

The State of Mysore

Vs

T. Digambar Rao

Civil Appeal No. 904 of 1968

(K. K. Mathew, P. K. Goswami, N. L. Untwalia JJ)

24.11.1975

JUDGMENT

MATHEW, J. -

1. The respondent filed a writ petition before the High Court of Mysore praying for the issue of a writ of mandamus directing the State of Mysore to grant to him the ex gratia payment ordered to be given in addition to the compensation awarded for acquisition of the lands in question. The High Court allowed the writ petition and this appeal, by certificate, is directed against that order.

2. The respondent was the owner of certain land in Bellary district in the State of Mysore. Bellary district was formerly a part of the State of Madras. The district became part of the State of Mysore in 1953 under the Andhra State Act, 1953.

3. Before the district became part of Mysore State, the land of the respondent together with other lands belonging to several other persons were sought to be acquired for the purpose of Tungabhadra Project. The preliminary notification for that purpose under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called the 'Act') was issued on January 14, 1941. Thereafter, no further steps were taken till October 25, 1949. On that date the notification under Section 6 of the Act was published. The owners of the land sought to be acquired made representations to the Government of Madras on June 14, 1946 for payment of additional compensation in view of the low market value which prevailed on the date of the notification. In response to the representations, the Government of Madras passed an order dated May 6, 1947 stating :

The Government have carefully considered the representation received from the Tungabhadra Project Committee and direct that compensation for lands be paid on the basis of the market value of the lands in 1941. They will also be paid in addition an ex gratia payment of 75 per cent of such market value (excluding the 15 per cent solatium) and the same principle should be adopted for the valuation of buildings, trees, etc. The ex gratia payment mentioned above will be made separately after the Land Acquisition Officer has passed an award in the usual manner.

4. On May 12, 1948, the Government of Madras passed another order making certain modifications in its order dated May 6, 1947. The material portion of that order reads as follows :

When the Civil Court increase the compensation, amount, the ex gratia amount to be paid should be so regulated as not to exceed 75 per cent of the 1941 valuation, and no such amount need be paid at all where the Court awards an amount either equal to or in excess of 1941 valuation plus 15 per cent solatium and 75 per cent ex gratia.

5. Thereafter, on further representation by the owners of land, the Government passed another order on August 25, 1948 modifying the orders dated May 6, 1947 and May 12, 1948 and enhancing the ex gratia payment from 75 per cent to 85 per cent (excluding 15 per cent solatium) and directing that the ex gratia payment be deferred in respect of buildings until the colonisation scheme was finalised.

6. The Special Deputy Collector, No. 2 Tungabhadra Project (hereinafter referred to as 'the Land Acquisition Officer) made an award on November 30, 1950 fixing the compensation payable to the respondent at Rs. 50,811-11-7. The respondent applied for a reference under Section 18 of the Act and the case was referred to the Sub-Judge, Bellary, on the question of compensation. He enhanced the compensation by Rs. 42,347-13-11. Against that order, the Land Acquisition Officer filed an appeal in the High Court of Mysore. The High Court fixed the compensation payable to the respondent at Rs. 61,255-10-0. After the decision of the High Court, the respondent made an application to the Government of Mysore for payment of ex gratia amount. The Government, by its letter dated February 9, 1962, rejected the application stating that his claim was untenable. It was to quash this order that the respondent filed the aforesaid writ petition.

7. The High Court held that the respondent was entitled to ex gratia payment of 85 per cent on the compensation as fixed by it.

8. The appellant, the State of Mysore, contended that the Madras Government undertook no legal liability to make ex gratia payment by the aforesaid orders and, therefore, no liability could devolve upon the successor State and that the quantum of ex gratia payment ordered to be given by the High Court was contrary to the terms of the order passed by the Government of Madras in that behalf.

9. As regards the first contention, it was argued for the appellant that the orders, even though passed by the Governor of Madras, were administrative in character and did not create justiciable right in the respondent and that even if the orders could be construed as implying a promise to make the payment, it was not supported by consideration.

10. Section 66 of the Andhra State Act, 1953, provides, in substance, that the liability in connection with the Tungabhadra Project incurred by the Government of Madras will pass on to the successor State and therefore, if the orders passed by the Madras Government created a legal liability on the Government of Madras to make the ex gratia payment and a corresponding right in the respondent.

11. The appellant did not file any return before the High Court. The argument of the appellant before the High Court was that the liability of the Madras Government did not devolve upon the appellant and not that there was no liability upon the Government of Madras by virtue of these orders. It may be noted that the notification under Section 4(1) of the Act was published in 1941 and there was phenomenal rise in the market value of the lands thereafter. As already stated, it was only in 1949 that the Government published the notification under Section 6 of the Act. If the appellant had filed a return stating that the order to make the ex gratia payment did not create any liability upon the Government, the respondent could have shown how the payment, though termed ex gratia, created legal liability, as the Government of Madras undertook the liability in consideration of the forbearance of the respondent to resort to court for quashing the notification under Section 4(1) of the Act. The respondent submitted that as he was denied the opportunity to show that the Government of Madras promised to make the ex gratia payment in consideration of his forbearing to resort to civil court for quashing the notification under Section 4(1), the appellant should not be permitted to urge the plea at this stage. We think that there is great force in this contention and

accept it.

12. We feel no doubt that if the Madras Government was liable to make the ex gratia payment, that liability devolved on the appellant under Section 66 of the Andhra State Act, 1953.

13. The second contention of the appellant was that the ex gratia payment should be computed only on the basis of the compensation fixed by the Land Acquisition Officer in his award and even if the civil court were to increase the compensation amount, the ex gratia payment should not exceed 85 per cent of the 1941 valuation and that no such amount need be paid at all where the court awards an amount either equal to or in excess of 1941 valuation plus 15 per cent solatium and 85 per cent ex gratia.

14. The High Court was of the view that when the court, on reference, enhanced the compensation, the ex gratia, payment has to be made on the basis of the enhanced compensation and not on the basis of the amount of compensation fixed by the Land Acquisition Officer in his award and that no other reading of the order May 12, 1948 is permissible. This, in our opinion, is not correct. That order seems to us to make sense only if we read it as importing liability to make ex gratia payment of 85 per cent of the market value of the land as fixed by the Land Acquisition Officer in his award and that no ex gratia amount need be paid at all where the court awards an amount either equal to or in excess of 1941 valuation plus 15 per cent solatium and 85 per cent ex gratia on the 1941 valuation of the Land Acquisition Officer.

15. The market value of the lands in question in 1941 as fixed by the Land Acquisition Officer in his award is Rs. 50,811-11-7. The ex gratia payment should not exceed 85 per cent of this amount and that comes to Rs. 43,191. Out of this amount, we have to deduct the compensation awarded in excess (over and above that awarded by the Land Acquisition Officer) by the High Court which is Rs. 10,443 (i.e. Rs. 61,255-10-0 minus Rs. 50,811-11-7). Thus, we hold that the respondent is entitled to payment of Rs. 32,748 as ex gratia amount. We direct the appellant to pay the amount within two months from today, failing which the respondent will be entitled to interest at nine per cent per annum on the amount from the date of expiry of the two-month period.

16. We modify the order of the High Court and allow the appeal to the extent indicated. We make no order as to costs.

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