

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HONOURABLE MS JUSTICE J. UMA DEVI

+ L.A.A.S.Nos.221, 222 & 237 of 2018

% Date: 19-09-2018

L.A.A.S.No.221/ 2018

Between:

M.A. Aziz, S/o. late M.A. Jabbar,
Occ: Business, R/o. S.V.M.J. Apartments,
Flat B1, Pattigadda, Begumpet, Hyderrabad
Telangana State.

... Appellant/Petitioner

And

The Special Deputy Collector (L.A.)
G.H.M.C., Hyderabad.

... Respondent

L.A.A.S.No.222/ 2018

Between:

M.A. Mannan, S/o. late M.A. Jabbar,
Occ: Business, R/o. S.V.M.J. Apartments,
Flat B1, Pattigadda, Begumpet, Hyderrabad
Telangana State.

... Appellant/Petitioner

And

The Special Deputy Collector (L.A.)
G.H.M.C., Hyderabad.

... Respondent

L.A.A.S.No.237/ 2018

Between:

M.A. Aziz, S/o. late M.A. Jabbar,
Occ: Business, R/o. S.V.M.J. Apartments,
Flat B1, Pattigadda, Begumpet, Hyderrabad
Telangana State.

... Appellant/Petitioner

And

The Special Deputy Collector (L.A.)
G.H.M.C., Hyderabad.

! Counsel for the appellant : Mr. V. Ramchander Goud

^ Counsel for Respondent : Mr. Chatla Madhu S.C. for GHMC

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? Cases referred



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE MS JUSTICE J. UMA DEVI

L.A.A.S.Nos.221, 222 & 237 of 2018

COMMON ORDER: (per VRS,J.)

These appeals are filed under Section 74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter called the Central Act 30 of 2013), challenging the omission of the Land Acquisition, Rehabilitation and Resettlement Authority, to grant award as stipulated by the statutory prescription itself.

2. Heard Mr. V. Ramchander Goud, learned counsel for the appellants and Mr. Chatla Madhu, learned counsel appearing for the respondent-corporation.

3. It appears that on the basis of a request made by the Greater Hyderabad Municipal Corporation for the acquisition of land for the widening of a road, the District Collector, Ranga Reddy District issued a notification under Section 4(1) of the Land Acquisition Act, 1894, on 24.05.2007. The emergency provisions under Section 17 (4) of the 1894 Act were invoked and the enquiry was dispensed with. Subsequently, a declaration under Section 6 was issued on 25.05.2007.

4. Aggrieved by the proposed acquisition, the appellants filed a writ petition. The writ petition W.P.No.14915 of 2007 was allowed by this Court and the declaration under Section 6 was set aside, by order dated 03.01.2014.

5. Thereafter, a fresh declaration under Section 6 was issued on 16.10.2014 and the same was published in the Government Gazette on 17.10.2014. But in the meantime, the Central Act 30 of 2013 came into

force with effect from 01.01.2014, under S.O.No.3729(E) dated 19.12.2013.

6. However, the Special Deputy Collector issued a notice in Form No.VII under Section 9(3) read with Section 10 of the 1894 Act. The Special Deputy Collector also passed an award on 05.02.2015 under the Old Act.

7. Therefore, the claimants filed a fresh writ petition in W.P.No.4881 of 2015, on the file of this Court challenging the award, as being contrary to the provisions of the Central Act 30 of 2013. The said writ petition was allowed by a learned Judge, by order dated 04.03.2015. By this order, the learned Judge gave permission to the appellants to file detailed objections and also directed the Special Deputy Collector to pass a supplementary award within four weeks.

8. Pursuant to the said order, the appellants filed detailed objections and supplementary award came to be passed on 27.03.2015 under the new Act.

9. The compensation determined was received under protest, by the appellants in these appeals, on 04.04.2015 and 21.05.2015. The possession of the land was taken from the appellants on 04.04.2015 and 25.05.2015.

10. Thereafter, the Special Deputy Collector made a reference to the Civil Court on 04.06.2015. But the appellants filed three different writ petitions in W.P.Nos.30209, 30962 and 30982 of 2016, challenging the supplementary award dated 27.03.2015. The challenge was necessitated on account of the fact that the Government had not constituted the Land Acquisition Authority at that time.

11. Therefore, the writ petitions were ordered, on 07.09.2016 and 14.09.2016, directing the Government to constitute the Authority under Section 51 of Central Act 30 of 2013. The appellants were directed to file applications before the Collector under Section 64 and the Collector was directed to refer those applications to the Authority so constituted.

12. Accordingly an Authority was constituted and the District Collector referred the applications of the appellants to the said Authority.

13. The Authority, after hearing both the parties passed a common award on 20.06.2018 under Section 69 of the Central Act 30 of 2013, fixing the compensation at Rs.50,000/- per sq. yard. But while doing so, the Authority omitted to grant costs and interest as per Sections 71 and 72 of the Act. Therefore, questioning the omission of the Authority to award costs and interest as per the statutory prescription, the land owners have come up with the above appeals.

14. It is relevant to note that the Greater Hyderabad Municipal Corporation has not chosen to file any appeal against the award of the Land Acquisition, Rehabilitation and Resettlement Authority. We asked the learned Standing Counsel for the Corporation whether any appeal has been filed and whether the time limit for filing an appeal is also over. The learned Standing Counsel submitted that so far no appeal has been filed and that the time limit prescribed by sub-section (1) of Section 74 of the Central Act 30 of 2013 has already expired. Therefore, we have no alternative but to take it that the Corporation is not aggrieved by the quantum of compensation as fixed.

15. Hence the only question that falls for our consideration is as to whether the Authority was right in not granting interest and costs as per the statutory prescription or not.

16. Under Section 71 of the Central Act 30 of 2013, every award, state the amount of costs incurred in the proceedings under this Chapter. It should also indicate the persons by whom the costs are to be paid. This prescription contained in sub-section (1) of Section 71 is qualified further by sub-section (2) which states that if the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Authority concerned was of the opinion that the claim applicant was so extravagant.

17. Insofar as interest is concerned, Section 72 of the Central Act 30 of 2013 stipulates that if the sum, which in the opinion of the Authority concerned, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the award of the Authority concerned may direct that the Collector shall pay interest on such excess at the rate of nine per cent, per annum from the date on which he took possession of the land to the date of payment of such excess into Authority. The proviso to Section 72 states that if the excess as awarded by the Authority is paid, after the date of expiry of a period of one year from the date of possession, interest at the rate of fifteen per cent shall be payable from the date of expiry of the said period.

18. It may be noted that Section 71 of Central Act 30 of 2013 is identical, in fact *in pari materia* with Section 27 of the old Act. Similarly, Section 72 of the new Act is *in pari materia* with Section 28 of the old Act.

19. This can be better appreciated by a tabulation furnished by Mr. V. Ramchander Goud, learned counsel for the appellants, which reads as follows:

Sl.No.	COMPARISON BETWEEN OLD ACT AND NEW ACT OF THE LAND ACQUISITION ACT	
1.	Section 28 of old Act >> identical to Section 72 of New Act	
	28. Collector may be directed to pay interest on excess compensation.— If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of sum which the Collector did award as compensation, the award of the Court may direct that the collector shall pay interest on such excess at the rate of (nine per centum) per annum from the date on which he took possession of the land to the date of payment of such excess into Court. (Provided that the award of the court may also direct that where such excess or any part thereof is paid into Court after the date or expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum 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 Court before the date of such expiry.)	72. Collector may be directed to pay interest on excess compensation.— If the sum, which in the opinion of the Authority concerned, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Authority concerned may direct that the Collector shall pay interest on such excess at the rate of nine per cent, per annum from the date on which he took possession of the land to the date of payment of such excess into Authority. (Provided that the award of the Authority concerned may also direct that where such excess or any part thereof is paid to the Authority after the date or expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent, 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 authority before the date of such expiry.
	Section 27 of Old Act >> identical to >> Section 71 of New Act	
	27. Costs.— (1) Every such award shall also state the amount of costs incurred in the proceeding under this Part, and by what persons and in what proportions they are to be paid. (2) When the award of the Collector is not upheld, the cost shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or	71 Costs.— (1) Every such award shall also state the amount of costs incurred in the proceeding, under this Chapter, and by what persons and in what proportions they are to be paid. (2) When the award of the Collector is not upheld, the cost shall ordinarily be paid by the Collector, unless the Authority concerned is of the opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that

	that he should pay a part of the Collector's costs.	he should pay a part of the Collector's costs.
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20. Having taken note of the legal position, let us now take a look at the order of the Authority, in respect of costs and interest. In fact, the Land Acquisition, Rehabilitation and Resettlement Authority, framed four points as arising for consideration before him. Point No.4 related to interest and costs. The discussion with regard to point No.4 can be found from paragraphs 27.00 to 27.02 of the order impugned in these appeals.

21. After extracting Sections 71 and 72 of the new Act in para 27.00, the Authority came to the conclusion in para 27.01 that the Circular issued by the Central Government in this regard was subsequent to the passing of the award and that therefore the Collector could not be expected to award costs. Insofar as interest is concerned, the Authority held in para 27.02 of its order that the Collector has a discretion to award interest and that this is borne out by the use of the word "may" in Section 72.

22. But we do not think that the view taken by the Authority is legally correct. The liability to pay costs did not arise out of the Circular issued by the Central Government on 26.10.2015. The liability to award costs arose out of Section 71. Similarly, the liability to pay interest arose out of Section 72. Therefore, the fact that the Central Government issued a Circular only after six months of the passing of the award is no ground to deny payment of costs.

23. Similarly, the expression "may" appearing in Section 72, cannot be construed as giving leverage to the Authority not to grant interest or to grant interest at a rate lesser than the one statutorily fixed. Section 28 of the 1894 Act also uses only the expression "may". But this expression has

come to be interpreted by the Supreme Court in *Shree Vijay Cotton & Oil Mills Ltd., v. State of Gujarat*¹. In fact in the said decision the Supreme Court went to the extent of holding that the claimants need not even file separate appeal or cross-objections before the High Court for the purpose of claiming interest. The Court held that even in an appeal filed by the Land Acquisition Officer it was open to the claimants to seek payment of interest and costs as fixed by the statute. The Supreme Court also held that once the conditions prescribed in Section 28 (of the Old Act) are satisfied, the award of interest is consequential and automatic.

24. As a matter of fact if any discretion is conferred upon the Collector either to refuse to grant interest or to grant interest at a rate lesser than nine per cent per annum, the provisions of Section 72 would have used the expression “not exceeding nine per cent per annum”. The rate of interest payable at nine per cent is fixed as static in Section 72. Similarly, the rate of interest payable at fifteen per cent is fixed as static in the proviso to Section 72. Therefore, the expression “may” has to be interpreted, as “shall” in such cases.

25. In view of the above, the appeals are allowed. The order of the Land Acquisition, Rehabilitation and Resettlement Authority is partly modified, holding that the appellants are entitled to interest at the rates fixed statutorily under Section 72 under the contingencies prescribed, both in the substantial provision as well as in the proviso. Insofar as costs are concerned, there are no indicia in Section 71. Therefore, the Court has only two options, either to direct the Authority to fix the costs or to fix the costs by itself. For the purpose of fixing the quantum of costs we do not wish to remand the matter back. Therefore, the appellants are entitled to

¹ (1991) 1 SCC 262

the costs of Rs.50,000/- apart from the interest payable as per Section 72.

There shall be no order as to costs.

26. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

V.RAMASUBRAMANIAN, J.

J. UMA DEVI, J.

19th September, 2018
Js.



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS JUSTICE J. UMA DEVI

L.A.A.S.NoS.221, 222 & 237 of 2018

(per VRS, J.)



19th September, 2018

Js.