(2007) 09 GAU CK 0013

Gauhati High Court (Imphal Bench)

Case No: None

Thanglenngir Chiru and Another		APPELLANT
	Vs	
Dy. Commissioner and Collector of Land Acquisition and Others		RESPONDENT

Date of Decision: Sept. 25, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 11, 15, 16, 17, 18

Citation: (2008) 1 GLT 442

Hon'ble Judges: T. Vaiphei, J; Mutum B.K. Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

T. Vaiphei, J.

This writ appeal is directed against the judgment and order dated 29.2.2000 passed by the learned Single Judge in Civil Rule No. 53 of 1998 rejecting the claim of the appellant for payment of interest u/s 34 of the Land Acquisition Act, 1894 ("the Act" for short) for the pre-Section 4(1) notification period i.e. from 1981 to 6.11.1996.

2. Shorn of unnecessary details, the facts giving rise to this appeal are that a large tract of lands measuring 48.47 acres situate within Charoi Khullen hill village belonging to the appellant No. 1 was occupied and used by the respondent No. 3 for construction of Magazine store at Leimatak Phase-V in the course of undertaking Loktak Hydro Electric Project in 1981. Initially, no land acquisition proceeding under the provisions of the Act was drawn up. However, the respondent No. l by his order dated 14.7.1982 purportedly made an award in favour of the appellant No. 1 awarding compensation at the rate of Rs. 3,000/- per acre for the lands, besides fixing the rates for crops and trees standing thereon. It would appear that the Chief of the neighbouring Lamdan Kabui Village did not accept the award and thereupon

moved the respondent No. l to refer the matter u/s 18 of the Act before the Ld. District Judge. The application was rejected by the respondent No. 1 holding that his order was not one passed u/s 11 of the Act as no notifications u/s 4 and 6 had been issued. The Chief of Lamdan Kabui Village therefore approached this Court under Article 226 of the Constitution. This Court by the order dated 24.1.1984 set aside the order of rejection and directed the respondent No. 1 to make a reference u/s 18 of the Act.

3. The matter was ultimately taken up by the Reference Court and was registered as Original Suit (Land Acquisition) No 8/1984 and was disposed of by the judgment and order dated 4.9.1987. Two appeals, viz F.A. No. 18/87 and F.A. No. 4/88 were preferred from the said judgment and order before this Court. This court by a common judgment and order dated 22.5.1996 disposed of the appeals in favour of the appellant No. 1 by holding that the appellant No. 1 was the owner of the said land and was entitled to compensation at the rate of Rs. 3000/- per acre plus solatium of 30% on the market value of the land and that he was further entitled to receive the entire amount of compensation in respect of the trees with solatium at the rate of 30%. No interest u/s 34 of the Act was, however, directed to be paid to the appellant No. 1. It may at this stage also be noted that two of the appellants in F.A. No. 18/87 had filed a review application, but the same was rejected by this Court in the order dated 2.9.1998. Consequently, the judgment and order dated 22.5.1996 has now attained finality.

4. It would appear that following the judgment and order dated 22.5.1996 of this Court, the State Government belatedly issued the notification u/s 4 and 6 of the Act on 13.9.1996 and 5.10.1996 respectively. The respondent No. 1, therefore, made the award dated 22.10.1996 for payment of compensation to the order of Rs. 4,97,127.80p in favour of the appellants. The appellants received the compensation amount under protest. Since the interest u/s 34 of the Act was not paid, the appellants once again approached this Court under Article 226 of the Constitution, which resulted in the impugned judgment and order. The Ld. Single Judge noted that the judgment and order dated 22.5.1996 did not contain any direction for payment of interest on the amount of compensation so awarded and that this judgment and order had attained finality. The Ld. Single Judge also noticed that this Court did not remand the matter to the Collector for making an award u/s 11 of the Act, but itself pronounced the decision as to the area of the land, the compensation which, in its opinion, should be allowed for the land and the apportionment thereof. Finding that no notice u/s 9 of the Act was ever issued by the Collector/respondent No. 1, the Ld. Single Judge held that the award dated 22.10.1996 could not be treated as one made u/s 11 of the Act and that it ought to have been treated merely as an order passed by the Collector to implement the judgment and order dated 22.5.1996 passed by the Division Bench of this Court finally deciding the compensation matter which had attained finality. Since the appellants were paid the compensation pursuant to the judgment of this Court and not on the basis of an

award made by the Collector u/s 11 of the Act, or by a Reference Court u/s 26 of the Act, according to the Ld. Single Judge, this Court in exercise of its jurisdiction under Article 226 of the Constitution could not direct payment of interest either u/s 34 or u/s 23(1-A) of the Act. The soundness of these findings are under challenge in this appeal.

5. We have carefully perused the judgment and order impugned herein. We have also gone through all the materials on record. Relying heavily on the decision of the Apex Court in Assistant Commissioner, Gadag SUb-Division, Gadag Vs. Mathapathi Basavannewwa and others, Mr. A. Nilmani Singh, the learned Senior Counsel for the appellants contends that the appellants are entitled to interest u/s 34 of the Act from the date the Project actually took over possession of their land, which is irrespective of whether the formal acquisition proceeding was initiated or not; the appellants should not be allowed to suffer due to the land acquisition proceeding clumsily started by inefficient/inexperienced Government machinery and protracted by ingenious and ill-advised persons misleading the Court from stage to stage thereby making a mockery of the judicial process. Per contra, Mr. N.P.C. Singh, the learned Senior Counsel for the respondents points out that the decision in Mathapathi Basavannewwa (supra) has been overruled by the subsequent decision of a larger Bench of the Apex Court in R.L. Jain (D) by Lrs. Vs. DDA and Others, and, therefore, contends that the appellants are, ipso facto, not entitled to any interest for pre-section 4(1) notification. He, further, submits that the appellants, having not claimed such interest in the previous cases being F.A. No. 18/87 and F.A. No. 4/88, , the decision where of has now attained finality, is barred by constructive res judicata from making such claims. Moreover, he contends, the interest on equitable consideration is not even claimed in this writ appeal and the claim now made in this writ appeal cannot be entertained at this stage. He, therefore, submits that the impugned judgment and order does not suffer from any infirmity calling for the interference of the Court.

6. The question as to whether in a case where possession is taken before issuance of notification u/s 4(1) of the Act, the landowner is entitled to interest for such anterior period in accordance with Section 34 of the Act is no longer res integra in view of the decision of the Apex Court in R.L. Jain Case (supra). A three Judge Bench of the Apex Court in paragraph-12 of the Judgment held:

12. The expression "the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited" should not be read in isolation divorced from its context, The words "such compensation" and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. "Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the

date of notification u/s 4(1) and other amounts like statutory sum under Sub-section (1-A) and solatium under Sub-section (2) of Section 23. The heading of Part-II of the Act is "Acquisition" and there is a sub-heading'' "Taking Possession" which contains Sections 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Section 16 or 17 of the Act. These are the only two sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly, the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification u/s 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification u/s 4(1) it would not be in accordance with Section 16 or 17 and will be without any authority of law and consequently cannot be recognized for the purposes of the Act. For parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Sections 16 or 17 of the Act. The words "so taking possession" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification u/s 4(1) of the Act which is dehors the provisions of the Act.

7. As for the entitlement of the appellants to interest on equitable grounds, the Apex Court in Ishwar Dutt Vs. Land Acquisition Collector and Another, , approved its decision in State of Himachal Pradesh and others Vs. Dharam Das, , holding that the amount other than the one envisaged either u/s 23(1-A) of the Act or under any of the provisions of the Act could not be granted on equitable grounds. This is what the Apex Court says towards the end of paragraph-3 of the judgment:

...It is settled legal position that when the statute deals with payment of interest to the claimants either u/s 31 or Section 28 of the Act, the Court has no power to award interest in a manner other than the one in which the statute prescribes payment. It is seen that in a case where decision has been taken exercising the urgency power u/s 17(4) of the Act and the award was made subsequent to the taking over possession, obviously the claimant would be entitled to payment of interest u/s 31 from the date of taking possession till the amount is deposited pursuant to the award of the Collector u/s 11. On reference, if the compensation is enhanced u/s 28 of the Act and the proviso thereto the claimants would be entitled to the rates of interest specified therein. Apart from these two provisions, there is no other provision under the Act empowering the Court to award interest on equitable grounds, in addition to statutory rates of interest prescribed under the Act. Equitable consideration has no role to play in determination of the compensation and the manner of awarding interest as enjoyed under the Act. The Act is to be administered in the manner laid in the Act and in no other way. As a concomitance, the equity jurisdiction of the Court is taken out and the Act enjoins the Court to grant interest as per the statutory rates specified in the Act.

Consequently, the contention of the learned Senior counsel for the appellants in this be half must meet the same fate.

8. Confronted with this situation, it is next contended by the learned Senior counsel for the appellants that since possession of the land was taken over by the respondents without following the procedure laid down by law, it will be just and equitable that the respondent No. 1 may be directed to determine the rent or damages for use of the land. The learned senior counsel strongly relies on the observation to that effect made by the Apex Court in paragraph 18 of the judgment in R.L. Jain Case (supra). In our considered view, this contention deserves to be noted only to be rejected in view of the fact that no relief to that effect was claimed by the appellant''s in F.A. No. 18 of 87 and F.A. No. 4 of 88, the decision whereof has now attained finality. Moreover, no such plea or relief were ever raised/claimed in the writ petition. Relief of general nature, which has no factual foundation in the pleadings, cannot be granted by this Court, more, so, when the appeal in question is a writ appeal. We are, therefore, not inclined to interfere with the impugned Judgment and Order, though, for different reasons.

9. The offshoot of the foregoing discussion is that this writ appeal has no merit and is, accordingly, dismissed

10. However, we direct that the parties bear their own respective costs.