

CASE NO.:
Appeal (civil) 2693 of 2007

PETITIONER:
Madishetti Bala Ramul (D) By LRs

RESPONDENT:
The Land Acquisition Officer

DATE OF JUDGMENT: 17/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2693 OF 2007
[Arising out of S.L.P. (Civil) No. 17397 of 2005]

S.B. SINHA, J :

1. Leave granted.

2. This appeal is directed against a judgment and order 09.02.2005 passed by a Division Bench of the Andhra Pradesh High Court whereby and whereunder the appeal preferred by the respondent herein under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act') against a judgment and award dated 02.01.1999 passed by the Principal Senior Civil Judge, Warangal in O.P. No. 72 of 1997 was allowed in part.

3. Certain basic fact of the matter is not in dispute.

42 acres 08 guntas of land situated in Hanamkonda Village was acquired for a public purpose, namely, excavation of Kakatiya canal. A draft notification was published in the District Gazette under Section 4 of the Act for acquisition of 4 acres 10 guntas of the land in Survey No.622 on 16.03.1979. Possession of the said land was taken over on 18.05.1979. An award was passed by the Land Acquisition Officer on 12.06.1988 fixing the market value of the acquired land @ Rs.75,000/- per acre. The said award, however, was confined to 1 acre 5 guntas only as the balance 3 acres 5 guntas of land was held to be belonging to the Government of Andhra Pradesh. A writ petition filed thereagainst, which was marked as Writ Petition No. 10387 of 1989, was allowed by the High Court of Andhra Pradesh by a judgment and order dated 17.11.1989 directing the Collector to refer the dispute to the Court in terms of Section 30 of the Act. However, later on, it was found by the respondent that the entire 4 acres 10 guntas of land belonged to the appellants.

4. The Parliament enacted the Land Acquisition (Amendment) Act, 1984 which came into effect on or about 24.09.1986. As in terms of the said amendment, an award was to be passed within a period of two years from the date of issuance of the notification, another notification was issued by the Collector in respect of the said 3 acres 5 guntas of land on or about 23.12.1991. In respect of the said area, another award was passed by the Land Acquisition Officer at the same rate, namely, Rs.75,000/- per acre with all the statutory benefits except additional market value. When a writ petition was filed before the High Court by Appellants, which was marked as Writ Petition No. 16220 of 1994, by its judgment dated 18.12.1995 the High Court directed the Land Acquisition Officer to grant additional market value in terms of Section 23(1)(a) of the Act and interest as per Section 34 thereof from the date of taking possession, pursuant whereunto and in furtherance whereof a supplemental award was passed on 12.06.1998. A

reference was made by Appellants in terms of Section 18 of the Act and by a judgment and order dated 02.01.1999, the Principal Senior Civil Judge awarded compensation for acquisition of the said land @ Rs.60/- per square yard as against the claim of Rs.150/- per square yard. However, the learned Judge granted additional market value and interest from the date of taking possession till the date of award, holding :

"In the result it is ordered as follows :

- i) The Claimant is entitled to market value of the acquired land at Rs. 60/- per sq. yard.
- ii) The Claimant is entitled to solatium at 30% on the enhanced market value.
- iii) The Claimants are also entitled to additional market value at 12% P.A. on the enhanced market value from 1.05.1979 to 06.05.1994.
- iv) The Claimants is entitled to interest @ 9 % p.a. for one year from 18.05.1979 and @ 15% p.a., thereafter on the enhanced market value till the payment is made or deposited

The reference is answered accordingly."

5. An appeal was preferred thereagainst by Respondent and by reason of the impugned judgment, the High Court held that Appellants are not entitled to additional market value and interest from the date of taking of the possession till the date of the award.

6. Mrs. K. Amareshwari, the learned Senior Counsel appearing on behalf of Appellants, would submit that having regard to the fact that Section 23(1)(a) of the Act was introduced by the Amending Act 68 of 1994 providing for additional market value @ 12% per annum from the date of taking possession till the date of the award whichever is earlier, Appellants became entitled thereto with effect from 18.05.1979.

7. It was contended that possession having been taken in terms of the provisions of the Act, and furthermore having regard to the fact that the High Court of Andhra Pradesh issued a direction in that behalf in its judgment dated 28.12.1995 passed in Writ Petition No. 16220 of 1994 and the Land Acquisition Officer having granted the same, amount could not have been reduced in view of Section 25 of the Act.

8. Mr. Rahul Shukla, learned counsel appearing on behalf of the respondent, on the other hand, submitted that no compensation is payable for taking possession of the land de'hors a valid notification under the Act.

9. The short question which, therefore, arises for consideration is as to whether Section 25 of the Act will have any application in the fact of the present case. Two notifications were issued separately. The second notification was issued as the first notification did not survive. Valuation of the market rate for the acquired land, thus, was required to be determined on the basis of the notification dated 23.12.1991. The earlier notification lost its force. If the notification issued on 16.03.1979 is taken into consideration for all purposes, the subsequent award awarding market value of the land @ Rs. 65/- per square yard cannot be sustained. As the said market value has been determined having regard to the notification issued on 23.12.1991, possession taken over by Respondent in respect of 3 acres 5 guntas of land, pursuant to the said notification dated 16.03.1979 was in the eye of law, therefore, illegal. The High Court evidently directed grant of additional

market value @ 12% per annum on the enhanced market value from the date of the publication of the notification dated 23.12.1991 as also interest thereupon from the said date in stead and place of 18.05.1979. We generally agree therewith.

10. The findings of the High Court cannot be faulted in strict sense of the law. We generally agree therewith.

11. In R.L. Jain (D) By L.Rs. v. DDA and Others [(2004) 4 SCC 79], a three-Judge Bench of this Court, opined :

"11. In order to decide the question whether the provisions of Section 34 of the Act regarding payment of interest would be applicable to a case where possession has been taken over prior to issuance of notification under Section 4(1) of the Act, it is necessary to have a look at the scheme of the Land Acquisition Act. Acquisition means taking not by voluntary agreement but by authority of an Act of Parliament and by virtue of the compulsory powers thereby conferred. In case of acquisition the property is taken by the State permanently and the title to the property vests in the State\005"

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 :
"\005Section 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 under Section 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 under Section 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 under Section 4(1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act\005"

It was furthermore 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 under Section

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 under Section 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 under Section 4(1) of the Act which is de hors the provisions of the Act."

It was observed :

"18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 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 *Lila Ghosh (Smt.) (Dead) Through L.R. Tapas Chandra Roy etc. v. State of West Bengal etc.* [(2004) 9 SCC 337], this Court held :

"19. Even though the authority in *Shree Vijay Cotton & Oil Mills Ltd.* 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 under Section 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 under Section 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 under Section 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 under Section 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. 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 realized 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 Appellants would not get anything for being remaining out of possession from 1979 to 1991.

16. Mrs. Amareshwari relied upon Section 25 of the Act which is as under :

"25. Amount of compensation awarded by court not to be lower than the amount awarded by the Collector.\027The amount of compensation awarded by the court shall not be less than the amount awarded by the Collector under section 11."

17. Section 25 of the Act merely prohibits that total amount of the award granted by the Collector cannot be reduced. Section 25 which has undergone an amendment in the year 1984, thus, merely lays down that the amount of compensation awarded by the reference court shall not be less than the amount awarded by the Collector, and in no circumstances the amount awarded by the Collector can be reduced. What is an award is a total sum and not the ingredients contained therein. An award made by the Collector is in the form of an offer. It is in that sense only that the amount contained therein cannot be reduced.

18. It is not the case of the appellants that the total amount of compensation stands reduced. If it had not been, we fail to understand as to how Section 25 will have any application in the instant case. Furthermore, Section 25 being a substantive provision will have no retrospective effect. The original award was passed on 08.02.1981, Section 25, as it stands now, may, therefore, not have any application in the instant case.

19. In Land Acquisition Officer-cum-DSWO, A.P. v. B.V. Reddy and Sons [(2002) 3 SCC 463], this Court opined that Section 25 being not a procedural provision will have no retrospective effect, holding :

"6. Coming to the second question, it is a well-settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same

would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24-9-1984, the date on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30-4-1982 and came into operation with effect from 24-9-1984\005"

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 02.01.1999 for the period 16.03.1979 till 22.12.1991, should be granted, which, in our opinion, would meet the ends of justice.

21. The appeal is allowed in part and to the extent mentioned hereinbefore. Appellant shall not be entitled to costs. Counsel's fee is assessed at Rs.50,000/-