

KARNATAKA HIGH COURT

Land Acquisition Officer

Vs.

Soma Gopal

Misc. First Appeal No. 2020 of 1985

(K. Jagannatha Shetty, Actg.C.J., N.D. Venkatesh and P.A. Kulkarni, JJ.)

21.02.1986

JUDGEMENT

K.Jagannatha Shetty, Actg. CJ

1. A Bench of this Court, while doubting the correctness of the decision of this Court in *Chikkathayappa v. Spl. L. A. O., Bangalore*¹, has referred the following two questions for opinion of the Full Bench : -

"(1) Whether a Reference Court making an award under Section 26 of the Principal Act after 24-9-1984, the date of coming into force of the Amending Act, is obligated to give effect to the provision in sub-section (1A), Section 23 of the Principal Act, as stands amended by the Amending Act, respecting a land, the acquisition proceeding for which had been commenced under the Principal Act prior to 30th April 1982, and respecting which an Award by the Collector (L. A. O.) under Section 11 of the principal Act, had been made before that date (30th April 1982)?

(2) Whether the High Court deciding an appeal under Section 54(1) of the Principal Act against an award of the Reference Court after 24-9-1984, is obligated to give effect to the provision in sub-section (1-A) of Section 23 of the Principal Act, as stands amended by the Amending Act, respecting a land, the acquisition proceeding for which had been commenced under the Principal Act prior to 30th April 1982, and respecting which an award had been made by the Collector under Section 11 of the Principal Act before that date (30th April 1982)?"

2. The above appeal preferred under Section 54(1) of the Land Acquisition Act, 1894 (Central Act 1 of 1894) has been directed against the award and decree dt. 6-1-1984 made in L. A. C. No. 165/81 on the file of the Civil Judge, Sirsi, in respect of a land acquired for the purpose of Kalinadi Hydro Electric Project.

3. During the pendency of the appeal in this Court, the Land Acquisition Act was amended by the Land Acquisition (Amendment) Act 68 of 1984. For clarity and brevity, we may, hereinafter, refer the Land Acquisition Act, 1894 as the 'Principal Act'; and the

¹(M. F. A. No. 270/83 disposed of on March 19, 1985)

Amendment Act 68 of 1984 as the 'Amending Act'. Clause (a) of Section 15 of the Amending Act inserted sub-section (1-A) to Section 23 of the Principal Act. Sub-section (1A) of Section 23 reads:-

"(1-A). 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 twelve per centum 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- sec. (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.

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."

Sub-section (2) of Section 23 of the Principal Act was amended by substituting 'thirty per centum' for the words 'fifteen per centum'. Section 28 of the Principal Act was also amended by enhancing the rate of interest from six per centum to nine per centum per annum. Section 30 of the Amending Act contains some transitional provisions in the following terms:

"30. Transitional Provisions:

(1) The provisions of Sub-section (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 -

(a) every proceeding 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 proceeding 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.

(2) The provisions of sub-section (2) of Section 23 and Section 28 of the Principal Act, as amended by Clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the Principal Act after the 30th day of April 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People) and before the commencement of this Act."

4. We may now cull out the dates germane to the questions for consideration. The original Bill relating to the Amending Act was introduced in the Parliament on April 30, 1982. The Amending Act came into force on 24-9-1984. The land was acquired pursuant to a preliminary notification published in the gazette issued in September 1975. The Deputy Commissioner made the award under Section 11 of the Principal Act before April 30, 1982. The first question for consideration is whether the Reference Court making an award after 24-9-1984 has to apply the provisions of sub-section(1-A) of Section 23 and award an amount of twelve per cent of the market value of the land per annum for the entire period beginning from the issue of the preliminary notification up to the award of the Deputy Commissioner or taking of the possession of the land, whichever is earlier. The second question is also in the similar terms but relates to applicability of the said sub-section to matters pending in appeals before the High Court, as in the present case.

5. A similar question regarding the applicability of sub-section (1A) of Section 23 to pending proceedings in Courts came up for consideration before a Bench of this Court in Chikkathayappa's case (M. F. A. no. 270/83). There it was observed: -

"The amending Act, as any other legislation, is prospective in operation except to the extent its provisions are expressly made applicable to pending proceedings or to acquisitions initiated earlier. A statute is construed as operating only in cases or on facts which came into existence after it (is?) passed, unless a retrospective effect is clearly intended. The retrospectivity must be clear or must arise by necessary and distinct implication from the terms of the statute. Application of the provisions of a legislative enactment to pending proceedings must, therefore, flow from express provisions of clear intendment. The applicability of the amended provisions to pending matters must be decided with reference to the provisions of Section 30 of the Amending Act. Section 30 of the Amending Act 68 of 1984 gives the amendments a limited retrospectivity and the category of pending cases to which the amended provisions are attracted are clearly specified.

The provisions of Section 23(1-A) providing for interest from the date of preliminary notification till the date of the award of the Land Acquisition Officer introduced by Section 15(A) of the Amending Act, are attracted to pending matters only under two circumstances envisaged by Section 30(1)(a) and (b).S. 30(1) provides:-

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These cases of the appellants do not qualify under Section 30(1)(a) as, indeed, the awards had been made by the Land Acquisition Officer prior to 30-4-1982. Nor is the condition envisaged in Section 30(1)(b) satisfied inasmuch as the proceedings for acquisition were not commenced after 30-4-1982."

The Court thus restricted the operation of sub-section (1-A) of Section 23 only to matters

covered under the transitional provisions of the Amending Act. This view has been followed by another Bench of this Court in *Spl. L. A. O., Upper Krishna Project, Narayanapur v. Basalingappa Parappa Anigadi*²,

6. At first sight, it would appear that the view taken by this court in Chikkathayappa's case is justified, Mr. Hiremath, learned Government Advocate, also strongly supported that view. He urged that sub-section (1A) is not retrospective in operation except to the extent it is expressly made applicable to matters covered by the transitional provisions. But, we must consider the questions raised in the light of the need for amending the Principal Act and the purpose for which sub-section (1A) has been inserted. It is also necessary to examine the scope of Section 23 and the duty of the Court in determining the compensation to be awarded for land acquired.

7. The Principal Act was of the year 1984. Since it came into force and particularly after ²(M. F. A. No. 277/84 disposed of on 7-1-1986 : Reported in ILR (1986) Kant 365)

Independence, there has been enormous expansion of the State's role in promoting public welfare and economic development. The acquisition of land for public purposes became far more numerous than ever before. It was often found that poor people's land which was the only source of their livelihood became an inescapable necessity for the larger interest of the community. The Government, therefore, thought that they should be adequately compensated for their loss so that they may be provided with necessary wherewithal's of rehabilitation. So the Principal Act was substantially amended by the Amending Act with a view to provide compensation to land owners and other interested persons on a more realistic and just basis. The statement of objects and reasons accompanying the Bill runs as follows:

"Statement of Objects and Reasons: With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialization, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them.

2. It is necessary, therefore, to restructure the legislative framework for acquisition of land so that it is more adequately informed by this objective of serving the interests of the community in harmony with the rights of the individual. Keeping the above objects in view and considering the recommendations of the Law Commission, the Land

Acquisition Review Committee as well as the State Governments, institutions and individuals, proposals for amendment to the Land Acquisition Act, 1984, were formulated and a Bill for this purpose was introduced in the Lok Sabha on the 30th April, 1982. The same has not been passed by either House of Parliament. Since the introduction of the Bill, various other proposals for amendment of the Act have been received and they have also been considered in consultation with the State Governments and other agencies. It is now proposed to include all these proposals in a fresh Bill after withdrawing the pending Bill."

8. It is well known, a number of land acquisition proceedings have been pending for years and years, after the issuance of preliminary notification under Sub-section (1) of Section 4, Payment of compensation to claimants on the basis of the market value of the land prevailing on the date of preliminary notification would then be patently unfair. To remedy this unfairness, the Bill provided for payment, in every proceeding for acquisition of land where the award of the Deputy Commissioner had not been given on April 30, 1982, an additional payment of 10 per cent per annum from the date of preliminary notification to the date of payment or deposit of compensation awarded by the Deputy Commissioner. But this clause was substituted by an amendment which was accepted as sub-section (1-A) to Section 23.

9. So much is the prenatal history of Sub-section (1 A) of Section 23. It is now necessary to consider the nature of the award made by the Deputy Commissioner and the power of Courts to determine the compensation payable for land acquired. The award made by the Deputy Commissioner is only in the nature of an offer to the party whose property has been compulsorily taken away. (See : *N. Bhomanbheeram v. State of Mysore*³.) If the party does not accept the offer, the matter is required to be referred to the Court. There then the Court is required to determine the amount of compensation. It must be determined in the light of the principles provided under Section 23. Section 23 in clear terms enjoins on the Court to take into consideration the matters set out thereunder in determining the amount of compensation. The Court is required to determine the market value of the land as obtained on the date of preliminary notification. Thereupon, the Court shall award under Sub-section (1A) of Section 23, an additional amount provided there under. This additional amount shall be calculated at the rate of 12 per cent per annum of the market value of the land for the period referred to in the said sub-section. The amount required to be awarded under sub-section (1A) is thus an additional amount to claimants. It was intended for their benefit since their property has been compulsorily acquired. The Court, therefore, shall award this amount in all references coming before it. The date of acquisition of land or date of the award made by the Deputy Commissioner appears to be immaterial. The power to award the additional amount is that of the Court. There is no inhibition express or implied for exercising that power.

10. There is, in our opinion, no imprecise drafting in sub-section (1A) of Section 23 nor its application to pending proceedings would result in giving to it a retrospective operation as contended by Sri Hiremath. The words employed in sub-section (1A) are perfectly general. What

is spoken of is the award of an additional amount calculated at the rate of 12 per cent per annum on the market value of the land determined. For awarding such an amount, no distinction could, therefore, be made respecting lands acquired before or after the coming into force of the Amending Act. In all pending cases whether on reference or on appeal, the Court is required to apply the provisions of sub-section (1A) of Section 23 in determining the compensation payable to claimants.

11. The conclusion that we have reached finds support from the recent judgment of the Supreme Court in *Bhag Singh v. Union Territory of Chandigarh*⁴. Although that case arose on the question of applicability of sub-section (2) of Section 30 of the Amending Act to pending proceedings, the observations made by learned Chief Justice at page 1580 are pertinent and lend light to the case before us. The learned Chief Justice observed:

"The appeal against the award would be a continuation of the proceeding initiated before the Court by way of reference under Section 18 and when the High Court hears the appeal, it would in effect and substance be hearing the reference and while determining the amount of compensation, it would have to give effect to Sections 23 and 28 as it finds them at the date of decision of the appeal. When Section 23, sub-section (1) provides that in determining the amount of compensation the Court shall take into consideration matters specified in the various sub-clauses of that sub-section and Sub-section (2) of Section 23 directs that in addition to the market value of the land the Court shall in every case award

³ AIR 1974 SC 1717

⁴ AIR 1985 SC 1576

a sum of 15 per centum of such market value in consideration of the compulsory nature of the acquisition, the mandate of these two sub-sections must apply equally whether the Court is hearing a reference or the High Court is hearing an appeal against an award made by the Court, The amended provisions in Section 23, Sub-section (2) and Section 28 would, therefore, have to be applied by the High Court in determining the amount of compensation....."

12. In *Raghubir Singh v. Union of India*⁵, the Delhi High Court while considering the scope of Sub-section (1A) has taken a similar view. There it was observed at para 10.

"The critical words in this section are 'also to' used in Sub-section (1). This shows that firstly this provision of additional amount made in Section 23(1 A) 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 had been made by the Collector before that date. Secondly this provision will also apply to every proceeding for acquisition of the land which was commenced after 30-4- 1982 whether or not an award has been made by the Collector before 24-9-1984. This provision applies to cases falling within the two cut-off dates 30-4-1982 and 24-9-1984. But if a case is decided after 24-9-1984, after the Amended Act

has become the law of the land, the Courts are bound to give effect to the provisions of Sub-section (1A) of Section 23 which means that the landowner 'in addition to the market value of the land' will also be entitled to 12 per cent per annum on such market value. This is exactly the case here. We must apply the law of the land and award 12 per cent per annum on the market value from 13-11-1959 the date of Section 4 notification till 30-3-1963 the date of the award. The word "also" is a copulative carrying on the sense that though the law enacted will apply to future cases, it will also apply to past in given cases."

The decision of the Bombay High Court in *Union of India v. Maria Olivia Carvalho*⁶, is also to the same effect.

13. What remains to be considered is whether the Parliament had intended to restrict the operation of Sub-section(1A) of Section 23 only to matters covered under the transitional provisions in Sub-section(1)of Section 30 of the Amending Act. Mr. Hiremath has strenuously contended for such an interpretation. But we find it hard to accept it. Sub-section(1) of Section 30 of the Amending Act states that sub-section(1 A) of Section 23 shall apply "also to". It means, in addition to. That is in addition to its application to proceedings in Courts, it shall apply and shall be deemed to have applied "also to" in relation to specified matters. The specified matters are those provided under Sub-section(1) of Section 30 of the Amending Act. Firstly, it shall apply and shall be deemed to have applied to every proceeding which was pending on April 30, 1982 and in which no award has been made by the Deputy Commissioner before that date. Secondly, it shall apply to every proceeding for acquisition of any land commenced after April 30, 1982 whether or not an award has been made by the Deputy Commissioner before 24-9-1984. Thus, it has given a limited retrospectivity to category of cases specified under Sub-section(1) of Section 30. But that does not mean that Sub-section(1A) of Section 23 has

⁵ AIR 1985 Del 228

⁶ AIR 1986 Bom 1

only limited operation. Apart from its general application, it has been expressly made applicable to proceedings before the Deputy Commissioner pending or disposed of between the said two cut-off days. It impliedly provides for re-determination of the award amount even at the hands of the Deputy Commissioner where the claimant has not sought for a reference to the Court.

14. We are, therefore, of the opinion that the decision of this Court in *Chikkathayappa v. Special Land Acquisition Officer, Bangalore*⁷, cannot be regarded as laying down the correct law in regard to the interpretation of Sub-section (1A) of Section 23.

15. In the result and for the reasons stated above, we answer both the questions referred in the affirmative. The papers shall now be placed before the Division Bench for disposal of the matter. In the circumstances of the case, we make no order as to costs,

Reference answered in affirmative.

⁷(M. F. A. No. 270/83)