

SUPREME COURT OF INDIA

Aresh @ Ashok J. Mehta (D) By Prop. Lrs.

Vs.

Spl. Tahsildar, Balgaum Karnataka

C.A.No.5517 of 2005

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya JJ.)

11.03.2013

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. This appeal has been preferred by the appellant-landlord against the judgment order dated 6th August, 1999 passed by the Division Bench of the High Court of Karnataka in Writ Appeal No. 8110/1996 whereby the Division Bench rejected the prayer for interest on amount of compensation w.e.f. 1st March, 1974 and thereby affirmed the order passed by the learned Single Judge but held that the appellant-landlord is entitled for interest w.e.f. 1st March, 1984.

2. The appellant was the owner of the land bearing R.S. No. 16/1, measuring 7 acres 21 guntas in village-Examba, Taluka Chikodi, Karnataka. The land in question was vested with the State for grant in favour of the tenant w.e.f. 1st March, 1974 under Section 44 of the Karnataka Land Reforms Act, 1961 as amended by Act No.1 of 1974 (hereinafter referred to as the 'Act').

3. The Tehsildar, Chikodi under Section 48A(7) and Section 53 heard the appellant-landlord and the tenant and determined the quantum of amount payable at Rs. 17,244/- vide order dated 28.2.1983. It was held that a sum of Rs. 2,000/- is to be paid as first instalment within 30 days from the date of the receipt of the order and the balance in 19 equated annual instalments with interest @ 5% as indicated therein. The compensation amount was paid to the appellant in between the years 1983-1985 but without any interest. In this background, the appellant moved in the Court of Special Tehsildar, Chikodi with an application that

his 1/3rd share in the house and well situated in RS No. 16/1 of Examba village vested with the State therefore he claimed interest on the compensation amount @ 5% per annum w.e.f. 1st March, 1974 till the payment of the entire amount. The details of amount of compensation, the amount of interest acquired on the compensation amount, the amount paid to the appellant and the amount as was due to him on 25th May, 1988 were shown in the representation. The appellant claimed a sum of Rs. 19,116.37. The Special Tehsildar, Chikodi vide letter dated 7th June, 1988 rejected his prayer and informed that as per Circular No. RD 171:LRM-86 dated 24.11.1986 interest has to be paid on the amount paid through the National Savings Certificate and, therefore, no interest is payable on the amount received in cash.

4. The order of rejection was challenged by the appellant by filing a writ petition no. 18591/88 before the Karnataka High Court; a prayer was made to direct the respondents to pay interest for delayed payment w.e.f. 1.3.1974. The Circular dated 24.11.1986, was also challenged by the appellant, as the same was referred to reject his claim. The learned Single Judge by his judgment held that no interest is payable towards the amount paid in cash. It was further held that interest @ 5% is payable, if the compensation amount is paid through National savings certificates. On challenge, the Division Bench of the High Court upheld the order passed by learned Single Judge but held that in the facts and circumstances of the case the appellant is entitled for interest w.e.f. 1st March, 1984.

5. Learned counsel for the appellant contended that the examples cited in Circular dated 24.11.1986 is illegal and contrary to the provisions of the Act and the clarification given therein. He secondly contended that the tenanted lands having vested with the State w.e.f. 1st March, 1974, the owners of the land cannot be deprived of the interest on compensation amount for which they are entitled from the date the principal amount become due. He thirdly contended that once the amount of compensation payable is determined in respect of the delayed payment then the land owner is also entitled to the interest amount even if the principal amount is paid in cash. It was also contended that when Circular dated 24.11.1986 itself makes it clear for investment of the amount which shall carry interest @ 5%, there is no bar as such either under the Act or the Rules to deprive the land-owner from the interest in case the amount is paid in cash. Therefore, according to the learned counsel the appellant is entitled for payment of interest towards the amount paid in cash in respect of delayed payment of the principal amount by allowing the appeal.

6. On the other hand, it was contended by learned counsel for the respondent that in the absence of any provision for payment of interest for the compensation paid in cash, the learned High Court has rightly rejected such prayer.

7. The question that arises for our consideration in this case is:- “Whether with respect to the delayed payment of the principal amount, the appellant is entitled for any interest towards the amount paid in cash and thereby the Circular dated 24.11.1986, contrary to such extend is liable to be set aside?

8. Heard learned counsel for the parties and carefully examined the impugned order passed by the learned Single Judge and the Division Bench of the High Court. For determination of the issue, it is necessary to notice the relevant provisions of the Act in so far as determining the mode of payment of Principal amount, interest, etc.

9. The Karnataka Land Reforms Act, 1961 was enacted for conferment of ownership on tenants, ceiling on land holdings and for certain other matters. Chapter III of the Act deals with the conferment of ownership on tenants. Under Section 44, all lands held by or in the possession of tenants immediately prior to the date of commencement of the (Amendment) Act stand transferred and vests in the State Government with effect from 1st March, 1974, i.e. the date of commencement of the (Amendment) Act No.1 of 1974. All rights, title and interest vesting in the owners of such lands and other persons interested in such land ceases with effect from 1st March, 1974 and vests absolutely with the State Government free from all encumbrances. Under clause (b) of sub section (2) of Section 44 amounts in respect of such lands which become due on or after the date of vesting is payable to the State Government and not to the land owner, landlord or any other person. The State Government takes possession of such lands forthwith. Under clause (g) of sub section (2) of Section 44 permanent tenants, protected tenants and other tenants holding such lands are entitled for rights and privileges which is accrued to them in such lands before the date of vesting against the landlord as apparent from Section 44 and quoted hereunder:-

“44. Vesting of lands in the State Government.—(1) All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under Section 5, shall, with effect on

and from the said date, stand transferred to and vest in the State Government.

(2) Notwithstanding anything in any decree or order of or certificate issued by any Court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely:—

(a) all rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Government free from all encumbrances;

(b) [x x x x x] amounts in respect of such lands which become due on or after the date of vesting shall be payable to the State Government and not to the land owner, landlord or any other person and any payment made in contravention of this clause not be valid;

(c) all arrears of land revenue, cesses, water rate or other dues remaining lawfully due on the date of vesting in respect of such lands shall after such date continue to be recoverable from the land-owner, landlord or other person by whom they were payable and may, without prejudice to any other mode of recovery, be realised by the deduction of the amount of such arrears from the amount payable to any person under this Chapter;

(d) no such lands shall be liable to attachment in execution of any decree or other process of any court and any attachment existing on the date of vesting and any order for attachment passed before such date in respect of such lands shall cease to be in force;

(e) the State Government may, after removing any obstruction which may be offered, forthwith take possession of such lands:

Provided that the State Government shall not dispossess any person of any land in respect of which it considers, after such enquiry as may be prescribed, that he is prima face entitled to be registered as an occupant under this Chapter;

(f) the land-owners, landlord and every person interested in the land whose rights have vested in the State Government under clause (a), shall be entitled only to receive the amount from the State Government as provided in this Chapter;

(g) permanent tenants, protected tenants and other tenants holding such lands shall, as against the State Government, be entitled only to such rights or privileges and shall be subject to such conditions as are provided by or under this Act; and any other rights and privileges which may have accrued to them in such lands before the date of vesting against the landlord or other person shall cease and determine and shall not be enforceable against the State Government.”

10. The tenants are registered as occupants of land on certain conditions under Section 45 and Section 46 states that if the tenant held land from one or more than one landlord he (tenant) is entitled to choose particular land.

11. Every land-owner, landlord and all other persons interested in the land are entitled for amount payable, for the extinguishment of their rights in the lands vested in the State Government determined with reference to the net annual income derivable from the land in accordance with Section 47, as quoted hereunder:

“47. Amount payable.—(1) every land-owner, landlord and all other persons interested in the land shall, for the extinguishment of their rights in the lands vesting in the State Government under sub-section (6) of section 15 or section 20 or section 44, be entitled to an amount determined with reference to the net annual income derivable from the land or all the lands, as the case may be, in accordance with the following scale, namely:—

(i) for the first sum of rupees five thousand or any portion thereof of the net annual income from the land, fifteen times such sum or portion;

(ii) for the next sum of rupees five thousand or any portion thereof of the net annual income from the land, twelve times such sum or portion;

(iii) for the balance of the net annual income from the land, ten times such balance:

Provided that,—

(i) if the tenant in respect of the land is a permanent tenant, the amount payable shall be six-times the difference between the rent and the land revenue payable for such land;

(ii) if the tenant holds land from intermediaries the amount shall be paid to the land-owner and the intermediaries in the same proportion in which the rent paid for the land by the tenant was being appropriated by them immediately before the date of vesting;

(iii) if the land vesting in the State Government is D class land referred to in Part A of Schedule I or if the landlord is,—

(1) a small holder;

(2) a minor;

(3) a widow;

(4) a woman who has never been married;

(5) a person who is subject to [such physical or mental disability as may be prescribed] ; or

(6) such soldier or seamen whose lands vest in the State Government under section 44, an amount equal to twenty times the net annual income from such land shall be payable.

(2) For the purpose of sub-section (1), the net annual income from the land shall be deemed to be the amount payable as annual rent in respect of the land as specified in section 8. But where in a land assessed as wet land or dry land the landlord has raised fruit bearing trees, the annual income for purpose of sub-section (1) [shall, subject to such rules as may be prescribed, be determined] on the basis of assessment for garden land which could have been levied having regard to the nature of the fruit bearing trees.

(3) Where there are wells or other structures of a permanent nature on the land constructed by the landlord the value thereof calculated in the prescribed manner shall also be payable.

(4) Notwithstanding anything in sub-sections (1) and (3), the aggregate amount payable according to the said sub-sections shall not exceed rupees two lakhs.]”

12. Section 48 relates to constitution of Tribunals. Under Section 48A, on receipt of an application from a tenant for being registered as an occupant, the Tribunal is required to make an enquiry after publication of a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land. Under Section 48B, the Tahsildar is required to determine the amount payable on receipt of the orders passed under sub section (4) or sub section (5) of Section 48A by the Tribunal,

13. The Tahsildar while determining the amount under Section 48B is required to determine the encumbrances and the amount payable in terms of Section 50 of the Act; the mode of payment of the amount, which is relevant for the present case, is stipulated under Section 51 which reads as follows:

“51. Mode of payment [of the amount].—[(1)] [Save as provided in Section 106] the [amount] payable to any person under Section 47 shall subject to the provisions of Section 50,—

[(a) be paid in cash in a lumpsum if the amount payable does not exceed [two thousand rupees] and

(b) if the amount payable exceeds [two thousand rupees], the amount up to [two thousand rupees] shall be paid in cash and the balance shall be paid in [non-transferable and non-negotiable] bonds carrying interest at the rate of [five and a half per cent] per annum and of guaranteed face value maturing within a specified period not exceeding twenty years:

Provided that the amount payable under the bonds issued under this clause may be paid in such number of instalments not exceeding twenty as may be prescribed:]

[Provided further that the amount payable shall, subject to such rules as may be prescribed, be paid,-

(i) in the case of a minor, [a person who has attained the age of sixty five years] a woman who has never been married, a small holder, a person subject to the prescribed physical or mental disability and subject to clause (ii), a widow,—

(a) in a lumpsum where the amount payable does not exceed fifty thousand rupees,; and

(b) where the amount payable exceeds fifty thousand rupees, the first fifty thousand rupees in a lumpsum and the balance in non-transferable and non-negotiable bonds carrying interest at the rate of five and half per cent per annum and of guaranteed face value maturing within a specified period not exceeding twenty years;

(ii) in the case of a widow, if she so elects in writing, in the form of annuity during her life time, a sum determined in such manner as may be prescribed, which shall not be less than the net annual income referred to in sub-section (2) of section 72.

Explanation:—For the purpose of this clause widow, minor and a person subject to physical or mental disability include, a woman who is a widow, a person who is a minor, a person subject to physical or mental disability respectively at the time when the amount payable is determined:

Provided also that in relation to a small holder the second proviso shall have effect as if it was in force on and from the First day of March, 1974.]

[(2) Notwithstanding anything in sub-section (1), on or after 1st March, 1984, the balance and interest thereon payable in accordance with clause (b) of sub-section (1) of the second proviso to the said sub-section shall, in lieu of the bonds specified therein, be paid in the following manner, namely:—

(a) the interest accrued at the rate of five and a half per cent per annum till 1st March, 1984 remaining unpaid shall be paid in five consecutive annual, as far as may be, equal instalments commencing from 1st March, 1984 in National Savings Certificates;

(b) the whole or, as the case may be, part of the balance specified in sub-section (1), payable before 1st March, 1984 remaining unpaid shall be paid

in five consecutive annual, as far as may be, equal instalments commencing from the said date in National Savings Certificates; and

(c) the whole or, as the case may be, part of the said balance payable on or after 1st March, 1984 shall be paid in ten consecutive annual, as far as may be equal instalments commencing from the said date in National Savings Certificates:

Provided that along with each of the instalments referred to in items (b) and (c), the interest thereon from 1st March, 1984 at the rate of five and a half per cent per annum upto the date of payment thereof shall also be paid in National Savings Certificates.]”

14. Under Section 52, payment of the amount to the land-owner/landlord shall be a full discharge of the liability for payment of the amount and no further claims or payment of amount shall lie against the State Government or any other person.

15. From the aforesaid provisions, it is clear that the all lands held by or in the possession of tenants prior to 1.3.1974 has been transferred and vested in the State Government with effect from 1.3.1974. All rights, title and interest vesting in the owners of such lands stand cease and is vested absolutely with the State Government. The amount in respect of such lands which becomes due on or after 1.3.1974 is only payable to the State Government and not to the land-owners/landlords. The land- owners/landlords are entitled to receive the amount only from the State Government and not from any other person.

The amount payable to the land-owner/landlord for the extinguishment of their rights is to be paid in the manner prescribed under Section 51. The amount upto Rs. 2,000/- is to be paid in cash and balance of the amount is payable in non-transferable and non-negotiable bonds carrying interest @5 ½% per annum. Therefore, it is clear that no provision has been made in the Act for payment of interest if any amount is paid in cash. On the other hand, the State Government is entitled to earn interest by establishment of separate fund under Section 53A which is created out of the amount of premium collected from the tenants or sub-tenants of land belonging to the institutions referred to in Section 106.

16. The question that arises further is that whether the appellant is entitled for payment of interest as per Circular No. ND 171 LWM 86 dated 24.11.1986 or as a matter of general rule.

17. Doubts were raised time and again by some of the Deputy Commissioners of the Districts about the mode of calculation and disbursement of amount. The same was made clear by the State Government by its Circular dated 24.11.1986 which reads as follows:-

“ Circular No. ND 171 LWM 86 dt. 24th Nov. 1986.

CIRCULAR

Doubts have been raised time and again by some of the Deputy Commissioners of the Districts, about the mode of calculation and disbursement of amount in national savings certificates for the lands lost under the provisions of Karnataka Land Reforms Act, 1961. The field officers are hereby clarified once again the method to be followed in commuting the amount and interest payable to the ex-land- lords.

1. The entire amount due to the ex-land-lords shall be calculated taking 1.3.1974 as the cut of date for the purpose of calculating interest.

2. On the total principal amount interest at the rate of 5-1/2% shall be calculated till 1.3.1984. The principal amount means the entire amount due to the Ex-Landlords (1.3.1974 to 1.3.1984) and the subsequent ten instalments also. The Principal amount so calculated will bear on interest at 5-1/2% per annum from 1.3.1974 to 1.3.1984. The amount so arrived both principal and interest shall be paid in National Savings Certificates.

3. Further the interest @ 5-1/2% shall be calculated on the entire principal amount from 1.3.1984 till the date of purchase of National savings certificates, and paid in cash at the time of handing over the national savings certificates.

4. The fraction amount of less than Rs.50.00 shall also be paid in cash. The action on all these should be simultaneously taken-

For Example:

Total amount 1. Rs.3,000/-

Determined: 2. Rs.2,000/- paid in cash.

3. Amount due is Rs.1,000/-

(in 20 instalments from 1.3.74 to 1.3.84)

Interest at 5-1/2% from 1.3.1974 date

Of vesting) till 1.3.84 550/-

To be invested in N.S. Cas 550/-

4. Interest at 5-1/2% from 1.3.84 till the date

Of purchase of N.S. Co-cash

5. Fraction, if any, below Rs. 50/- each.

The above guidelines shall be followed scrupulously in all cases. x x x x x x

x x

Sd/- S. Ashok

Under Secretary to Govt. Rev. Dept.

(Land Reforms)

No. RS.KLR.HP.86-87 Belgaum Dt. 27.12.1986

Copy forwarded to all the Tehsildars and Spl. Tehsildar, Land Reforms, in Belgaum Distt. for information and further necessary action.

Sd/-

for Spl. Dy. Commissioner

Belgaum.”

18. The aforesaid clarification made by the State Government makes it clear that the entire amount due to the ex-landlords shall be calculated taking 1.3.1974 as the cut off date for the purpose of calculating interest. However, we find that the example given therein is confusing which does not make it clear whether amount Rs.3000/- shown therein includes the interest w.e.f. 1.3.1974 apart from the principal amount to which the ex-landlords are entitled.

19. As per Circular dated 24.11.1986, as noticed above, the entire amount of compensation payable to the ex-landlords along with interest is to be calculated taking 1.3.1974 as the cut off date upto 1.3.1984. But if the amount is paid earlier then upto the date of payment. Out of the aforesaid total amount two thousand rupees is to be paid in cash and the rest through National Savings Certificates. If the amount is not paid on or before 1.3.1984, provisions have been made to pay further interest @ 5 ½% on the entire principal amount from 1.3.1984 till the date of purchase of the National Savings Certificates; that means the authorities are required to either invest the amount in National Savings Certificates or pay interest till the amount is invested.

20. There is no ambiguity in the clarification made by circular dated 24.11.1986, but the example cited therein is not only confusing but also contradictory to the main clarification.

21. Substantive provision of 'mode of calculation' as prescribed under Section 51 has been clarified by Circular dated 24.11.1986. The example cited in the circular is merely an illustration. If the illustration is conflicting with the clarification of the substantive law/provision or if the illustration is vague, the clarification will prevail over the illustration. In such case, a person who is entitled for the interest as per the clarification aforesaid cannot be deprived of or denied his right relying on the illustration.

22. The question of payment of interest on compensation amount on acquisition of land fell for consideration before a larger bench of four judges of this Court in the case of Satinder Singh vs. Umrao Singh reported in AIR 1961 SC 908. That was a case of property which was acquired under the East Punjab Requisition of Immovable Property (Temporary Powers) Act (48 of 1948). The Act was replaced by Punjab Requisitioning and Acquisition of Immovable Property Act (11 of 1953). Under 1948 Act, compensation was to be paid in accordance with provisions of that Act. In the said case, the party claimed the interest on the amount of compensation. The argument was that the amount of compensation awarded should carry a reasonable interest from the date of acquisition as the claimants lost possession of their property. The said argument earlier was rejected by the High Court principally on the ground that relevant Act of 1948 makes no provision for payment of interest and omission to make such a provision amounts in law to an intention not to award interest in regard to compensation amount determined under it. This Court noticed the contention raised on behalf of the landlords and held as follows:-

“17. What then is the contention raised by the claimants? They contend that their immovable property has been acquired by the State and the State has taken possession of it. Thus they have been deprived of the right to receive the income from the property and there is a time lag between the taking of the possession by the State and the payment of compensation by it to the claimants. During this period they have been deprived of the income of the property and they have not been able to receive interest from the amount of compensation. Stated broadly the act of taking possession of immovable property generally implies an agreement to pay interest on the value of the property and it is on this principle that a claim for interest is made against

the State. This question has been considered on several occasions and the general principle on which the contention is raised by the claimants has been upheld. In *Swift Co. And Board of Trade* (1925) AC520 at p.532 it has been held by the House of Lords that “on a contract for the sale and purchase of land it is the practice of the Court of Chancery to require the purchaser to pay interest on his purchase money from the date when he took, or might safely have taken, possession of the land”. This principle has been recognised ever since the decision in *Birch v. Joy* (1852) 3 H L C 565. In his speech Viscount Cave, L.C., added that “this practice rests upon the view that the act of taking possession is an implied agreement to pay interest”, and he points out that the said rule has been extended to cases of compulsory purchase under the Lands Clauses Consolidation Act, 1845. In this connection distinction is drawn between acquisition or sales of land and requisition of goods by the State. In regard to cases falling under the latter category this rule would not apply.

18. In *Inglewood Pulp and Paper Co. Ltd. And New Brunswick Electric Power Commission*, 1928 AC 492(AIR 1928 P C 287) it was held by the Privy Council that “upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest upon the principal sum awarded from the date when possession was taken, unless the statute clearly shows a contrary intention”. Dealing with the argument that the expropriation with which the Privy Council was concerned was not effected for private gain, but for the good of the public at large, it observed “but for all that, the owner is deprived of his property in this case as much as in the other, and the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. The right to receive the interest takes the place of the right to retain possession and is within the rule”. It would thus be noticed that the claim for interest proceeds on the assumption that when the owner of immovable property loses possession of it he is entitled to claim interest in place of right to retain possession. The question which we have to consider is whether the application of this rule is intended to be excluded by the Act of 1948, and as we have already observed, the mere fact that Section 5(3) of the Act makes Section 23(1) of the Land Acquisition Act of 1894 applicable we cannot reasonably infer that the Act intends to exclude the application of this general rule in the matter of the payment of

interest. That is the view which the Punjab High Court has taken in *Surjan Singh v. East Punjab Government* (AIR 1961 SC 908) and we think rightly.

19. When a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily he is not making claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation. In our opinion, therefore, the fact that Section 5(1) deals with compensation both for requisition and acquisition cannot serve to exclude the application of the general rule to which we have just referred.”

23. In view of the specific clarification made vide Circular dated 24th November, 1986 and decision of this Court in *Satinder Singh* (Supra), we hold that the appellant is entitled for interest w.e.f. 1.3.1974 @ 5 % till the total amount was paid to him. The respondent cannot deny the interest on the amount of compensation to which the appellant is entitled as a matter of general rule, and in the light of the clarification made by Circular dated 24.11.1986.

24. The orders passed by the Single Judge and the Division Bench of the Karnataka High Court are, accordingly, set aside. The respondents are directed to pay the appellant interest @ 5 % per annum w.e.f. 1.3.1974 as ordered above within three months. The appeal is allowed with aforesaid observation and direction, but there shall be no order as to costs.