

THE ASSISTANT COMMISSIONER,  
GADAG SUB-DIVISION, GADAG

A

v.

MATHAPATHI BASAVANNEWWA AND ORS.

AUGUST 17, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Land Acquisition Act, 1894 :*

*Section 23(1-A)—Lands—Acquisition of—Possession taken over prior to publication of notification under s.4(1)—Period to be reckoned for payment of additional amount—Held, where possession was taken long before publication of notification under s.4(1) and award made subsequently, landowner would be entitled to payment of additional amount at 12 per cent per annum of market value from date of taking possession.*

C

Certain lands of the respondents were acquired under the Land Acquisition Act, 1894. The possession was taken on 23.1.1971 whereas the notification under s.4(1) of the Act was published on 2.8.1994 and the award was made by the Land Acquisition Officer on 15.1.1986.

D

In the appeal before this Court filed by the State, it was contended by the appellant that in view of provisions of s.23(1-A) of the Act, the land-owners would not be entitled to additional amount at 12 per cent annum of the compensation commencing from the date of taking possession till the date of publication of the notification under s.4(1).

E

Dismissing the appeal, this Court

F

HELD : 1.1. Possession of the land having been taken before publication of Notification under s.4(1) of the Land Acquisition Act, 1894, which has never been questioned by the land owners, they, by necessary implication, are entitled, under s.23(1-A) of the Act, to payment of additional amount at 12 per cent annum of market value from the date of taking possession. [810-D]

G

1.2. The object of introducing s.23(1-A) is to mitigate the hardship caused to the owner of the land, who has been deprived of the enjoyment of the land by taking possession from him and using it for the public purpose,

H

A because of considerable delay in making the award and offering payment thereof. The additional amount at 12 per cent per annum was intended to be paid as compensation from the date of taking possession. [809-D-E; F]

B 1.3. Strict construction of the provisions of s.23(1-A) of the Act leads to unjust result, hardship to the owner and defeats legislative object. Where possession was taken long before publication of the notification under s.4(1) but the award is subsequently made and meanwhile the owner has been deprived of enjoyment of his property, the owner would be entitled to the compensation from the date of taking possession till date of the award. The expression "whichever is earlier" has to be construed in that backdrop and the claimant would be entitled to additional amount from the date of taking possession. [809-G- H, 810-A]

C CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 17885 of 1995.

D From the Judgment and Order dated 17.1.95 of the Karnataka High Court in C.P. No. 59 of 1995.

K.R. Nagaraja for the Petitioner.

E The following Order of the Court was delivered :

An interesting question has been raised by Shri Nagaraja, learned counsel for the Petitioner, in this case.

F The admitted facts are that the petitioner had taken possession of the lands on 23.1.1971, but the notification under s.4(1) of the Land Acquisition Act (for short, 'the Act) was published in the Gazette on 2.8.1984. The award came to be made by the Land Acquisition Officer on 15.1.1986. The question is from what date the respondents-owners are entitled to the benefit of s.23(1-A) of the act as amended by Act 68 of 1984.

G Section 23 (1-A) reads thus:

H "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 centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 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." (emphasis supplied) A

Learned counsel contended that conjoint reading of the dates of notification and making of award would connote that taking possession referable under the expressions "commencing on and from the date of publication of the notification" and "whichever is earlier" would be relatable to the date of the notification published under s.4(1) of the Act and the date of passing of the award by the Collector and not anterior to the date of publication of the notification under s.4(1). Therefore, the owners of the land are not entitled to additional amount at 12 per cent per annum of the compensation commencing from the date of taking possession till date of publication of the notification under s.4(1). We find no force in the contention. B C

The object of introducing Section 23(1-A) is to mitigate the hardship caused to the owner of the land, who has been deprived of the enjoyment of the land by taking possession from him and using it for the public purpose, because of considerable delay in making the award and offering payment thereof. To obviate such hardship, Section 23(1-A) was introduced and the Legislature envisaged that the owner of the land is entitled to 12 per cent per annum additional amount on the market value for a period commencing on and from the date of the publication of the notification under s.4(1) of the Act in respect of such land up to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. At times after publication of the notification under s.4(1), by invoking power of urgency under s.17(4), possession is taken before making the award. The additional amount at 12% per annum was intended to be paid as commutation from the date of taking possession. D E F

But strict construction leads to unjust result, hardship to the owner and defeats legislative object. Take case like one in hand. Possession was taken long before publication of the notification. In the meanwhile the owner was deprived of enjoyment of his property. In other words, if the possession is taken earlier and notification is issued later but the award is subsequently made, the owner or the claimant is entitled to the compensation from the date of taking possession till date of the award, though possession was taken before the notification under s.4(1) was published. G H

A The expression "whichever is earlier" has to be construed in that backdrop and the claimant would be entitled to additional amount from the date of taking possession.

B In this case, since advance possession was taken before the publication of notification under s.4(1), which was never questioned by the owners in a court of law, the claimants, by necessary implication are entitled to the payment of the additional amount by way of compensation from the date of taking over the possession for loss of enjoyment of the land. A different situation may arise where the claimants themselves may question the notification and its invalidity is upheld by the court. Thereunder, the claimants may not be entitled to the additional compensation since they are not willing to surrender the possession under the notification and the state did not in law come into possession under the notification referred to in 23(1A).

D Therefore, we are of the considered view that though the notification under s.4(1) was issued after taking possession of the acquired land from the owners of the land, the owners of the land would be entitled, in the case at hand, to additional amount at 12 per cent per annum of market value from the date of taking possession though notification under s.4(1) was published later.

E The petition is, therefore, dismissed.

R.P.

Appeal dismissed.