

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 10665 OF 2010
[Arising out of SLP(C) No.2427/2009]

M. BUGGAPPA(D) THRO' LR & ORS.

.....APPELLANTS

Versus

LAND ACQUISITION OFFICER-CUM-MANDAL
REVENUE OFFICER & ANR.

.....RESPONDENTS

O R D E R

Leave granted.

2. The appellants' land was acquired in pursuance of preliminary notification dated 3.7.1990 and final notification dated 18.10.1990 for the public purpose of providing plots to persons belonging to weaker sections. Possession of the acquired land was however taken over on 17.11.1977. The Land Acquisition Officer, by his award dated 21.3.1991, offered compensation at Rs.110/- per sq. yard. The Reference Court, by its judgment dated 30.12.1999, affirmed the said rate of compensation. On appeal to the High Court, by the impugned judgment dated 13.10.2008, compensation was increased to Rs.160/- per sq. yard.

3. The Reference Court apart from awarding solatium, also awarded additional amount on the market value at the rate of 12% per annum from 17.11.1977 to 3.7.1990. The Reference Court awarded interest at 9% per annum from 17.11.1977 for a period of one year and at the rate of 15% per annum from 17.11.1978. The High Court while increasing the compensation as above, held that the appellants were not entitled to additional amount under Section 23(1A) of the Land Acquisition Act, 1894 ('the Act', for short). The High Court also held that appellants

were not entitled to interest from 17.11.1977 but only from the date of preliminary notification namely, 3.7.1990. The said judgment is under challenge in this appeal by special leave.

4. Learned counsel for the appellant did not challenge the correctness of the compensation determined at Rs.160/- per sq. yard. His grievance was only in regard to the denial of additional amount under Section 23(1A) of the Act and denial of interest from the date of possession till the date of preliminary notification.

Re: Additional Amount

5. Section 23(1A) of the Act provides that in addition to the market value of the land, the Court shall 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 under Section 4(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.* Thus the date of commencement for payment of additional amount is the date of notification under Section 4(1) of the Act. The date of possession is the last date upto which additional amount can be awarded and not the commencement date. As the award was made on 21.3.1991 and possession was taken on 17.11.1977, no additional amount would be payable. The Reference Court has awarded additional amount from the date of taking possession to date of notification under Section 4(1) of the Act. This is contrary to Section 23(1A) as it directs payment of additional amount only from the date of notification

under Section 4(1) of the Act (which is 3.7.1990). There is no question of paying any additional amount from '3.7.1990 to 17.11.1977' which is absurd and impossible. Additional amount cannot be granted under Section 23(1A) of the Act in regard to any acquisition where possession was taken over prior to the date of the notification under Section 4(1) of the Act. Therefore, the Reference Court committed an error in awarding additional amount under Section 23(1A) of the Act and the High Court has rightly corrected the same.

Interest

6. Insofar as interest is concerned, this Court in *R.L. Jain(D) By Lrs. v. DDA & Ors.* - (2004) 4 SCC 79 and *Special Land Acquisition Officer v. Karigowda* - (2010) 5 SCC 164, made it clear that interest cannot be awarded from a date prior to the date of preliminary notification merely on the ground that possession was taken prior to the date of preliminary notification. Therefore award of interest under Section 28 of the Act from a date prior to date of preliminary notification is not sustainable and High Court was right in correcting the date on which the liability to pay interest would arise to 3.7.1990.

Damages

7. This Court in *R.L.Jain* (supra) observed that the land owner is entitled to compensation for wrongful use and occupation from the date of actual possession to date of preliminary notification. We extract below the relevant portion

of the said judgment:

"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."

In a subsequent decision in *Madishetti Bala Ramul (D) By Lrs. Vs. The Land Acquisition Officer*, (2007) 9 SCC 650, this Court was of the view that instead of remanding the matter to the Collector for determining the amount of compensation to the landowners for the period prior to the date of preliminary notification, interest of justice would be met if a direction is made for payment of some interest on the amount awarded, by way of damages for the period of illegal use, that is, between the date of dispossession to date of preliminary notification.

8. We are of the view that having regard to the fact that the possession of the land was taken as long back in 1977, that is 33 years ago, it would not be just and proper to remand the matter to the Collector at this stage for determination of compensation for wrongful use at this stage. Award of 6% per annum on the compensation amount, as damages for use and occupation from the date of dispossession (17.11.1977) to date of preliminary notification (3.7.1990) in addition to what has been awarded by the High Court would serve the interest of justice.

9. Learned counsel for the appellant submitted that in *Madishetti Bala Ramul* (supra) this Court had awarded damages at the rate of 15% per annum (on the market value determined) and, therefore, we should award damages at that rate. We find that award of damages at 15% on the compensation on the peculiar facts and circumstances of the case, and not on account of any principle evolved. Further, the market value as on 17.11.1977 when possession was taken would have been much less than the market value as on 3.7.1990. Therefore, if damages is awarded at 6% per annum on the market value determined as on 3.7.1990, the actual rate of damages with reference to the market value as on 17.11.1977 will be much more. In the circumstances, we are of the view that the damages for dispossession without initiating acquisition proceedings, when expressed in terms of a percentage of the compensation determined with reference to the market value more a decade later should not be more than 6% per annum. Where of course the preliminary notification is issued within one or two years from the date of taking possession, the court may award damages even at 8% to 10% of the market value determined depending upon the facts and circumstances.

10. We accordingly allow the appeal in part, and award in addition to what has been awarded by the High Court, damages at 6% per annum from 17.11.1977 to 3.7.1990, on the market value determined as on 3.7.1990. The amount so due as damages shall carry interest at 6% per annum from the date of award (21.3.1991) to date of payment. The amount awarded as damages shall not carry any additional amount or solatium.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
December 13, 2010.

.....J.
(A.K. PATNAIK)

