

THE HON'BLE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND

THE HON'BLE SMT JUSTICE T. RAJANI

WRIT APPEAL No.1889 of 2017

JUDGMENT: (Per Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

This writ appeal is filed against the order dated 20.08.2010 dismissing WP.No.7222 of 2007.

2. Heard the learned counsel for the appellants, the learned Government Pleader for Land Acquisition appearing for respondent No.1, the learned Government Pleader for Revenue appearing for respondent Nos.2 and 3 and the learned Government Pleader for Irrigation and Command Area Development appearing respondent No.4.

3. The 45 (forty-five) writ petitioners have joined in instituting the writ appeal. They claimed to be the persons falling in the category IV in relation to the classification of holdings for the purpose of the payment of compensation on the strength of the decision of Empowered Committee to resolve all issues relating to land and structures being submerged under the Somasila Project.

4. The substance of this appeal relates to the refusal to disburse 25% of the enhanced value of the compensation amount as well as the counting of depreciation of 35.314% in the valuation. The learned counsel for the appellants stresses

the eligibility of the appellants to enhancement by 25% of the compensation amount without depreciation of the 35.314% in the valuation.

5. Per contra, the learned Government Pleader for Land Acquisition argued that the writ petition was filed belatedly and this writ appeal was also entertained after condoning enormous delay. He pleads that reasons were stated by the learned single Judge for upholding the deduction of depreciation and also for refusal of enhancement of the compensation amount by 25%.

6. The learned single Judge, concluding the impugned judgment, relying on the judgment of the Apex Court in *STATE OF KARNATAKA v. SANGAPPA DYAVAPPA BIRADAR*¹ held that after accepting the award on consent, an application for reference under Section 18 of the Land Acquisition Act, 1894, (for short, 'the Act'), is not maintainable. Applying those principles the writ petition has been dismissed.

7. The fact of the matter remains that the appellants held various parcels of land among those, which was submerged in Somasila Project. The official respondents do not have the contention that any of the petitioners is not entitled to compensation. The only issue is as to whether they are entitled

¹ (2005) 4 SCC 264

to the decision in the form of an award as accepted by them, following the negotiations through the Empowered Committee.

8. 35.314% was treated as depreciation while valuing the buildings where such depreciation was referable to non-residential, motivated and damaged structures. Such deduction for the purpose of arriving at just and reasonable compensation on settlement between the parties is not eligible to be interfered in writ jurisdiction.

9. However, 25% enhancement of the compensation amount was obviously the grapevine on the basis of which the writ appellants, who have lost their land due to submergence in Somasila Project, had agreed to the consent award. Had they not consented, obviously, the matter would have been taken up for further consideration before the appropriate reference Court under the Act. On a comprehensive consideration of all the relevant facts and factors emanating out of the pleadings and material on record, we are of the view that each of the appellants is entitled to an order that the compensation paid to each of them has to be enhanced by 25% of the said compensation, having regard to the decision of the Empowered Committee. Hence, the impugned order of the learned single Judge is liable to be modified to that extent and also by directing payment of interest at 8% p.a. for the period from 01.01.2004 till the date of payment, excluding seven (7) years, taking into

consideration the delay in instituting the Writ appeal and the delay, if any, in instituting the writ petition.

10. In the result, this Writ Appeal is allowed in part and the impugned order of the learned single Judge is modified by vacating the rejection of the writ petitioners' claim for 25% enhancement of the compensation. It is declared and ordered that each of the appellants is entitled to 25% enhancement of the compensation due to each of them. Such amounts shall carry interest at 8% p.a. for the period from 01.01.2004 till the date of payment, excluding seven (7) years. All amounts due as compensation and interest as per this judgment shall be quantified and paid to each of the petitioners or their representatives in law, as the case may be, within a period of three (3) months from the date of receipt of a copy of this order.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

T. RAJANI, J

September 19, 2018
DSK