

(2009) 10 MAD CK 0261

Madras High Court

Case No: CMPs. No"s. 35 to 38 of 2009 in Review Applications No"s. 78 to 80 of 2004 in Appeal Suits No"s. 132 and 133 of 2001 and Cross Objections No"s. 14 and 15 of 2003

Narendra Dairy Farms P. Ltd.
and Others

APPELLANT

Vs

The Land Acquisition Officer,
Revenue Divisional Officer, The
Chief Engineer, The
Superintending Engineer and
The Executive Engineer

RESPONDENT

Date of Decision: Oct. 21, 2009

Acts Referred:

- Land Acquisition Act, 1894 - Section 11, 11(1), 15, 16, 17

Hon'ble Judges: M.M. Sundresh, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: B. Kumar for K. Chandrasekaran, for the Appellant; V. Ravi, Special Government Pleader, for the Respondent

Judgement

K. Raviraja Pandian, J.

These four applications are taken out with the prayer to clarify the order passed in Review Applications Nos. 78 to 80 of 2004, in Appeal Suits Nos. 132 & 133 of 2001 and Cross Objections Nos. 14 and 15 of 2003 dated 08.12.2005 to the effect that the petitioners are entitled for additional compensation at the rate of 12% per annum from the date of taking possession, namely, 01.03.1972 till the date of award, namely, 10.02.1993, solatium at the rate of 30% and interest thereon as provided u/s 34 of the Act and also additional rate 15% per annum on the amount awarded in terms of the order of this Court in AS Nos. 132 and 133 of 2001 from the date of the first notification, namely, 19.01.1972 till the publication of the second notification, namely 11.09.1990.

2. The facts are : The petitioners filed appeal u/s 54 of the Land Acquisition Act against the award of the learned Subordinate Judge, Palani dated 23.02.2001 made in LAOPs Nos. 6 and 7 of 1996. An extent of 410.92 acres of land belonging to the petitioners was acquired for the purpose of construction of dam across the river Palar and Purandhalar under the provisions of the Land Acquisition Act, 1894.

3. Notification u/s 4(1) of the Act was issued on 19.01.1972. Admittedly, possession of the land was taken on 01.03.1972, i.e., immediately after issuance of Section 4(1) notification. Subsequent to taking possession, the respondents herein allowed the notification u/s 4(1) dated 19.01.1972 to get lapsed. A fresh notification u/s 4(1) of the Act was issued on 11.09.1990. The award was passed by the Land Acquisition Officer on 10.02.1993 determining the compensation at the rate of Rs. 6881/- per acre. On reference u/s 18 of the Act, the Reference Court determined the compensation at the rate of Rs. 15,000/- per acre. Aggrieved by the enhancement, the Land Acquisition Officer filed appeals in Appeal Suits Nos. 132 and 133 of 2001. The claimants filed cross objections in Cross Objections Nos. 14 and 15 of 2003 claiming enhanced compensation at the rate of Rs. 40,000/- per acre.

4. A Division Bench of this Court, after hearing the parties, disposed of the appeals and cross objections, as follows:

1. Respondents (claimants) are entitled to a decree of compensation at the rate of Rs. 28,000/- per acre;

2. Additional amount of 12% per annum on the compensation as contemplated u/s 23(1A) of the Act;

3. Solatium of 30% on the compensation.

4. The interest is at the rate specified in Section 34 of the Land Acquisition Act, as awarded by the Court below in respect of the three components as held by the Supreme Court in [Sunder Vs. Union of India](#), .

5. The respondents herein filed review applications in Review Applications Nos. 78 to 81 of 2004, which were ultimately dismissed by this Court, by its order dated 08.12.2005, thereby confirming the order of the Division Bench dated 17.03.2003 made in AS. Nos. 133 and 134 of 2001 and cross objections Nos. 14 and 15 of 2003.

6. The clarification sought for in these petitions is as to the entitlement of the petitioners in respect of the second relief granted by the Division Bench by its order dated 17.03.2003, in favour of the petitioners, i.e., additional amount of 12% per annum as contemplated u/s 23(1A) of the Act.

7. It is contended on behalf of the petitioners that for no fault of the petitioners, the notification u/s 4(1) issued originally on 19.01.1972, pursuant to which possession of the land was taken on 01.03.1972, was allowed to be lapsed by the respondents and the second 4(1) notification was issued on 11.09.1990 and award was passed on

10.02.1993. From 01.03.1972, the date of taking possession till 11.09.1990, the date of issuance of the second 4(1) notification, the respondents deprived of the petitioners, from enjoying their land. As the first 4(1) notification dated 19.01.1972 was lapsed, the possession taken pursuant to Section 4(1) notification would not vest with the respondents free from all encumbrances, as contemplated under the provisions of the Act. Such possession with the respondents has to be regarded as an illegal possession only and the respondents have to make good the loss sustained by the petitioners. It is further contended that interpreting Section 23(1-A) differently, the respondents are demanding huge amount nearly Rs. 2.00 crores as excess payment of compensation without having any regard to the illegal deprivation of the petitioners" from enjoyment of the property from 01.03.1972 to 10.02.1993 (11.09.1990). In order to bring home their contention, the petitioners relied on the decision of the Supreme Court in the case of [Madishetti Bala Ramul \(D\) by LRs. Vs. The Land Acquisition Officer, .](#)

8. We heard the learned Counsel on either side and perused the materials available on record.

9. Section 23(1-A) of the Act provides that, in addition to the market value of the land, the Court shall, in every case, award an amount calculated at the rate of 12% per annum on such market value for the period commencing on and from the date of publication of the notification u/s 4 Sub-section (1) of the Act, 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.

10. From the above provision, it is clear that additional amount at the rate of 12% has to be calculated from the date of issuance of 4(1) notification to the date of award or from the date of issuance of 4(1) notification to the date of taking possession, whichever is earlier.

11. In this case, the original 4(1) notification was issued on 19.01.1972, but it was allowed to be lapsed. However, possession was taken pursuant to issuance of the said 4(1) notification, on 01.03.1972, which factums is not at all disputed. As per Section 23(1-A) of the Act, the starting point for awarding the additional amount is the date of issuance of notification u/s 4(1) of the Act and the terminal points are - the date of taking over possession or the date of passing of award, whichever is earlier.

12. The notification issued u/s 4(1) of the Act on 19.01.1972, prior to taking possession, is not available for determining the additional amount, as it has lapsed. Possession has been taken on 01.03.1972 itself. The second notification issued on 11.09.1990, is the only notification available for determination of the additional amount, which notification was issued well subsequent to the taking over possession. In this situation, the petitioners are entitled to 12% per annum of additional amount from 11.09.1990, the date of issuance of second Section 4(1)

notification till the date of passing of the award on 10.02.1993.

13. The issue to be considered now is - is it justified in denying any amount to the petitioners for the period from 01.03.1972, the date on which possession was taken to 11.09.1990, the date on which the second 4(1) notification was issued.

14. This issue has elaborately been considered by the Supreme Court in the case of [Madishetti Bala Ramul \(D\) by LRs. Vs. The Land Acquisition Officer](#), in which the facts are more or less comparable, in the sense that in that case, 42 acres 08 guntas of land situated in Hanamkonda village was acquired for public purpose of excavation of Kakatiya canal. A draft notification was issued u/s 4 of the Act for acquisition of 4 acres 10 guntas of land in survey No. 622 on 16.03.1979. Possession of the said land was taken over on 18.05.1979. The award was passed by the Land Acquisition Officer on 12.06.1988 fixing the market value of the acquired land at the rate of Rs. 75,000/- per acre. The said award, however, was confined to one acre 5 guntas only as the balance 3 acres 5 guntas of land was held to be belonging to the Government of Andhra Pradesh. Ultimately, it was found that on 17.11.1989 the claimants are entitled to the remaining area also. Because of the lapse of two years" period for passing the award as per the provisions of the act the entire proceedings has been lapsed. Another notification was issued in respect of the remaining extent of 3 acre 5 guntas of land on 23.12.1991. In respect of that area, another award was passed at the same rate, namely Rs. 75,000/- per acre with all the statutory benefits except additional market value.

15. In that factual circumstances, the Supreme Court in the above referred to case, extensively quoted the three Judge Bench judgment of the Supreme Court in the case of [R.L. Jain \(D\) by Lrs. Vs. DDA and Others](#), and observed as under:

12. Noticing the provisions of the Act it was held that possession can be taken over only after an award is made. It was observed: (SCC pp.89-90, para 11)

Section 17 is in the nature of an exception to Section 16 and it provides that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. The urgency provision contained in Section 17(1) can be invoked and possession can be taken over only after publication of notification u/s 9(1) which itself can be done after publication of notification under Sections 4(1) and 6 of the Act. Even here in view of Sub-section (3-A) the Collector has to tender 80 per cent of the estimated amount of compensation to the persons interested/entitled thereto before taking over possession. The scheme of the Act does not contemplate taking over of possession prior to the issuance of notification u/s 4(1) of the Act and if possession is taken prior to the said notification it will be de hors the Act. It is for this reason that both Sections 11(1) and 23(1) enjoin

the determination of the market value of the land on the date of publication of notification u/s 4(1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act.

It was furthermore held: (SCC pp.90-91, para 12)

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 under Sections 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 recognised 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 Section 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 de hors the provisions of the Act.

It was observed: (SCC pp.93-94, para 18)

18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification u/s 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a

course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.

13. Yet again in [Smt. Lila Ghosh \(Dead\) through LR Shri Tapas Chandra Roy Vs. The State of West Bengal](#), this Court held: (SCC pp.343-44, para 19)

19. Even though the authority in [Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat](#), appears to support the claimants, it is to be seen that apart from mentioning Sections 28 and 34, no reasons have been given to justify the award of interest from a date prior to commencement of acquisition proceedings. A plain reading of Section 34 shows that interest is payable only if the compensation, which is payable, is not paid or deposited before taking possession. The question of payment or deposit of compensation will not arise if there is no acquisition proceeding. In case where possession is taken prior to acquisition proceedings a party may have a right to claim compensation or interest. But such a claim would not be either u/s 34 or Section 28. In our view interest under these sections can only start running from the date the compensation is payable. Normally this would be from the date of the award. Of course, there may be cases u/s 17 where by invoking urgency clause possession has been taken before the acquisition proceedings are initiated. In such cases, compensation, under the Land Acquisition Act, would be payable by virtue of the provisions of Section 17. As in cases u/s 17 compensation is payable, interest may run from the date possession was taken. However, this case does not fall into this category.

14. In this case, however, the appellants herein were dispossessed pursuant to a notification which for one reason or other could not be given effect to. Another notification u/s 4 of the Act had to be issued. The said notification was held to be not invalid. The State put forward the claim in respect of a portion of a property which it could not do. Possession must be obtained under a valid notification.

15. The Land Acquisition Officer took possession of the land on the basis of a notification which did not survive. The respondent could not have continued to hold possession of land despite abatement of the proceeding under the 1984 Act. It was directed to be decided by the High Court upon a reference made by the Collector in terms of Section 30 of the Act. The State, therefore, itself realised that its stand in regard to the ownership of 3 acres and 5 guntas of land was not correct. It, therefore, had to issue another notification having regard to the provisions contained in the Land Acquisition (Amendment) Act, 1984. Whereas the High Court may be correct in interpreting the question of law in view of the decision of this Court, but the same would not mean that the appellants would not get anything for being remaining out of possession from 1979 to 1991.

...

20. In the peculiar facts and circumstances of the case, although the proper course for us would have to remand the matter back to the Collector to determine the

amount of compensation to which the appellants would be entitled for being remained out of possession since 1979, we are of the opinion that the interest of justice would be met if this appeal is disposed of with a direction that additional interest @ 15% per annum on the amount awarded in terms of award dated 2-1-1999 for the period 16-3-1979 till 22-12-1991, should be granted, which, in our opinion, would meet the ends of justice.

16. Here in this case also, the peculiar facts and circumstances of the case is that originally 4(1) notification was issued on 19.01.1972, immediate to which possession was taken on 01.03.1972. The said 4(1) notification was allowed to lapse. The second notification u/s 4(1) of the Act was issued on 11.09.1990 and the award was passed on 10.02.1993. The purpose for which the land was acquired was also accomplished. This case also, as in the case before the Supreme Court, cited supra, has been pending in litigation for nearly three decades and hence it is not a fit case for again remitting the matter back to the Collector for determining the compensation and allow the matter to continue in litigation for another few decades. We are of the view that interest of justice would be met if a direction is issued directing the respondents to pay 9% interest for the period for which the petitioners were forced to be out of possession of their land. The petitioners are entitled to interest/damages at the rate of 9% over the compensation granted for the period from 01.03.1972, the date of taking possession of the land till 10.09.1990, the previous day of the issuance of second 4(1) notification. From 11.09.1990, the date of the second Section 4(1) notification till 10.02.1993 the date of award, the petitioners are entitled to additional amount as per Section 23(1-A) of the Act.

17. With these clarifications, the above miscellaneous petitions are disposed of.