

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.7871 of 2009

ORDER:

Heard Smt. S. Kiranmayee for petitioners and the Government Pleader (Land Acquisition) for respondent.

2. The petitioners pray for the following relief:

“..writ of *mandamus* directing the respondent herein to award interest on the market value, solatium and additional market value from the date of award dated 12.09.1986 date of taking possession to the date of realization instead of from the date of 28-A Applications i.e., 30.11.1998 on par with the Judgment and Decree of the Senior Civil Judge, Rajampet, Kadapa district in LAOP No.1831/1988 and batch cases and pay the same to the petitioners herein in pursuance of their applications filed under Section 28-A.”

3. The respondent is not disputing the dates and events referred in the writ petition or the entitlement of the petitioners for re-determination under Section 28-A of the Land Acquisition Act, 1984 (for short 'the Act'). But the objections raised by the respondent read as follows:

“..In reply to the averments made in para 15, 16 and 17 of the petitioners affidavit, it is respectfully submitted that the Land Acquisition officer is not competent to award interest U/s 34 for the period prior to passing of Award U/s 28-A. It is submitted that the Awards U/s 11 and U/s 28-A are different. It is also submitted that the Land Acquisition officer is not competent to re-open the Award already passed U/s 11 or U/s 28-A. It is submitted that as Section 28-A contemplates re-determination of compensation on the basis of the amount of compensation awarded by the reference court, and accordingly, the Land Acquisition Officer has passed Award U/s 28-A. It is submitted that the petitioners are not entitled for payment of interest prior to the date of application filed U/s 28-A of the Act.

In reply to the averments made in para 18 of the petitioners affidavit, it is respectfully submitted that as explained in the above paras the writ petitioners are not entitled for payment of any interest from the date of earlier Award U/s 11, since the Land Acquisition Officer has passed separate Award re-determining the compensation U/s 28-A of the L.A. Act.”

4. Counsel for petitioners relies upon the decision of this court in ‘*Government of Andhra Pradesh vs. Musalikoppu Janardhana*¹’, wherein a similar objection has been considered by this court and the following principle is laid down:

“The learned Government Pleader tried to sustain the restriction of payment of interest only to the period from the date of filing of applications on the ground that the respondents not being diligent in seeking reference under Section 18 are not entitled to claim interest. In our view, such a contention is wholly merit less. Whether they applied for enhancement of compensation or not, the statute conferred a benefit on the respondents for re-determination of compensation on the basis of the award passed by the Court. That being so, no further distinction can be drawn between the persons, who sought for reference and those who have not. Such a distinction can only be termed as purely artificial without any sanction of law. This argument also militates against the purpose for which Section 28-A is introduced, namely, to ensure that the landowners, who have not claimed reference, are equally entitled to the same amount of compensation as those who claimed reference. When a right is vested in the persons, who did not seek reference, to seek re-determination of compensation, notwithstanding the fact that they were not diligent in seeking reference, they cannot be deprived of any part of the statutory benefit on the jejune ground of not being diligent in seeking reference. The right conferred on the landowner to receive interest on compensation is based on denial of his right to enjoy the property till such time as compensation amount is paid to him. This being the purpose of payment of interest, the respondents’ failure to seek reference under Section 18 has no relevance to or bearing on

¹ 2009(2) ALD 567 (DB)

their right to claim interest. We therefore reject the first contention of the learned Government Pleader.

As regards the contention of the learned Government Pleader that if the respondents were aggrieved by the award passed under Section 28-A(2), they are entitled to seek reference under Section 28-A(3) of the Act, we have not felt persuaded to accept the same.

The jurisdiction under Article 226 is not circumscribed by any restrictions. However, the constitutional courts have placed on themselves certain self imposed restrictions in entertaining Writ Petitions when the petitioner has an effective alternative remedy. But, at the same time, it is held that availability of an alternative remedy is not an absolute bar to entertain a petition under Article 226 of the Constitution of India. In *A.V. Venkateshwaran Vs. R.S.Wadhvani*² the Constitution Bench of the Supreme Court held thus:

“The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court.”

In *Harbanslal Sahnia Vs. Indian Oil Corporation Ltd.*³, the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

“The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: i) where the

²) AIR 1961 SC 1506

³) (2003) 2 SCC 107

writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corpn. v. Registrar of Trade Marks* {(1998) 8 SCC 1}. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

As noted supra, the Constitution vested a fundamental right in the owner of the property to receive compensation at a rate, which shall not be less than the market value on the pain of invalidation of any law if such a law does not make provision for such payment. While on the interpretation of the provisions of Section 28-A as above, the respondents are entitled to receive interest as awarded by the civil Court and Lok Adalath, denial of such interest, falls foul of Article 300-A of the Constitution. Therefore, when the respondents are denied the right accrued to them both under the Constitution and the express statutory provisions contained under the Act, it will be unjust to drive the respondents to undergo the rigmarole of a reference under Section 30 of the Act. Indeed, in *Shree Vijay Cotton and Oil Mills Limited* (12 supra) while rejecting the contention of the State that the claimants were not entitled to payment of higher interest as their cross objections were rejected on the ground of limitation, the Supreme Court held that payment of interest is not dependant on any claim by the person whose land has been acquired, that when once the provisions of Section 34 are attracted, it is obligatory for the Collector to pay the interest and that if he fails to do so, the same can be claimed from the Court in proceedings under Section 18 of the Act or even from the appellate Court thereafter. The Supreme Court further held that the procedural hazards cannot come in the way of a substantial right of a citizen under the Act. On such reasoning the Supreme Court held that it was not necessary for the claimant to have filed separate appeals/ cross-objections before the High Court for the purposes of claiming interest under Section 28 or Section 34 of the Act.

We are, therefore, of the view that the learned Single Judge has not committed any error in entertaining the writ petitions and granting relief to the respondents instead of relegating them to the alternative remedy under Section 28-A (3)

of the Act. One other reason for us to reject the plea of alternative remedy is that no disputed questions of facts are involved to decide the claims of the respondents. A pure question of interpretation of the provisions of the Act in general and Section 28-A in particular is involved in the cases before us. Therefore, it is more desirable that such questions are decided by a constitutional Court rather than allowing a civil Court to decide the same. We therefore reject this contention of the learned Government Pleader too.”

5. Learned Government Pleader, after taking note of the binding precedent and the objections raised by the petitioners, submits that the issue is covered in favour of the petitioners.

6. Both after perusing the ratio laid down by this court and taking note of submissions of learned Government Pleader, I am satisfied the petitioners have made out their case and the writ petition can be allowed as prayed for. The petitioners are given liberty to make a representation by enclosing a copy of this order within four weeks from today and the respondent is directed to pass orders as held by this court in ‘*Government of A.P. vs. Musalikoppu Janardhana*’s case (supra), within three months thereafter.

7. The writ petition is, accordingly, allowed. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S.V.BHATT, J

Date: 02.08.2017
BSS

HON'BLE SRI JUSTICE S.V. BHATT

29

Writ Petition No.7871 of 2009



Date: 02.08.2017

BSS