

EXECUTIVE ENGINEER, NANDUR, MADHAMESHWAR CANAL A

v.

VILAS EKNATH JADHAV AND OTHERS
(Civil Appeal No. 2919 of 2013 etc.)

APRIL 02, 2013 B

[SURINDER SINGH NIJJAR AND
PINAKI CHANDRA GHOSE, JJ.]

LAND ACQUISITION ACT, 1894: C

Dispossession of land owner prior to notification u/s 4(1) - Damages - Held: In case the land owner has been dispossessed prior to the issuance of the preliminary Notification u/s 4(1) of the Act, it will be open to such land owner to recover the possession of his land by taking appropriate legal proceeding - In case the possession is not recovered, he would be entitled to rent or damages for use and occupation for the period Government retained possession of the property. D

R.L. Jain (D) by LRs. versus D.D.A. and Others 2004(2) SCR 1156 = AIR 2004 SC 1904 - relied on. E

Case Law Reference:

2004 (2) SCR 1156 relied on para 1 F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2919 of 2013.

From the Judgment and Order dated 28.04.2009 of the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petition No. 2458 of 2009. G

WITH

A C.A. No. 2920 of 2013.

Babu Marlapalle, Sudhanshu S. Choudhari for the Appellant.

B Shankar Chillarge, Asha Gopalan Nair for the Respondents.

The following order of the Court was delivered

O R D E R

C 1. Leave granted.

2. In spite of service, none has appeared on behalf of respondent Nos. 1 to 4, the persons whose land was acquired. Mr. Babu Marlapalle, learned senior counsel appearing for the appellant submits that the judgment of the High Court is contrary to the law laid down by this Court in *R.L. Jain(D) by LRs. versus D.D.A. and Others* reported in AIR 2004 SC 1904. He submits that the appellant had taken possession of the land of respondent Nos. 1 to 4 on 3.6.2001 whereas the Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 30th December, 2006. Undoubtedly, the aforesaid respondents would have been entitled to interest on the statutory benefits under the Act calculated from the date when the Notification under Section 4 of the Act was issued. However, for the period between 3.6.2001 and 30.12.2006, they would only be entitled to rental compensation. On the rental compensation determined by the Land Acquisition Officer, the respondents would also be entitled to the interest at Bank rate. In support of this, he relies on observations made in paragraph 18 of the judgment in *R.L. Jain(D) supra*. In the aforesaid paragraph, this Court has observed as follows :-

H "18. In a case where the land owner 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 land owner. It is fully open for the land owner 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 land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of S.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."

3. The aforesaid observations make it abundantly clear that in case the land owner has been dispossessed prior to the issuance of the preliminary Notification under Section 4(1) of the Act, it will be open to such land owner to recover the possession of his land by taking appropriate legal proceeding. In case the possession is not recovered, he would be entitled to rent or damages for use and occupation for the period Government retained possession of the property.

4. These observations fully support the submissions made by learned senior counsel for the appellant.

5. In view of the above, the appeals are allowed. The judgment and order of the High Court is modified to that extent.

R.P.

Appeals allowed.