

ANDHRA PRADESH HIGH COURT

Kesireddi Appala Swamy

Vs.

Special Tahsildar, Land Acquisition Officer

S.R. Nos. 36789 and 34481 of 1967, reported in AIR 1969 Andhra Pradesh 55 (FB)

(P. Jaganmohan Reddy, C.J., Parthasarathi and Ramachandra Rao, JJ.)

17.09.1968

JUDGMENT

P. Jaganmohan Reddy, C.J.

1. A Bench of this Court consisting of one of us (Chief Justice) and Kuppuswami, J., referred to a Full Bench the question whether court-fee is payable under Section 48 of the Andhra Court Fees and Suits Valuation Act (VII of 1956 hereinafter referred to as the Court Fees Act) on 15% of the compensation which has to be awarded as solatium under sub-section (2) of Section 23 of the Land Acquisition Act (hereinafter called the Acquisition Act).

2. This reference was occasioned by certain observations of our learned brother, Venkatesam, J., delivering the judgment of the Bench in *Dodla Malliah v. State of Andh Pra*¹, that court-fee should be payable not only on the excess market value, but also on the 15% thereon, following the Bench decision in *Brahmanandam v. Secy, of State*², which held 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 favour, he must pay court-fees not only on the excess market value, but also on 15 per cent, thereon. Our learned brother stated; "it is also needless to point out that since the appellants were claiming interest on that amount, they were bound to pay court-fees on that amount as well." In S. R. No. 33447 of 1966 : AIR 1969 Andhra Pradesh 55 (FB), Basi Reddi and Chandrasekhara Sastri, JJ., while referring the question to a Full Bench stated that there was force in the contention that the observations in Dodla Malliah's case, 1964-1 Andh WR 185 : AIR 1964 Andhra Pradesh 216, were obiter and that even if those observations are not treated as such, that decision requires reconsideration. The Full Bench consisting of one of us (Chief Justice), Seshachelapati and Chinnappa Reddi, JJ., held that in so far as interest awarded under Section 28 of the Acquisition Act was concerned, no court-fee was payable under Section 48 of the Court Fees Act. The Full Bench while observing that neither solatium under sub-section (2) of Section 23, nor interest under Section 28 of the Acquisition forms part of the award, however, stated: "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

¹1964-1 Andh WR 185 : AIR 1964 And Prad 216

²ILR 53 Mad 48

compulsory nature of the acquisition, there is no duty on the Court to award interest on that amount; but 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". Since that question has now arisen for determination, Sri Suryanarayana contends that the reasons which weighed with the Full Bench in coming to the conclusion that interest was no part of the compensation or the award or the decree no court-fee is payable under Section 48 of the Court-Fees Act should be applied mutatis mutandis while determining the further question whether court-fee is payable under Section 48 of the said Act on the excess of solatium awarded under Section 23 (2) of the Acquisition Act. The Full Bench had held that compensation to be awarded for the land acquired under the Acquisition 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, that 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 and that 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. While so holding, they said: "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. 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."

3. Sri Ramachandra Reddy, the Principal Government Pleader, contends that under Section 15 of the Act, it is provided that "in determining the amount or compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24", and therefore, he submits that solatium under Section 23 (2) is also a part of compensation; as such, court-fee is payable thereon.

4. It is, in our view, profitable in order to appreciate the rival contentions, to examine the provisions of Section 48 of the Court Fees Act and the relevant provisions of the Acquisition Act. Under Section 48 of the Court-Fees Act, the fee payable under Section 48 of the Court Fees Act, the fee payable under that Act on a 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. A question would naturally arise as to what is "the amount awarded" and what is "the amount claimed" for the purpose of determining the court-fees payable under the above section. It may be noticed that under Section 49 of the Court-Fees Act, generally in appeals other than appeals against orders relating to compensation in respect of property acquired for public purposes under any Act, not necessarily the Acquisition Act the fee payable should be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal. There are 5 Explanations to that section, which clarify what is included and what is not included in the subject-matter of the appeal.

For instance, Explanation (2) says that costs shall not be deemed to form part of the subject-

matter of the appeal, except where such costs form themselves the subject-matter of the appeal or relief is claimed as regards costs on grounds additional to, or independent of, the relief claimed regarding the main subject-matter in the suit. Explanation (3) thereof says that in claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished. Explanation (5) provides that where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable such market value shall be ascertained as on the date of presentation of the plaint. There are however no such specific rules in relation to solatium or compensation, in Section 48 of the Court-Fees Act. We have, therefore, to look into the provisions of the Acquisition Act for the meaning of the terms "award" and "claim" for the purpose of determining the court-fee payable under Section 48 of the Court-fees Act.

5. Where property of a citizen is intended to be acquired under the provisions of the Acquisition Act, the Collector has to give notice to the persons interested in the land, under Section 9. Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice) and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections, (if any) to the measurements made under Section 8. Sub-section (3) of Section 9 further provides that the Collector has to serve notice to the same effect on the occupier of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate. After the requirements of Section 9 have been complied with, the Collector will have to proceed with the enquiry under Section 11 into the objections which any person interested has stated pursuant to a notice given under Section 9: (a) to the measurements made under Section 8, (b) into the value of the land at the date of the publication of the notification under Section 4 sub-sec. (1) and (c) into the respective interest of the persons claiming the compensation, and has to make an award under his hand of (i) the true area of the land (ii) the compensation, which in his opinion should be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

6. It will be observed from these provisions that what is required to be claimed by the person interested in the land acquired, is the nature of his interest in the land and the amount and particulars of his claims to compensation for such interest and objections, if any, to the measurements made under Section 8, in respect of which an enquiry has to be held under Section 11, and thereafter the Collector has to make an award in respect of the matters enumerated in that section. The claim and the award is in respect of the value of the interest in the land, which is the compensation for such interest. There is no specific mention either in Section 9 or Section 11 of any claim for solatium or interest, nor has the Collector been enjoined to make an award in respect thereof. It is however provided that in determining the amount of compensation, the Collector has, under Section 15, to be guided by the provisions contained in Sections 23 and 24. Sub-section (1) of Section 23 provides for 6 matters to be considered in determining the amount of compensation for the land acquired under the Acquisition Act, by the Court to which a

reference has been made by the Collector under Section 18 at the instance of a person interested in the land who has not accepted the award, whether in respect of the measurement of the land, the amount of compensation, the person to whom it is payable or to apportionment of the compensation among the persons interested. Section 24 provides for the matters to be neglected in determining the compensation. These two sections are asunder :

Section 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); secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested, at the time of Collector's taking possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

(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."

Section 24. "But the Court shall not take into consideration-first, the degree of urgency which has led to the acquisition; secondly, any disinclination of the persons interested to part with the land acquired; thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit; fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under Section 6, by or in consequence of the use to which it will be put; fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired, will be put; or, seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or affected without the sanction of the Collector after the date of the publication of the notification under Section 4, subsection (1)".

7. Where the Court passes an award, the question is whether the award will not only include the compensation as fixed after taking into consideration matters specified in clauses first to sixthly of sub-section (1) of Section 23, but also the amount mentioned in sub-section (2) thereof. It appears to us that Sections 26 and 27 answer that question. Sub-section (1) of Section 26 provides: "Every award under this part (part III) shall be in writing signed by the Judge, and shall specify the amount awarded under clause 1 of sub-sec. (1) of Section 23, and also the amounts (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." Under sub-section (2) of that section. "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." Section 27 further provides that every such award shall also state the amount of costs incurred in the proceedings under that Part, and by what persons and in what proportions they are to be paid.

8. There is nothing in Section 26 to show that the award should include the 15% solatium to be awarded under Section 23 (2). On the other hand, where the Legislature intended something which is not part of the compensation, namely, costs, it has specifically directed under Section 27 that the same shall be included in the award. There is therefore no doubt that in an award passed by the Court under Section 26, only those matters which are specified in Section 23 (1) and costs under Section 27, are to be included. Solatium under sub-section (2) of Section 23 is not part of the award. Though no doubt in Section 15 there is a reference to Section 23, it however does not specify that compensation has to be fixed by the Collector by taking into consideration only matters referred to in sub-section (1) of Section 23. As every word in the section has to be given a meaning and significance, in our view Section 15 by referring to the entire Section 23 and not merely specifying sub-section (1) of that section, was providing a guidance to the Collector to determine compensation under Section 11, and in so doing, was directing the inclusion in the award to be passed by him after taking into consideration not only the matters specified in Section 23 (1) but also in Section 23 (2). In other words, though there is no definition of what an "award" is, nonetheless when an award is made by the Collector under Section 11, the item relating to compensation has to be fixed in accordance with the guiding principles specified in Sections 23 and 24, which includes the amount specified in Section 23 (2). It may be pointed out that Section 34 enjoins on the Collector, if the amount of compensation is not paid or deposited on or before taking possession of the land, to pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited. But it does not form part of the award to be passed by the Collector under Section 11. While this is so, payment of interest nonetheless is a mandatory provision directing the Collector to pay the money, which any person aggrieved can enforce by recourse to law. It may be, even without the statutory provision, interest can be awarded on rules of equity. Where, however, an award is passed by the Court, the Legislature specifies the amounts which have to be included in the award, namely, those amounts which are arrived at after taking into consideration the matters which are mentioned in sub-sec. (1) of Section 23 and costs under Section 27, and nothing else. It excludes by omission to make a reference to Section 23 (2) to the 15% solatium on the market-value of the property as also the difference in the interest awarded by the Collector under Section 34 and that which is payable on the excess of compensation awarded by the Court, in respect of which the Court is required to direct the Collector to pay the amount of such excess at the rate of 6% per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

9. An examination of the provisions of the Acquisition Act unfettered by any authority would incline us to the view that while solatium under Section 23 (2) may form part of the compensation to be awarded by the Collector under Section 11, it does not form part of the award which the Court has to pass under Section 26, though it is required under Section 23 (2) to add 15% on the amount of market-value awarded by it, which will be in the nature of a direction to the Collector to pay, the amount just in the same way as he is directed to pay interest. The reason for excluding solatium from the award to be passed by the Court is perhaps due to the solicitude of the Legislature not to overburden the owner whose lands are acquired against his will with payment of court-fee thereon. This assumption of ours is fortified by the provisions of Section 48 of the Court-fees Act itself, which require payment of court-fee on the difference between the amount awarded and the amount claimed. We have already shown that the amount which an owner is required to claim includes neither solatium nor interest, but only compensation for all his interests in that land. It is therefore clear that solatium under Section 23 (2) forms part of neither the claim nor of the award, and consequently, no court-fee is payable on such amount.

10. We propose now to refer to some of the decisions cited before us to examine whether they militate against the prima facie view we have taken on a reading of the relevant provisions of the Court-fees Act and the Acquisition Act. The Bench in *Dodla Malliah's case*, 1964-1 Andh WR 185 : AIR 1964 Andhra Pradesh 216 supra, was considering the question whether court-fee at all is payable in appeal to the High Court under Section 54 against an award passed by the Court to which a reference has been made under Section 18. It was contended that as under Section 49 of the Court-fees Act, court-fee payable in appeal is the same as in the Court of the first instance and as no court-fee is payable in the Court of first instance, namely, in the Court to which the reference was made under Section 18, no court-fee is payable in appeal to the High Court. The argument advanced by Sri Sankara Sastry in that case was that according to Section 48 of the Court-fees Act, court-fee is no doubt payable on the difference between the amount awarded and the amount claimed by the appellants, but it applies only to appeals against an order relating to compensation under any Act; that Section 54 of the Acquisition Act provides an appeal to the High Court from the award or from any part of the award of the Court, which is now deemed to be a decree by reason of Section 26 (2) (added by Amendment Act 19 of 1921), and as such it does not refer to an award of the Land Acquisition Court, and that since Section 48 of the Court-fees Act is not applicable Section 59 thereof governs the case. Though this contention was negatived, we do not, except for one sentence in the observations of Venkatesam, J., relying on the case of 57 Mad LJ 357, find any such contentions as those raised before us, nor any detailed consideration of the question referred to us.

11. In 57 Mad LJ 357, which was a judgment of a single Judge, no doubt the question referred in this case was considered. The learned Judge in that case was considering Section 8 of the Court-Fees Act, 1870, which is in pari materia to Section 48 of the present Court-fees Act. It was contended in that case that under Section 23 (1) of the Acquisition Act, the amount of compensation to be awarded is determined by the considerations mentioned in clauses (1) to (11) of the section and that in construing Section 8 of the Court Fees Act, the expression "the amount awarded" should be taken to cover only the amount awarded having regard to the considerations mentioned in clauses (1) to (6) only of Section 23 and that the expression "amount claimed" in Section 8 (of the Court-fees Act) should also receive a similar construction. In rejecting the contention, the learned Judge observed at page 358: "As I understand the Act" the amount of compensation to be awarded includes 'not only the market-value but also the 15% on "such

market-value". After referring to Sections 11, 15 and 38 of the Acquisition Act he proceeded to state; "it seems to me to be clear that the extra amount of "compensation claimed by the appellant in an appeal should under Section 8 of the Court Fees Act include also the 15 per cent of the market-value and that he should pay Court-fee on the total amount including the 15 per cent." It will be observed that there was absolutely no reference to Section 9 or Section 26 or Section 27 of the Acquisition Act or to the other sections to which we have referred; nor was there any attempt made to ascertain what an "award" and a "claim" is under the provisions of the Acquisition Act, for the purpose of Section 48 of the Court-fees Act. Section 31 to which the learned Judge referred, deals with payment of compensation or deposit of the same in Court by the Collector after he has made the award. We do not understand how the provision requiring the Collector to tender payment of the compensation awarded by him to the person interested, or where it is not received, his being required to deposit the same in Court to which a reference under Section 18 would be submitted, is germane to the question whether solatium is included in the award passed by a Court, for purposes of payment of Court-fee under Section 8 of the Court-fees Act, 1870. Even if, as the learned Judge held and as we also have held, the 15 per cent solatium on the market-value is included in the amount of compensation awarded by the Collector, that does not by itself resolve the further question whether court-fee is payable on the difference in the solatium awarded by the Collector and that which the appellant is entitled on the award of increased compensation, which, in our view, would depend upon the interpretation to be given to the provisions of Sections 9 and 23 of the Acquisition Act. We are therefore unable to accept the reasoning of the learned Judge in Brahmanandam's case, ILR 53 Mad 48 (supra) or the observations of the Bench in Dodla Malliah's case, 1964-1 Andh WR 185 : AIR 1964 Andhra Pradesh 216 (supra), based on that decision as being in accord with our reading of the relevant provisions of the Court-Fees Act and the Acquisition Act. A decision of a Bench of the Travencore Cochin High Court in *Abdulrahiman Kunju v. State*¹, was also cited by the learned Government Pleader, but that case does not advance the matter any further because the Bench without further consideration, merely followed Brahmanandam's case, ILR 53 Mad 48 (supra) in holding that Court-fee is payable on 15 per cent solatium also.

12. In support of our view that the award for purposes of appeal is the award which is the one that is specified in Section 26 of the Acquisition Act, we may refer to a decision of a Bench of the Calcutta High Court in *Banshidhur Marwari v. Secretary of State*², In that case, it appears that on a reference by the Collector, the matter came up before a Land Acquisition Judge and on the 21st May, 1924 it was dismissed for default in the absence of the petitioner. On the 11th June, 1924, the petitioners applied under Order 9 Rule 9 for restoration of the case. That application was also dismissed for default on the 10th

¹ AIR 1955 Tranvancore Cochin 110

²54 Cal 312, 314 : (AIR 1927 Cal533 at p. 533)

January 1925. On the 6th March, 1925, the petitioners applied before the Land Acquisition Judge for review of his order dated the 10th January, 1925. That application for review was dismissed on the 26th June, 1926. The petitioners thereafter presented a memorandum of appeal to the High Court on 30-7-1926 directed against the order of 10-1-1925 and almost simultaneously made the application under consideration for extension of time under Section 5 of the Limitation Act. The contention on behalf of the opposite party was that the order against which the petitioners sought to appeal was an order from which no appeal lies under the Land Acquisition Act. In dealing with the contentions raised before them, Suhrawardy, J., observed at page 315:

"Award" has not been properly defined in the Act; but what is or may be supposed to be an award has been sufficiently indicated in several sections of which reference may be made to Section 11. Section 26 also indicates as to what an award should be. Under that section an award shall specify the amount awarded under Section 23. The order against which the petitioners want to appeal cannot be said to be an award within the meaning of Section 26 of the Act."

13. There is no doubt that the award which is the subject matter of the appeal to the High Court is the award under Section 26, which is the award that is referred to in Section 48 of the Court-fees Act, and that award, as we have already stated, does not contain solatium payable under Section 23 (2) of the Acquisition Act.

14. In our view, the result of the foregoing discussion is that 15 per cent of the market-value to be added under Section 23(2) to the compensation awarded under Section 23(1) is not part of the award which has to be passed by the Court within the meaning of Section 26. Accordingly, no Court-fee under Section 48 of the Court-fees Act need be paid on the difference of the solatium to which the appellant is entitled as a result of the increase in compensation awarded by the Court and that awarded by the Collector. The Office is directed to register the memorandum of appeal and the cross-objections without calling on the appellant or the cross-objectors to pay court-fee thereon.

Parthasarathi, J.

15. I agree and wish to make some observations on the construction of Sections 48 and 49.

16. The latter Section of the Court Fees Act provides for the payment of Court-fee in respect of the "subject-matter" of appeals. This is a provision applicable generally to appeals. Section 48 is of limited application and is intended for a special category of appeals. The effect of Section 48, in so far as it is material for the present discussion, is that Court-fee is payable on the difference between the amount awarded and the amount claimed.

17. The very fact that the legislature had chosen to classify appeals coming within the purview of Section 48 as a special category, is an unmistakable indication of the legislative intendment to make an exception from the general rule enacted in Section 49. The position is that, the subject-matter of an appeal is made the basis for valuation in Section 49. But, this general provision furnishes a contrast or distinction, when one considers it in juxtaposition with the Section 48, which enacts a special rule in respect of a distinct category of appeals.

18. It was thus clearly designed that the range of valuation in cases coming under Section 48, should be narrower than the range of valuation, comprehended in the expression, "subject-matter of appeal". If "subject-matter of appeal" and difference between "amount awarded and amount claimed" are to be regarded as coincident in their sweep or range, what was the need for a special provision?

19. The contention of Sri Ramachandra Reddy is that the word "awarded" occurring in Section 48 should be deemed to include the entire amount payable to the owner of a land and takes in the

statutory solatium also. Likewise, his submission is that the "amount claimed" includes the solatium. If this contention is accepted, it would mean that the entire subject-matter of the appeal becomes the basis of valuation for Court-fee. In my opinion, this the legislature not only did not intend, but also guarded against by making a special provision.

20. The rule of construction suggested by the learned counsel would result in both the provisions being equated in their result and operation. This method of construction leading to the conclusion that there is a superfluity is not permissible. In *Hill v. Willaim Hill (Park Lane), Ltd*³, Viscount Simon said:-

"It is to be observed that though a Parliamentary enactment (like parliamentary eloquence) is capable of saying the same thing twice over without adding anything to what had already been said once, this repetition in an Act of Parliament is not to be assumed. When the legislature enacts a particular phrase in a statute, the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is good reason to the contrary, the words add something which has not been said immediately before."

21. The alternatives are: Firstly, to regard the two provisions as identical in their effect and to equate the difference in amount awarded and amount claimed", with the "subject matter" of appeals. This, in my opinion, would be to ignore the meaning attributable to the words "awarded" and "claimed" and also to impute to the legislature the error of repetition.

22. The second alternative is to hold that the two provisions do not constitute an example of legislative tautology and that they should be so interpreted in such a manner as not to render Section 48 superfluous.

23. There can be no doubt that the former alternative is to be preferred as being not only in consonance with precedent and principle but also with the "equity of the statute" thereby giving due recognition to the spirit and meaning of Section 48.

24. I agree with the reasoning and conclusions of my Lord the Chief Justice as to the meaning of the words "awarded" and "claimed" and I concur in the directions given by

³1949 AC 530 at p. 546

him

Order accordingly.