

# ANDHRA PRADESH HIGH COURT

R.D. Suryanarayana Rao

Vs.

Revenue Divisional Officer

S.R. No. 33447 of 1966 in Appeal No. 78 of 1965

(P. Jaganmohan Reddy, C.J., Seshachalapathi and Chinnappa Reddy, JJ.)

06.09.1967

## JUDGMENT

### **P. Jaganmohan Reddy, C.J.**

1. The question before this Full Bench is whether the office is right in demanding Court-fee on the interest payable under Section 28 of the Land Acquisition Act on compensation payable for the compulsory acquisition of land under the said Act.

2. The Government filed an appeal against compensation awarded to the respondents at the rate of Rs. 6/- per sq. yd. by the Subordinate Judge, Guntur, on 20-7-1964 in O. P. No. 61/62. In that appeal, the respondents preferred cross-objections claiming enhanced compensation of Rs. 4,779.38 ps. together with 15% solatium. Interest on the enhanced amount was also claimed, but Court-fee on the amount of compensation and solatium alone was paid. The High Court office relying on an observation by a Division Bench of this Court consisting of Satyanarayana Raju, J., (as he then was) and Venkatesam, J., in *Dodla Mallaiiah v. State of Andhra Pradesh*<sup>1</sup>, called upon the Cross-objector to include interest also in his valuation and pay Court-fee thereon, if he was not relinquishing his claim to it. The Cross-objector pointed out that since the Government had taken possession of the acquired land on 11-1-1960, the Government was bound to pay the statutory interest from the date of possession till the date of actual payment and therefore interest need not be separately valued for purposes of Court-fee. As the office did not accept this contention, the matter was posted for orders of Court and it came up before Venkatesam, J. It may be pointed out that the learned Judge who delivered the judgment in *Dodla Mallaiiah's* case 1964-1 Andh WR 185 : AIR 1964 Andhra Pradesh 216 on behalf of the Bench must have felt that the matter required further consideration and therefore directed it to be posted before a Bench as that decision "was sought to be distinguished". The Bench consisting of Basi Reddi and Chandrasekhara Sastry, JJ., after noting the contentions of the learned advocate for the Cross-objector Sri A. V. Krishna Rao, that the observations in *Dodla Mallaiiah's* case were obiter and even if they are not treated as obiter, that decision requires reconsideration in so far as it relates to the payment of Court-fee on interest, observed that these contentions were not without force and merit consideration by a Full Bench.

<sup>1</sup>1964-1 Andh WR 185 : AIR 1964 And Pra 216

3. It may be mentioned that in *Dodla Mallaiah's case*, 1964-1 Andh WR 185 : AIR 1964 Andhra Pradesh 216 the question that had to be considered was whether Court-fee under the Andhra Pradesh Court-fees and Suits Valuation Act was payable under Section 48 or Section 49. It was contended by Sri Sankarasastry before that Bench that it was Section 49 that would apply to appeals from decrees awarding compensation under the Land Acquisition Act and since Court-fee payable under Section 49 is the same as that payable in the lower Court, Court-fee of Rs. 2/- paid in appeal was sufficient. Venkatesam, J., after holding that Section 48 of the Act which expressly deals with appeals claiming enhanced compensation governs the case, but not Section 49, observed at page 192 as follows:

"The appellants also claim 15 per cent statutory solatium besides the compensation amount. It was laid down in *Brahmanandam v. Secy. of State*<sup>2</sup>, that where a person being dissatisfied with the amount of compensation awarded to him under Section 18, Land Acquisition Act, wants to appeal, insisting in case of his success that not only the excess market value but also 15 per cent of the same should be decreed in his favor, he must pay court-fees not only on the excess market value, but also on 15 per cent thereon. 'It is also needless to point out that since the appellants are claiming interest on that amount, they are bound to pay court-fee on that amount as well.' (Underlining (herein ' ') 'emphasized)').

It is this passage that is characterized by the learned counsel for the appellant as obiter and as a precedent sub silenti, that is, a decision where a point has neither been raised, nor argued and consequently not binding, or at any rate not warranted on a reading of the relevant provisions of the Court-fees Act and the Land Acquisition Act. It is not denied that Section 48 of the Court-fees Act applies, but unlike in explanation (iii) to Section 49. there is no provision in Section 48 that the interest accrued during the pendency of the suit till the date of the decree shall be made part of the subject matter of appeal. It is, however, urged by the learned Government Pleader that under the provisions of the Land Acquisition Act, solatium and interest form part of the compensation upon which Court-fee is payable under Section 48 which requires that Court-fee payable on the memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellant. It may be noted, firstly, that the section applies to memoranda of appeals against orders relating to compensation under any Act, not necessarily, confined to the Land Acquisition Act; secondly, that the appeal is against an order relating to compensation and, thirdly, Court-fee is payable on the difference between the amount awarded and the amount claimed by the appellant. The question naturally arises as to what is meant by an order relating to compensation. Whatever may be the meaning of the word "compensation" for purposes of other Acts, what we have to consider is what does compensation include for purposes of the Land Acquisition Act and what is it that is awarded thereunder, the difference between which and the amount claimed will be the subject-matter of the appeal on which Court-fee is to be paid. It may be mentioned that as a consequence of the decision of their Lordships of the Privy Council in *Rangoon Botatoung Co. Ltd. v. The Collector, Rangoon*<sup>3</sup>, that inasmuch as a decree relating to awards made under the Land

<sup>2</sup> ILR 53 Mad 48: (AIR 1930 Mad 45)

<sup>3</sup>39 Ind App 197 (PC)

Acquisition Court is not a decree made in the course of its ordinary jurisdiction, no appeal lay to

the Judicial Committee, Section 54 of that Act was amended providing for an appeal to the Privy Council and as a consequence sub-section (2) was added to Section 26 whereby the award passed under sub-section (1) of Section 23 was deemed to be a decree and the statement of grounds of such an award is a judgment within the meaning of Section 2 (14) of the Code of Civil Procedure 1908. It is appropriate at this stage to notice the relevant portions of Sections 23, 26 and 34 of the Land Acquisition Act, which are given below:

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration- first, the market value of the land at the date of the publication of the notification under Section 4, sub-section (1);

xx xx xx

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market value, in consideration of the compulsory nature of the acquisition.

26(1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of Section 23, and also the amount if any respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, clause (2) and Section 2, Clause (9), respectively of the Code of Civil Procedure, 1908.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with the interest thereon at the rate of four per cent per annum from the time of so taking possession until it shall have been so paid or deposited.

It will be observed that compensation to be awarded for the land acquired under the Act is the market value of the land together with damages or expenses or the loss of profits occasioned by the acquisition of the said land or property. The compensation as computed under Section 23 (1) is the amount which has to be set out in the award passed under Section 26 (1) and it is that award which is deemed to be a decree under sub-section (2) of Section 26. It may be pertinent to notice that neither solatium under sub-section (2) of Section 23, nor interest under Section 34 forms part of the award. Though in respect of solatium, the Court is enjoined in every case to award a sum of 15% on the market value of the subject-matter in consideration of the compulsory nature of the acquisition, there is no such duty on the Court to award interest on that amount, but a statutory liability is imposed on the Collector to pay the amount awarded with interest thereon from the time of taking possession until such time as it shall have been paid or deposited. We are not here concerned with the question whether solatium is part of compensation within the meaning of Section 48 of the Court-fees Act, because that question is neither argued, nor pressed upon us inasmuch as Court-fee has already been paid thereon. The only question is whether the order "relating to compensation" under the Act includes interest.

4. Mr. Krishna Rao, learned Counsel for the cross-objector, contends that compensation does not include interest as under Section 23 (1) which deals with the determination of compensation,

there is no mention made for the inclusion of interest. In any case, he submits that interest is not compensation in the sense that it is the value of the land, but is a statutory liability for deprivation of possession and the consequent loss of profits or the yield therefrom. Interest is, therefore, independent of compensation. Their Lordships of the Privy Council in

*Inglewood Pulp and Paper Co., Ltd. v. New Brunswick Electric Power Commission*<sup>4</sup>, observed that "the right to receive interest takes the place of the right to retain possession and is within the rule." Gajendragadkar, J., (as he then was) in *Satinder Singh v. Umrao Singh*<sup>5</sup>, further reinforced these observations at pages 916-17 when he said, "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."

5. The Government Pleader, on the other hand, says that the use of the word "order" and not "award" read with the words "relating to" would not necessarily confine compensation to that which is to be computed under Section 23 (1) and awarded under Section 26, but would also include the order relating to interest which is given under Section 34.

6. It appears to us whether solatium is part of compensation or not - a matter upon which we do not wish to express our views in this reference - interest certainly is not. A reference to Section 11 of the Land Acquisition Act would show that the Collector has to enquire about the value of the land and the respective interests of the persons claiming compensation and that he has to make an award under his own hand, among other things about the compensation which, in his opinion, is to be allowed and in determining the amount of compensation, the Collector shall be guided by the provisions contained in section 23 and ignore the matters to be included under Section 24. As already stated compensation can only be computed in the manner laid down in Section 23 (1) which does not include interest either under Section 34 or on the excess amount awarded by the Court over that awarded by the Collector under Section 28. If interest is not part of compensation under the provisions of the Land Acquisition Act, reference to an order relating to it, cannot in any manner affect the content of the word. The order referred to in Section 48 of the Court Fees Act is the order against which an appeal is being filed and such an order in respect of compensation awarded under the Land Acquisition Act is a decree within the meaning of Clause (2) of Section 2 of the Code of Civil Procedure. This view of ours is fortified by a close reading of Section 48 of the Court Fees Act, in that, the order against which an appeal is filed relates to compensation awarded and the amount of compensation claimed, so that by reference in so far as the Land Acquisition Act is concerned, the meaning to be given to the word "award" is the same as contained in Section 26 of the Act. It may further be stated that where costs are sought to be included in the award Section 27 clearly provides for it and in the same manner if it was the intention of the Legislature to include interest also in the award, it could have said so but it did not. On the other hand, where interest is sought to be included as part of the subject-

<sup>4</sup>1928 AC 492

<sup>5</sup> AIR 1961 SC 908

matter of appeal, it has been specifically stated so, as in the case of explanation (iii) to Section 49 of the Court-fees Act. In a recent case, a Bench of the Gujarat High Court in *Anandilal v. Addl. Spl. Land Acquisition Officer*<sup>6</sup>, arrived at a similar conclusion on analogous provisions of Section 7 (1) of the Bombay Court-fees Act which like Section 48 of the Andhra Pradesh Court-fees Act also provided that the amount of fee payable under the Act on the memorandum of appeal against an order relating to compensation under any Act for the time

being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant. Bhagwati, J., after referring to the case of AIR 1961 Supreme Court 908 (supra) and the case of *National Insurance Co. v. Life Insurance Corporation*<sup>7</sup> said:

"..... It is now well settled that the right to receive interest is in substitution of the right to retain possession of the land and when a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily, he does not make a claim for damages properly or technically so called but he bases his claim on the general rule that if he is deprived of his land, he should be put in possession of the compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the amount of compensation." Continuing further Bhagwati, J., observed:

".....Moreover the scheme of the Land Acquisition Act, 1894, itself shows that interest is treated as distinct from compensation for the purposes of that Act, Interest cannot, therefore, be regarded as forming part of compensation and the expressions "amount awarded" and "amount claimed" cannot on a true construction include the amount of interest claimed by the appellant in the memorandum of appeal..... The claim for interest on the additional compensation claimed in the memorandum of appeal would stand or fall with the decision of the main claim and being merely an adjunct of the main claim, no Court-fee would be payable on it."

7. In our view, the observations of the Bench in Dodla Mallaiiah's case 1964-1 Andh WR 185 : (AIR 1964 Andh Pra 218) that if the appellants are claiming interest, they are bound to pay court-fee thereon do not appear to have been made after a consideration of the relevant provisions relating to interest and the meaning of the word "compensation" under the Land Acquisition Act. In fact, as we have already seen, the question of payment of Court-fees on interest did not arise in that case. A precedent is authority for what it actually decides in the case. Lord Halsbury observed over half a century ago in *Quinn v. Leathern*<sup>8</sup>. dealing with the case of *Allen v. Flood*<sup>9</sup>.

"I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but covered and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a

<sup>6</sup> AIR 1965 Guj212

<sup>8</sup>1901 AC 495

<sup>7</sup> AIR 1963 SC 1171

<sup>9</sup>1898 AC 1

mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

8. In this view of the matter, we hold that interest is not included in compensation and no Court-fee need be paid on it. The office is directed to register the cross-objections without requiring payment of Court-fee on the interest claim.

Answered accordingly.