set out as under.

4. The Land in question was proposed for being acquired by way of Preliminary Notification u/s 28(1) of the Karnataka Industrial Areas Development Act, 1966.

The Final notification u/s 28(4) was issued on 18-11-1976. The possession of the land was however taken on 18-4-1977. The award came to be passed on 18-3-1992. The Land Acquisition Officer, in his award dated 18-3-1992, has clearly stated that the possession of the land was taken on 18-4-1977. It is on that has is that he has awarded additional amount payable u/s 23(1-A) of the Act at 12% per annum from 4-3-1975 (date of publication of Preliminary notification) till 18-4-1977 (date on which possession of the land was taken). The Reference Court does not however refer to the date of taking over possession of the land. In fact in the operative portion of the order, the direction issued by the Reference Court reads as follows:

"Further the petitioners are entitled for the amount calculated at 12% of such market value from the date of publication of the preliminary notification namely 3-3-1975 till the date of award passed by LAO on 18-3-1992 as per Section 23(1-A) of the Act and as held in Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr, .

The Reference Court while awarding the additional amount of 12% as per Section 23(1-A) of the Act from the date of preliminary notification till the date of passing of the award, has ignored the date of taking over possession which is anterior in point of time to the date of passing of the award. A reference is made to the decision in Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr, . A perusal of this judgment discloses that possession of the land was taken over in the said case prior to the publication of 4(1) notification. In this factual background the question that arose in that case was as to whether in such a situation, the landowners were entitled for benefits u/s 23(1-A) of the Land Acquisition Act from the date of taking over possession. The facts in that case were that the possession of the land was taken on 1st June, 1977 and notification u/s 4(1) in relation to the land was issued thereafter on 8th March, 1991. The award was passed by the Land Acquisition Officer on 6th February, 1992. The Apex Court, in such a situation has held that the owners were entitled to additional amount u/s 23(1-A) from the date of 4(1) Notification viz., 8th March, 1991 to the date of award namely 6th February, 1992. The owners were held not entitled for the benefits of the provision from the date on which the possession was taken viz., 1st June, 1977 to the date on which Section 4 notification was issued. In this case, such a question has not arisen. There is absolutely no difficulty or confusion in the facts of this case in applying the provisions of Section 23(1-A) of the Act, Section 23(1-A) states as under:

"Section 23(1-A): In addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per cent per annum on such market-value for the period commencing on and from the date of the publication of the notification u/s 4, Sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier".

5. Thus the benefit of additional amount of 12% per annum is available from the

date of publication of the preliminary notification till the date of award or the date of taking over possession, whichever is earlier. Thus the starting point for computing the amount of additional amount payable u/s 23(1-A) is the 4(1) Notification. The terminal point being the date of the award or the date of taking over possession whichever is earlier.

6. In the instant case, Section 28(1) notification was published on 3-3-1975, possession was taken on 18-4-1977 and thereafter award was passed on 18-3-1992. The benefit of 12% additional amount per annum shall have to be confined only till the date of taking over possession as that date is earlier to the date of passing of the award. The Reference Court was not correct in directing that the said amount shall be computed and paid till the date of passing of the award. Such an interpretation would be directly against the letter and spirit of the provision.

Accordingly, we pass the following order:

ORDER

The appeal is partly allowed. The judgment and decree passed by the Reference Court is modified only insofar as it pertains to the award of additional amount as per Section 23(1-A) of the Act. It is ordered that the claimant/respondents are entitled to 12% additional amount u/s 23(1-A) from the date of publication of the preliminary notification on 4-3-1975 till the date of taking over possession of the land on 18-4-1977. In all other respects, the award of the Reference Court is left undisturbed.

Learned Counsel appearing for respondents 1(a to g) submits that he is aggrieved by the award passed by the Reference Court in the matter of apportionment of the compensation and has therefore filed a review petition before the Reference Court, which is pending consideration. We do not wish to make any observations in these proceedings regarding the said claim. It is open for them to pursue the said proceedings if they have already filed one.