

Neutral Citation No. - 2023:AHC-LKO:76255

Judgment Reserved on 25.08.2023

Judgment Delivered on 21.11.2023

Court No. - 31

Case :- FIRST APPEAL No. - 121 of 1994

Appellant :- Ashok Kumar

Respondent :- State Of U.P And Others

**Counsel for Appellant :- V.Prakash,Amar Deep Nigam,Vijay Kumar
Srivastava**

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar Nigam,J.

1. Heard learned counsel for the parties and perused the record.
2. Present appeal under Section 54 of the Land Acquisition Act read with Section 96 of CPC has been filed against the judgment and decree dated 14.07.1994 passed by the Presiding Officer, Nagar Mahapalika Tribunal/ Additional District Judge, Lucknow in Misc. Case no. 23 of 1982 (Ashok Kumar v. State) thereby partly allowing the claim of the the appellant.
3. The facts of the present case are that plot no. 601 area 1-13-0, plot no. 658 area 0-9-0, plot no. 915 area 1-7-15 was acquired by the State Government of U.P. for the establishment of Lucknow Kanpur road and City Expansion Scheme. The relevant notification under Section 4 of the Land Acquisition Act was published on 24.8.1976 and the notification under Section 6 of the Land Acquisition Act was published on 20.11.1976.

4. The possession of the acquired land was taken on 21.05.1977 and the award for the compensation was made on 27.09.1979.
5. Thereafter appellant filed a claim petition under Section 18 of the Land Acquisition Act. It is alleged by the claimant in his claim petition that he was the owner in possession of the acquired land which possessed the building potentiality on the date of the notification. He also alleged that the market value of the acquired land was not less than Rs. 3/- per sq. ft. on the date of the notification and the compensation awarded by the Special Land Acquisition Officer is insufficient and inadequate.
6. The said claim of the claimant has been contested by the State Government by filing written statement pleading that he is not entitled to the benefit of Act no. 68 of 1984. It is further alleged that the claim of the claimant is barred by the provisions of Urban Land and Ceiling Act, 1976. It is further alleged that the compensation awarded is sufficient and adequate.
7. After taking into consideration the evidence and other material on record, reference was partly allowed with the direction that the appellant/claimant is entitled for compensation of the land acquired at the rate of Rs.3/- per sq. ft. as being market value of the acquired land on the date of notification and the appellant/ claimant is entitled to 30% solatium under Section 23(2) of the Act No. 68 of 1984 on the market value of the land under the acquisition in consideration of the compulsory in nature of the acquisition. Further, the claimant/ appellant is entitled for 9% interest on the excess amount which has been found due by the Tribunal and which has not been paid by the Special Land Acquisition Officer from the date of taking possession of the land till the date of payment.
8. In addition to above , the Tribunal has also directed that if the payment is not made within one year from the date of passing the

judgment of the Tribunal , the claimant is further entitled for 15% interest on the above excess amount which has been found due and which has not been paid by the Special Land Acquisition Officer.

9. So far as the controversy involved in the present case is concerned, the appellant is aggrieved by the directions given by the Tribunal by means of judgment and award dated 14.07.1994 to the effect that if the payment is not made within one year from the date of passing the judgment of the Tribunal, the claimant is further entitled for 15% interest on the above excess amount which has been found due and which has not been paid by the Special Land Acquisition Officer.
10. Learned counsel for the appellant submits that said direction is contrary to the provisions of Section 28 of the Land Acquisition Act, 1894, the said interest should be given to the appellant for one year from the date of taking over the possession by the Special Land Acquisition Officer and in support of his arguments , he has placed reliance on the judgment of Hon'ble Apex court in the case of K.S. Paripoornan Vs. State of Kerala and others (1995) 1 SCC 367.
11. After hearing learned counsel for the parties and going through the provisions as provided under Section 28 of the Land Acquisition Act, 1894 as well as the law laid down by Hon'ble the Apex Court in the case of K.S. Paripoornan (supra) in which it has been held that

 "Therefore, if the sum which, in the opinion of the court, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the court shall direct to pay interest on such excess at the rate of 9% per annum from the date on which the Collector took possession of the land to the date of payment of such excess into the Court. By operation of the proviso, if such, excess or any part thereof is paid into the Court after the date of expiry of a period of one year from the date on which compensation is taken, interest at the rate of 15% per annum

shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the Court before the date of such expiry. Accordingly, the appellant is entitled to the enhanced interest @ 9% from the date of taking possession, namely, January, 15, 1981 and March 11, 1981 respectively for one year @ 9% and thereafter @ 15% till the date of the deposit made by the Collector. Admittedly, the deposit of the enhanced compensation was made on October, 20, 1986 and December 3, 1986. Therefore, the interest shall be calculated at the enhanced rates for the aforesaid record."

12. Learned counsel for the appellant relied upon judgments by coordinate benches of this court passed in First Appeal No. 130 of 1994 Mohan Lal v. State of U.P. decided on 26.03.2014, First Appeal No. 131 of 1994 Bhagwan Din and others v. State of U.P. decided on 02.12.2021, First Appeal No. 126 of 1994, Gulab v. State of U.P. decided on 14.02.2014. Covered by the same notification wherein this Court has held that appellant is entitled for 9% interest for the period of one year from the date of taking over possession and thereafter 15% interest till the compensation amount is not paid to him.
13. For the foregoing reasons, the directions given by the Tribunal by means of judgment and award dated 14.07.1994 to the effect that if the payment is not made within one year from the date of passing the judgment of the Tribunal, the claimant is further entitled for 15% interest on the above excess amount which has been found due and which has not been paid by the Special Land Acquisition Officer, is contrary to law, liable to be set aside, so the same is set aside and the judgment and decree dated 14.07.1994 passed by the Presiding Officer, Nagar Mahapalika Tribunal/ Additional District Judge, Lucknow in Misc. Case no. 23 of 1982 (Ashok Kumar v. State) is modified to the extent that appellant is entitled for 9% interest for the

period of one year from the date of taking over possession and thereafter 15% interest till the compensation amount is not paid to him.

14. With the above observations, the appeal is partly **allowed**.

Order Date :- 21.11.2023

Ved Prakash

(Manish Kumar Nigam, J.)