

ANDHRA PRADESH HIGH COURT

Dy. Collector, S.P

Vs.

B.V. Seshamma

A.S. No. 1525 of 1982

(Raghuvir, Sardar Ali Khan and Radhakrishna Rao, JJ.)

23.12.1986

JUDGEMENT

Raghuvir, J.

1. The above 26 appeals relate to acquisition of lands. To preface the discussion in the cases, it is not irrelevant to recount sovereign powers of the State which include police power, power of taxation and power to acquire land, often expressed in Latin expression "eminent domain". In old texts of jurisprudence sovereign power is recounted to include escheat. The modern text book writers on sovereignty consider escheat is more an incident of property than a subject of sovereignty.

2. In the pre-constitution days eminent domain power affecting land was reduced in enactment of The Land Acquisition Act, 1 of 1894. The Act specifies the procedure to be followed when land is acquired. The Act also lays down how compensation is to be determined. Compensation is a word which includes the market value of the land and solarium paid to the landholders and sometimes the expression is used to include interest awarded to the landholder. The subject before the Full Bench pertains to interest payable to landholders. The rate of interest in the Act payable was 6% per annum. Solarium of 15% on the market value was paid. In a recent enactment solarium and interest were enhanced by amending the Act.

3. The Parliament of India introduced a Bill on April 30, 1982. The Bill received the assent of the President on Sept. 24, 1984. The Act is now entitled "The Land Acquisition (Amendment) Act, 68 of 1984." In the Amendment Act solarium is enhanced to 30%. The rate of interest is enhanced to 12%. The Objects and Reasons recite since acquisition cases are pending determination of the value of the land for long, and when value is finally determined the amount of compensation is "unrealistic and iniquitous". Therefore, the Parliament desired landholders be adequately compensated for loss suffered by them. In numerous cases arising under the Act 1 of 1894 all over the country this was the experience when land was acquired to meet the welfare activities of the State.

4. It is seen often land acquired is the source of livelihood of landholder and over a decade the

landholder is not paid the compensation when land is acquired. Therefore, to off set the inequities, solarium is increased. The rate of interest is enhanced at first in the Bill to 10% when the bill emerged finally from both Houses of Parliament, interest was varied to 12%. The word 'interest' is not used in the Amending Act, instead 'additional amount' is used, but the words mean interest is obvious in the context of the Act.

5. Immediately after the enactment of the Act 68 of 1984 two controversies arose before the State High Courts. There was a Full Bench decision of this Court to decide in what cases payment of solarium of 30% is payable. Later the Supreme Court rendered opinion on that subject and with that opinion the controversy on solarium is at rest. The instant controversy is in what cases and when 12% interest is payable. Is it enforceable in all cases of acquisition which are pending consideration in Courts when the Amending Act is enforced, or 12% interest is payable only in some cases where Section 4(1) notification was published earlier to Sept. 24, 1984 or where the award under the Act 1 of 1894 was passed before April 30, 1982 ?

6. The above controversy is generated by two Sections. The debate and discussion in this Court indicated similar controversy arose before various State High Courts. The two Sections read as under :

"S.23(1A) : In addition to the market value of the land, as above provided the Court shall in every case award an amount calculated at the rate of 12% per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4 Sub-S(1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier (Emphasis supplied).

Explanation :- In computing the period referred to in this Sub-Section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded

Section 30. Transitional provisions : (1) The provisions of Sub-S(1-A) of Section 23 of the Principal Act, as inserted by Clause (a) of Section 15 of this Act shall apply and shall be deemed to have applied also to and in relation to

(Emphasis supplied)

(a) every proceedings for the acquisition of any land under the principal Act pending on the 30th day of April 1982 (the date of introduction of the Land Acquisition (Amendment) Bill 1982 in the House of the People) in which no award has been made by the Collector before that date;

(b) every proceedings for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the date of commencement of this Act".

(Emphasis supplied).

7. In the instant appeals a Division Bench disposed of seven appeals. A. S. Nos. 1525, 1697 of 1982, 940, 1765, 1776, 1987 and 1998 of 1983 on March 6, 1986. Later, along with three more,

in all ten appeals were posted 'for Being Mentioned to on April 15, 1986 to specify whether 12% rate of interest is payable to the landholders in the cases. Subsequently in 16 more cases similar question arose, thus in all 26 cases the rate of interest payable on compensation arose for decision. What was stated at the hearing in the order culminated in reference to the Full Bench. The issue referred is whether 12% interest should be accorded in the ten plus sixteen appeals. In all the 26 cases the awards were pronounced before April 30, 1982. The facts in the appeals are not necessary to be stated as facts do not help in answering the question. The question at issue - whether the interest specified in Sub-S(1-A) of Section 23 is operative in all pending cases irrespective of the fact when the Section 4(1) notification was published or when the award was pronounced.

8. The words emphasized in the two Sections play a key role in interpreting the Sections. The counsel for landholders for obvious reasons relied on cases where the Courts leaned in favor of the view and contend 12% be paid in all cases. The State Government and the counsel appearing for Corporation, for whose benefit the land was acquired relied on cases where retroactivity to Section 23(1-A) was restricted to the date of award as on April 30, 1982 or later, but not to the cases where award was passed earlier to April 30, 1982.

9. The discussion in other State High Courts passed through similar stresses in deciding the issue. The Karnataka High Court resolved the controversy in a Full Bench. In Bombay High Court a Full Bench is over-due as there is difference of opinion in Divisional Bench cases. In a Punjab case a single Judge's opinion is reported. A case in Delhi High Court supports the landholders contention. To these cases we will return later. In this Court the reference order disagreed with the opinion expressed in an earlier divisional Bench, so the issue is placed before a Full Bench. These facts explain how the appeals are heard by the Full Bench. It may be convenient now to refer to the cases. We have earlier referred to the contentions raised by the contestants. The contentions were extrapolated more or less from the following cases.

10. A single Judge of this Court in *K. Anjaneyulu v. Sub-Collector Tenali*², held the amended provisions (Act 68 of 1984) relevant to the interest Sub-S(1-A) of Section 23 be operated in all cases, if they are pending before the Courts or authorities, without "any restriction". It is held words "also to" in Clause (1) of Section 30 support the conclusion. In this regard appeal on reference order was shown is a continuation of acquisition proceedings. That view was affirmed in the reference order. In addition to that reasoning in the reference it is pointed out Section 30 is a transitory provision. Section 23 is a non- transitory provision. A transitory provision cannot cut the ambit of a non- transitory provision but should yield to give effect to non-transitory provisions. Alternatively it is held it is reasonable to treat the transitory and the non-transitory provisions be harmonised. The words "or not" occurring in Clause (b) of Section 30(1) were inserted by way of abundant caution.

11. In an earlier case a Divisional Bench of this Court in *Rayalaseema Paper Mills Ltd. v. H. Khatoun Saheb*², held in para 6 interest is dealt in distinct provisions.

"(a)..... By Section 23(1A) interest from the date of notification under Section 4(1) to the date of taking possession or the making of award whichever is earlier..... (b) By Section 34 interest is to be paid for the period between taking of possession and date of

payment or deposit.

¹(1986) 1 Andh LT 342

²(1986) 2 Andh LT 717

(This interest is on the compensation) (c)..... By Section 30 of the Amendment Act limited retrospectivity..... to the cases where the acquisition has been limited after 30-4-1982." In concluding as to retroactivity the language in Section 30(1) was indicated of limited applicability.

12. The Karnataka High Court in *Special Land Acquisition Officer v. Soma Gopal*³, resolved the issue by posing the following question-whether in all cases, whether on reference or on appeal, the Court is required to apply the provisions of Section 23(1-A) in determining the compensation. The answer was in the affirmative. In answering the issue the words 'also to' occurring in Section 30(1) of the amending Act were considered to support the conclusion. The Delhi High Court in *Raghubir Singh v. Union of India*⁴, held

".....additional amount made in Section 23(1A) will also apply and shall be deemed to have applied to every proceeding which was pending on 30-4-1982 and in which no award has been made by the Collector before that date."

The word 'also' in this regard was termed 'copulative'. In *Puran v. State of Haryana*⁵, a single Judge of Punjab and Haryana High Court held acquisition proceedings come to an end with the passing of the award or taking possession of the land. The award in that case was passed on August 28, 1981 therefore Section 23(1A) was not made applicable. In *Union of India v. Maria Olivia Carvalho*⁶, the Bombay High Court of Goa considered the provisions and held in all cases pending 12%, interest is payable. In another case from the same High Court in *Hiraji v. State*⁷, a contrary opinion was taken by the Bombay High Court.

13. The above cases show how the controversy is bristling all over the country. We are informed the issue is pending consideration before the Supreme Court. Since number of cases are awaiting finalisation, we think fit to decide the controversy by the Full Bench.

14. On a consideration of the language in Section 30(1) and Section 23(1-A) we hold the predominant intention of the Parliament is to award interest in In All Cases (pending on the date of enforcement of Act 68 of 1984) decided after the Amending Act is enforced. We are supported on this part of the conclusion as in the Statement of Objects in the Bill it is stated due to delay in payment of compensation arising under Act 1 of 1894 what is paid to landholder after long time is 'unrealistic and iniquitous'. The words 'also to' in Section 30(1) is a pointer to support the above conclusion.

15. In that view, we hold the opinion in the case *Rayalaseema Paper Mills v. H. Khatvon Saheb* (supra) is not good law, therefore, is reversed. Though there are indications in Sections 23(1-A) and 30 to the contrary (to repeat) we are satisfied the predominant intention of the Amending Act 68 of 1984 is to award 12% interest in all cases pending before the authorities and Courts irrespective of the fact when Section 4(1) notification was published or when the award was passed. We direct 12% interest to be paid in all the above 26 cases.

16. The question referred to answered accordingly.

³ AIR 1986 Karn 179 (FB)

⁴ AIR 1985 Del 228

⁷ AIR 1986 Bom 390

⁵ AIR 1986 Pun and Hary 305

⁶ AIR 1986 Bom 1

Answer accordingly.