

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Mr. JUSTICE ABHINAND KUMAR SHAVILI

Writ Appeal No. 187 of 2010

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal is preferred by the Government of A.P against the order passed by the learned Single Judge in W.P. No. 26373 of 2008 dated 11.9.2009.

The facts, to the limited extent necessary, are that a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the 1894 Act') was issued on 28.12.1994 pursuant to which a Section 6 declaration was issued on 9.4.1995. Since no award was passed, the notification issued earlier lapsed. A fresh notification under Section 4(1) of the 1894 Act was issued on 19.4.1999 pursuant to which possession of the subject land was taken on 29.9.1999. However, even this notification lapsed resulting in a third notification being issued on 17.9.2002 and an award was passed under Section 11(2) of the 1894 Act on 31.12.2003. Claiming payment of interest from the date on which possession of the subject land was taken on 29.9.1999, till the award was passed on 31.12.2003, the respondent-writ petitioners invoked the jurisdiction of this Court; and, by the order under appeal, the learned Single Judge directed the appellants to pay interest on the amount of compensation, including solatium and additional market value, @ 9% per annum for the first year and 15% per annum thereafter from the date of taking possession on 29.9.1999 till the date of the award on 31.12.2003. Questioning the said order, the appellate jurisdiction of this Court, under Clause 15 of the Letters patent, is invoked by the Government of Andhra Pradesh.

Learned Government Pleader for Land Acquisition would submit that, since the award is a consent award passed under Section 11(2) of the 1894 Act, the amount awarded includes the entire amount which the land owners are entitled to claim; having given their consent for an award to be passed, interest from the date of taking possession till the date of passing of the award cannot be claimed; and since Section 34 of the 1894 Act has no application to cases where possession of the land has been taken anterior to the Section 4(1)

notification, the Learned Single Judge had erred in directing the appellant to pay compensation under Section 34 of the 1894 Act.

It is no doubt true that Section 11(2) of the 1894 Act enables the Collector, if the persons interested in the land agree in writing, to make an award according to the terms of the agreement, without making any further enquiry. The consent of the land owner is given for acquisition of land by the State which, in the present case, is pursuant to the Section 4(1) notification issued on 17.9.2002. As possession of the subject land can only be taken under the 1894 Act, after an award is passed (except where the urgency clause under Section 17(4) is invoked) and as possession, in the present case, was taken nearly three years prior to the Section 4(1) notification having been issued on 17.9.2002, the consent of the land owners, under Section 11(2) of the 1894 Act, cannot be understood as extending to their claim for compensation on their being deprived of possession even prior to a notification having been issued under Section 4(1) of the 1894 Act. While Section 34 of the 1894 Act enables payment of interest from the date of taking possession, till the date of payment of compensation, the interest payable thereunder is for the period posterior to the award, unlike in the present case where the claim for interest is for a period anterior to the award itself.

A Division Bench of this Court, in **Chilukuri Rama Rao vs. Government of Andhra Pradesh**¹, dealt with a case of a consent award passed under Section 11(2) of the 1894 Act and, following the judgment of the Supreme Court in **Chandra Bansi Singh vs. State of Bihar**², directed payment of interest as an equitable relief at 12% per annum on the belated payment of compensation.

In **Government of Andhra Pradesh vs. Land Acquisition Officer and Mandal Revenue Officer, Hanamkonda**³, a learned Single Judge of this Court held that possession being taken, even prior to a notification being issued under Section 4(1) of the Land Acquisition Act, cannot be construed as compensation under the Act; and while the Act may not provide for payment of interest, for the period from the date of taking possession till the passing of the award, the respondents would be entitled for equitable compensation on being

¹ 1998(3) ALT 110

² AIR 1984 SC 1764

³ 1993(2) AnWR 530

deprived of their possession in cases where possession was taken prior to a notification being issued under Section 4(1) of the 1894 Act.

While fairly stating that the scope of Section 34 of the 1894 Act was not examined by the Division Bench in **Chilukuri Ramarao**¹, Sri P. Sridhar Reddy, learned counsel for the respondents-writ petitioners, would, however, draw our attention to the judgment of the Supreme Court in **Assistant Commissioner, Gadag Sub-Division vs. Mathapathi Basavannevva and others**⁴. In the case before the Supreme Court, possession of the land was taken thirteen (13) years prior to a notification being issued under Section 4(1) of the Land Acquisition Act, and an award was passed a little more than a year after a notification was issued under Section 4(1) of the Act. On the question whether the petitioners therein were entitled for interest under Section 23(1-A) of the Act, as amended by Act 68 of 1984, the Supreme Court observed that in case advance possession has been taken before publication of the notification under Section 4(1), which has not been questioned by the owner in a Court of law, by necessary implication the claimants were entitled for an additional amount by way of compensation from the date of taking over possession for loss of enjoyment of land, but a different situation may arise when the claimants themselves question the notification, and the invalidity is upheld by the Court. Holding that the petitioners therein had not questioned the Section 4(1) notification, which has been issued after possession of the land was taken from them, the Supreme Court held that they were entitled for additional amount at 12% per annum of the market value from the date of taking possession, though a notification under Section 4(1) was issued later.

As neither Section 23(1-A), which applies to the period from the date of the Section 4(1) notification till the date of taking possession, nor Section 34, which relates to payment of interest from the date of passing of the award till the date of taking possession, apply to the present case, we are in complete agreement with the opinion of the learned Single Judge of this Court, in **Government of Andhra Pradesh**³, that the land owners are entitled for equitable compensation for being illegally deprived of their possession over the subject land.

⁴ AIR 1995 SC 2492 (1)

As, in similar circumstances, the Supreme Court, in **Assistant Commissioner, Gadag Sub-Division**⁴, had directed additional amount at 12% per annum to be paid as compensation, we modify the order of the learned Single Judge and, instead of the interest awarded by him at 9% for the first year and 15% from the second year onwards, we direct the appellants to pay the respondents-writ petitioners equitable compensation at 12% per annum, on the awarded amount, from the date possession was taken till the date the notification was issued under Section 4(1) of the 1894 Act, ie, from 29.9.1999 till 17.9.2002. The amount, as directed hereinabove, shall be paid within two months from the date of receipt of a copy of this order.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(ABHINAND KUMAR SHAVILI, J)

1st November, 2017

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