

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.9548 and 9572 of 2009

COMMON ORDER:

Heard Sri J.Venkateswar Reddy for petitioners and the learned Government Pleader (Land Acquisition) for respondents.

The petitioners herein are aggrieved by the inaction of respondents in paying 12% additional market value, interest on 30% solatium and additional market value and filed the present writ petitions for appropriate directions.

Having regard to the award already passed and the judgment, which have become final between the parties, whereunder additional market value was not granted, the counsel for petitioners confines his submissions against non-payment of 12% additional market value and interest on 30% solatium.

The periods for which the benefits are claimed read as follows:-

W.P.No.9548 of 2009

12% additional market value for two years one month 19 days i.e., 30.07.1988 to 19.09.1990 and interest on 30% solatium.

W.P.No.9572 of 2009

12% additional market value for one year four months 15 days i.e., 30.07.1988 to 13.12.1989 and interest on 30% solatium.

The case of petitioners is that through Section 4(1) Notification, dated 30.07.1988, the agricultural lands in Sy.Nos.126, 127 and 174 measuring Ac.5-08 gts., and Ac.6-32 gts., situated at Enumamula Village, Hanamkonda Mandal, Warangal District, were acquired. Award was passed on 13.12.1989 in W.P.No.9572 of 2009 and on 19.09.1990 in W.P.No.9548 of 2009 determining compensation at Rs.45,000/- per acre. The awards were referred under Section 18 of Land Acquisition Act, 1894 (for short 'the Act') to Civil Court for enhancement and the Civil Court enhanced the compensation to Rs.28/- per sq. yard with all statutory benefits. On 16.12.1998, the petitioners claim to have filed applications under Section 28-A of the Act for extending similar benefits. The petitioners rely on the order of this Court in W.P.No.22152 of 2008 dated 14.10.2008.

The circumstances and the dates and events on which the petitioners are relying on for receiving the amounts, referred to above, are not in dispute.

For not paying 12% additional market value and interest on solatium, the 1st respondent filed counter affidavit and the operative portion of the counter affidavit in W.P.No.9572 of 2009 reads thus :-

“In answer to the averments made in Paras 7, 8 and 9 of the petitioner's affidavit, I submit that the Award U/ s.28-A was passed on 25-4-2009 duly calculating 12% additional market value U/ s.23-[1A] from 12-07-1988 to 30-07-1988 which has been approved by the Government for passing of Award U/ s.28-A. However, this is being correct on the basis of Award of Land Acquisition Officer/ Revenue Divisional

Officer, Warangal in Proceedings No.A/ 3376/ 88 dated 19.09.1990. According to which the petitioners are entitled to additional market value from 30-07-1988 to 19-09-1990 i.e., from the date of notification U/ s.4(1) of the Act to the date of Land Acquisition Officer Award. The payment of interest on solatium of 30% which was also not approved by the Government has not been allowed in 28-A Award Proceedings No.A/ 3376/ 1988, dated 25-04-2009. However, the interest on 30% Solatium will be allowed in the Supplementary Award that has to be passed by the Land Acquisition Officer/ Revenue Divisional Officer, Warangal after approval of competent Authority."

Sri J.Venkateswar Reddy relies on *SIDDAPPA VASAPPA KURI v. SPECIAL LAND ACQUISITION OFFICER*¹ and contends that for the periods in dispute under Section 23(1-A) of the Act, the petitioners are entitled for the amounts claimed by them. He relies on paragraphs 5 to 7, which read thus:

This Court in [Special Tahsildar \(LA\), P.W.D. Schemes, v. M.A. Jabbar](#), [1995] 2 SCC 142, quoted [Section 23\(1A\)](#) and said :

"In other words, the owner of the land who has been deprived of the enjoyment of the land by having been parted with possession, the Act intended that the owner be compensated by awarding an additional amount calculated at the rate of 12 per centum per annum on the enhanced market value for the period between the date of notification and the date of award or date of taking possession of the land, whichever is earlier. Admittedly, possession having already been taken on 15-2-1965, before publication of the notification under [Section 4\(1\)](#) on 6-3-1980, the award of additional amount for the period from 6-3-1980 to 30-9-1983, i.e., the date of making the award under [Section 11](#) is perfectly correct."

¹ (2002) 1 Supreme Court Cases 142

It is, as we see it, clear from [Section 23\(1A\)](#) that the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per centum per annum on the market value, is the date of publication of the [Section 4](#) notification. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier. In the present case, possession of the land having been taken prior to the publication of the [Section 4](#) notification, that terminal is not available. The only available terminal is the date of the award. The High Court, therefore, was in no error in holding that the appellants were entitled to the additional compensation under [Section 23\(1A\)](#) for the period 8-3-1991 to 6-2-1993.

[Section 23\(1-A\)](#) admits of no meaning other than the meaning that we have placed upon it. There is no room here for any construction other than that given above. It is only where a provision is ambiguous that a construction that leads to a result that is more just can be adopted. Having regard to its clear terms, [Section 23\(1A\)](#) must receive the only construction it can bear. We are of the view, therefore, that the law has been correctly laid down in the decision in [Special Tahsildar \(LA\), P.W.D. Schemes v. MA. Jabbar](#), [1995] 2 SCC 142 and that it has not been correctly laid down in [Asstt. Commr., Godag Sub-Division v. Mathpathi Basavannewwa](#), [1995] 6 SCC 355 and, for that matter in [State of H.P. v. Dharam Das](#), [1995] 5 SCC 683.

This Court has granted interim direction on 30.04.2009 to pay the amounts claimed by petitioners.

The respondents filed counter affidavit and also petition to vacate the interim order.

The Government Pleader places on record the instructions dated 05.10.2017 and informs the Court that as on date supplementary award is not passed.

As the principle of law on which the entitlement is canvassed and the clear language under Section 23(1-A) of the Act, this Court is of the view that the petitioners are entitled for 12% additional market value for the respective periods claimed in the writ petitions and also interest on 30% solatium.

Hence, the respondents are directed to pass supplementary award in respect of 12% additional market value for the respective periods claimed in the writ petitions and also interest on 30% solatium within three months from the date of receipt of a copy of this order.

The 1st respondent is directed to take steps necessary for getting the amounts from the 2nd respondent within four weeks from the date of receipt of a copy of this order. The 2nd respondent, as and when such request is made by the 1st respondent, makes available the amount for paying compensation covered by supplementary award.

The writ petitions are ordered accordingly. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 06.10.2017
Prv

