

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 901/2016**

Shri Baboi Naik, 79 years old, landlord, r/o
Varsha, Villa Nova, Colva, Salcete, Goa. ... Petitioner

Versus

1. Land Acquisition Officer, Deputy Collector,
Margao.
2. The Executive Engineer, Work Div. VI
(South Road), P.W.D., Fatorda, Margao, Goa. ... Respondents

Shri Vilas P. Thali, Advocate for the Petitioner.

Shri Deep Shirodkar, Additional Government Advocate for the
Respondents.

CORAM : C.V. BHADANG, J.

Reserved on : 16th OCTOBER, 2018

Pronounced on : 19th OCTOBER, 2018

ORDER:

By this petition, the petitioner/deed holder is challenging the orders dated 09.04.2014 and 03.03.2015, passed by the Executing Court in Execution Application No. 124/2012, to the extent the Executing Court holds that the petitioner would be entitled to interest under Section 23(1-A) of the Land Acquisition Act, 1894 (Act, for short) on the amount of compensation, from the date of notification, under Section 4 of the said Act.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That, vide notification dated 14.02.1991, under Section 4 of the Act, the Government had acquired certain lands for construction of a public road. The acquired land includes 348 square metres of land from survey no. 15/3 and 800 square metres of land from survey no. 49/0 of village Colva belonging to the petitioner. Indisputably the possession of the acquired lands was obtained by the State prior to the issuance of the notification under Section 4 of the Act. The Land Acquisition Officer (LAO) awarded compensation at the rate of Rs.4/- per square metre in respect of land out of survey no. 15/3 and Rs.20/- per square metre in respect of land from out of survey no. 49/0. Feeling aggrieved by the inadequate compensation granted, the petitioner filed a reference under Section 18 of the Act, which was registered as Land Acquisition Case No. 54/1997, before the learned District Judge, South Goa, Margao. The learned District Judge partly allowed the reference by an award dated 18.09.1999 in the following terms:

“The reference is allowed in part with costs.

The market price of the suit plots, one having an area of 348 square metres and the other an area of 800 square metres, is fixed at Rs.150/- per square metre and at Rs.120/- per square meter, respectively. The applicant shall be entitled to 30% solatium on the value of the land and 12% interest per annum on the said value for the period

commencing from 14.02.1991 (date of publication of notification under Section 4 of the L.A. Act) or from the date of taking possession of land, whichever is earlier, to the date of the award, in terms of Section 23(1-A) of the said Act. On excess amount of compensation awarded by this Court, the applicant shall be entitled to 9% interest per annum for the first year from the date on which the Collector took possession of the land and at the rate of 15% per annum from the second year, till excess sum is paid in Court, in terms of Section 28 of the L.A. Act. The amount already paid to the applicant towards land shall be adjusted accordingly. Costs are assessed at Rs.800/- towards Advocate's fees and Rs.800/- towards Court fees."

(Emphasis supplied)

3. The dispute in the present petition only pertains to the date from which the interest at the rate of 12% under Section 23(1-A) of the Act is payable.

4. The State challenged the aforesaid award before this Court in First Appeal No. 118/1999. This Court by a judgment and order dated 21.04.2004, allowed the appeal and set aside the enhancement granted by the Reference Court. This was in turn challenged by the petitioner before the Hon'ble Supreme Court in Civil Appeal No. 850/2005. The Hon'ble Supreme Court

by an order dated 15.09.2010, allowed the appeal and while setting aside the judgment of this Court has restored the judgment and order passed by the Reference Court.

5. The petitioner has filed the aforesaid Execution Application for execution of the said award, which is pending before the Executing Court.

6. According to the petitioner, the Reference Court having granted 12% interest per annum on the amount of compensation from 14.02.1991 (the date of notification under Section 4 of the Act) or from the date of taking possession “whichever is earlier”, it was not open for the Executing Court to have restricted the interest from the date of notification under Section 4 of the Act. The Executing Court by the impugned order dated 09.04.2014 has held that the petitioner would be entitled to interest from the date of notification under Section 4 of the Act and not from the date of taking over the possession, which in the opinion of the Executing Court would amount “to a case of unjust enrichment”.

7. The petitioner filed an application before the Executing Court for “correction” of the judgment and order

dated 09.04.2014, on the ground that certain contentions which were raised on behalf of the petitioner were not recorded or considered by the Court, while passing the order dated 09.04.2014. The Executing Court by order dated 03.03.2015 has dismissed the said application. It is these two orders, which are subject matter of challenge in this petition.

8. I have heard the learned Counsel appearing for the parties. Perused record.

9. Shri Thali, the learned Counsel for the petitioner has raised two contentions:

Firstly, it is submitted that the judgment and award passed by the Reference Court, having been restored by the Supreme Court, it was not open for the Executing Court to go behind the said award and to restrict the interest under Section 23(1-A) of the Act, from the date of notification under Section 4 of the Act and not from the date of taking possession, which is prior to the date of notification under Section 4 of the Act. The learned Counsel has submitted that the Executing Court cannot go behind the award.

Reliance in this regard is placed on the decision of the Supreme Court in the case of **Haryana Vidyut Prasaran Nigam**

Limited & Another Vs. Gulshan Lal & Others, (2009) 13 SCC 354 and **Land Acquisition Collector, Mohali & Another Vs. Surinder Kaur, (2013) 10 SCC 623**. Reliance is also placed on the decision of this Court in the case of **The Industrial Credit and Investment Corporation of India Ltd. & Another Vs. Sharad Khanna & Others, AIR 1993 BOM 304**, in order to submit that even where the award/order of the Court, which is sought to be executed, was passed erroneously and “not lacking in inherent jurisdiction”, the order was not a nullity and its validity cannot be challenged in execution or other collateral proceedings.

Reliance is then placed on the decision of the Supreme Court in the case of **Rafique Bibi (dead) by LRs Vs. Sayed Waliuddin (dead) by LRs & Others, (2004) 1 SCC 287**, in order to bring out the distinction between an illegal decree or order and a null/void decree or order. The learned Counsel, however, in all fairness, did not dispute that the interest under Section 23(1-A) of the Act is payable from the date of the notification under Section 4 of the Act.

10. Secondly, it is alternatively submitted that when the State or the acquiring body takes possession of the acquired land, prior to the issuance of notification under Section 4 of the

Act, the land owner is entitled to get rent or damages for use and occupation, for the period the Government retains the possession of the property. It is submitted that in such a case, the Collector has to determine the rental compensation/damages payable, which has not been done in this case. It is submitted that the Collector be directed to determine the rental compensation, for the period from the date of taking possession, till the issuance of notification under Section 4 of the Act.

Reliance in this regard is placed on the decision of the Supreme Court in the case of **R.L. Jain (D) by LRs Vs. DDA & Others, (2004) 4 SCC 79.**

11. Shri Shirodkar, the learned Additional Government Advocate has supported the impugned order. It is submitted that the rule that the Executing Court cannot go behind the decree/award has well known exceptions. It is submitted that the operative part of the award, passed by the Reference Court, if read as a whole, would clearly indicate that the interest is granted as admissible under Section 23(1-A) of the Act and as such, the Executing Court has rightly come to the conclusion that the petitioner would not be entitled to interest from the date of obtaining of possession, which is prior to the date of notification under Section 4 of the Act.

12. In this regard, common reliance is placed on the decision of the Supreme Court in the case of **R.L. Jain** (supra). It is submitted that the possession taken prior to the issuance of notification under Section 4 of the Act is *dehors* the Act and as such, the interest under Section 23(1-A) of the Act would not be payable from any such antecedent date.

Reliance is also placed on the decision of the Supreme Court in the case of **Siddappa Vasappa Kuri & Another Vs. Special Land Acquisition Officer & Another**, AIR 2001 SC 2951, in order to submit that the additional compensation under Section 23(1-A) of the Act is payable only from the date of notification under Section 4 of the Act and not from the date of taking possession.

13. I have given my anxious consideration to the rival circumstances and the submissions made. Section 23(1-A) of the Act reads thus:

“23. Matters to be considered in determining compensation-

.....

(1-A) In addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of

the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.”

(Emphasis supplied)

14. It can thus clearly be seen that the additional compensation at the rate of 12% per annum on the market value of the land acquired can be granted for the period commencing from the date of notification under Section 4 of the Act and not prior thereto. This aspect was also not disputed by the learned Counsel for the petitioner. Thus, the learned Counsel for the petitioner did not dispute that the compensation under Section 23(1-A) of the Act, at the rate of 12% per annum, calculated on the market value of the land can be granted commencing from the date of notification under Section 4 of the Act. The contention, however, is that the Reference Court having granted such compensation from the date of notification under Section 4 of the Act or from the date of taking possession “whichever is earlier”, it was not open for the Executing Court to go behind the award and to restrict the computation of the interest from the date of notification under Section 4 of the Act. The contention in my considered view cannot be accepted. The other decisions relied upon on behalf of the petitioner, would not be applicable, in the context of the view as being taken.

15. The Supreme Court in the case of **Siddappa Vasappa Kuri** (supra) has held thus, in para 5 of the judgment:

"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 8th March, 1991 to 6th February, 1993."

(Emphasis supplied)

The said view has been reiterated by the Supreme Court in the case of **R.L. Jain** (supra).

16. The Executing Court has come to the conclusion that the issue before the Hon'ble Supreme Court in Civil Appeal No. 850/2005, filed by the appellant, was restricted to the market value of the land and not the date from which interest under Section 23(1-A) of the Act, is to be calculated. In my considered view, the contention on behalf of the petitioner that the

Executing Court could not have gone behind the award is misplaced, as the matter can be looked at from another angle. Although, it cannot be disputed that the Executing Court cannot go behind the award, the said principle would not prevent the Executing Court from placing a reasonable construction on the decree/award, while executing the same. To put it otherwise, the Executing Court would not be precluded and in fact, would be required to read the decree/award as a whole and in a meaningful manner, in order to execute the same in accordance with law. In a case where there are two constructions possible, the Executing Court would obviously prefer the one which is in consonance with the provisions of law and not otherwise. The decree holder while placing reliance on the well established principle that the Executing Court cannot go behind the decree/award, cannot insist for execution of the award to a point of absurdity and which would be clearly against the provisions of law as may be applicable.

17. The present case in my considered view is not about the Executing Court going behind the decree/award, but, of reading the award sought to be executed in a meaningful manner. A careful perusal of the operative part of the order would show that the Reference Court had granted 12% interest

on the value of the land for the period commencing from 14.02.1991 i.e. the date of publication of notification under Section 4 of the Act or from the date of taking possession of land, whichever is earlier in terms of Section 23(1-A) of the Act. It is true that the Executing Court has said that such interest would be payable for the period commencing from 14.02.1991 i.e. the date of notification under Section 4 of the Act or from the date of taking possession of the land "whichever is earlier". However, in my considered view, the portion "whichever is earlier" cannot be read in isolation and it has to be necessarily read alongwith the portion which is subsequently appearing "to the date of award" in "terms of Section 23(1-A) of the said Act". Such a construction/interpretation would be in consonance with the provisions of Section 23(1-A) of the Act and the decision of the Supreme Court in the case of **Siddappa Vasappa Kuri** (supra) and **R.L. Jain** (supra). It can thus clearly be seen that the Reference Court was conscious of the fact that interest under Section 23(1-A) of the Act on the value of the land has to be granted for the period commencing from the date of notification under Section 4 of the Act and that too in terms of Section 23(1-A) of the said Act. Even assuming that an alternate construction can be placed on the award passed by the Reference Court, the one which is in consonance with Section 23(1-A) of the Act will

have to be preferred. Thus, the first contention as raised on behalf of the petitioner cannot be accepted and will have to be refuted.

18. This takes me to the second contention about the requirement of the Collector having determined the rental compensation. As noticed earlier, the Supreme Court has held that the possession taken by the State prior to the notification of the Act is dehors the provisions of the Act and as such, no compensation could be claimed under any of the provisions of the Act for such a period prior to the date of notification under Section 4 of the Act. This is what is held in para 18 of the decision in the case of **R.L. Jain** (supra).

“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 Section 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.”

It can thus be seen that the Supreme Court has held that where the possession is taken prior to issuance of preliminary notification, it would 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 payable to the land owner for the acquisition of the land, which has not been done. However, looking to the fact that such possession is dehors the provisions of the Act, it would not be open for the petitioner to claim such rental compensation in proceedings arising out of the said Act.

19. However, in my considered view, it would be open to the petitioner to approach the learned Collector for determining such rental compensation from the period of taking of possession till the issuance of notification, under Section 4 of the Act and if, such an application is filed, the learned Collector shall decide the same in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of any such application or the rental compensation to be determined and all contentions

including that of limitation, if any, are left open to be determined by the learned Collector, in the event, such an application is filed. Subject to this, no case for interference is made out. The Writ Petition is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.

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