

Subhadra Bai Vs. State of Mysore

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Court : Karnataka

Decided On : Mar-15-1972

Reported in : AIR1973Kant13; AIR1973Mys13; (1973)1MysLJ175

Judge : B. Venkataswami and ;E.S. Venkataramiah, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 34

Appeal No. : Misc. F.A. No. 13 of 1970

Appellant : Subhadra Bai

Respondent : State of Mysore

Advocate for Def. : Anna Danayya Puranik, High Court Government Pleader

Advocate for Pet/Ap. : Murlidhar Rao, Adv.

Disposition : Appeal allowed

Judgement :

1. On account of construction of a tank at Hosalli village, Koppal taluk, certain land belonging to the appellant-claimant became submerged under water in the year 1959-60. Later on preliminary notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as the Act) was published proposing to acquire the said land in the Mysore Gazette dated 8-11-11962. On the basis of the said notification, the land was acquired and the Land Acquisition Officer passed an

award fixing Rs. 35,374/- as the compensation payable in respect of the said land. The said amount was paid to the claimant on 26-11-1963. While doing so, he did not award interest for the period prior to 26-11-1963, on the ground that the possession had not been taken at all pursuant to the land acquisition proceedings. The appellant objected to the said award and requested the Land Acquisition Officer to refer the matter to the Civil Court for determination of the interest payable to her. She however had no objection regarding the Market value of the land as determined by the Land Acquisition Officer. The Land Acquisition Officer thereafter referred the matter to the Civil Judge, Raichur. After hearing the parties, the lower Court found that the case of the appellant was not sustainable with regard to the claim for interest on the ground that in respect of period anterior to the initiation of the land acquisition proceedings under Section 4(1) of the Act, the appellant was not entitled to claim interest on the amount of compensation under Section 34 of the Act. Aggrieved by the order passed by the lower Court, the claimant has filed this appeal.

2. It is to be seen from the statement of the case submitted by the Land Acquisition Officer under Section 19 of the Act to the lower Court, that the lands of the appellant had become submerged from the year 1959-60. It is also stated therein that the Public Works Department completed the construction of the tank on 31-3-1959 much earlier to the initiation of the land acquisition proceedings in this case. The land acquisition proceedings became necessary only on account of the submersion of the land of the appellant. It is no doubt true that in the record of the Land Acquisition Officer it is shown that the possession of the Land was taken on 27-1-1964. It is very difficult to accept the said position. It refers only to the formal taking of possession of the land. Actually the land was under water even according to the statement of case submitted by the Land Acquisition Officer from the year 1959-60. One Radhakrishna who is the son of the appellant has been examined as P. W. 1 in the case. He has stated in the course of the deposition that the land of the appellant was submerged by the water of the tank from 1958 onwards. In the course of the cross-examination again he reiterated that even though the record of the Land Acquisition Officer showed that possession was taken on 27-1-1964, in fact the appellant lost possession of the land in the year 1958. The evidence of P. W. 1 referred to above taken along with the statement of

the case submitted by the Land Acquisition Officer, clearly establishes that the appellant lost possession of the property on account of the submersion of the same by the water of the tank in the year 1958-59. It is not disputed that the construction of the tank was completed on 31-3-1959. If that is so, it has to be held that at least from 31-3-1959 the appellant was not in possession of the property and that she was actually deprived of the same on account of the construction of the tank.

3. The next question that arises for consideration is whether under Section 34 of the Land Acquisition Act, it is permissible for the Court holding an enquiry into the compensation payable to a claimant to award interest in respect of the period prior to the date on which the proceedings under the Land Acquisition Act are initiated. Section 34 of the Act provides that the claimant would be entitled to interest at the rate of 5 per cent. per annum on the compensation awarded from the date on which the possession of the land is taken from him by the Deputy Commissioner. In this case, as already stated, no physical possession of the property was taken after the land acquisition proceedings were started. The appellant lost possession of the property prior to 31-3-1959. It is argued on behalf of the Land Acquisition Officer by Sri Annadanayya Puranik, the learned High Court Government Pleader, that Section 34 of the Act is applicable only to cases where the Deputy Commissioner takes possession of the property under the Act and not to a case of this nature where the claimant is deprived of the possession of the property on a date anterior to the commencement of the proceedings under the Act. We find that it would be both inequitable and illogical to accept the submission made on behalf of the Land Acquisition Officer. Section 34 does not expressly prohibit the payment of interest on the market value of the land for the period anterior to the date on which the proceedings were actually initiated. It only states that interest is payable from the date on which the Deputy Commissioner takes possession of the land. In the instant case we have already held that the Deputy Commissioner did not take physical possession of the property at all after the proceedings were initiated. What was however done was the regulation of the act of the Government by which the Claimant was dispossessed of the land. In such a case, it would not be unreasonable to hold that the date on which the claimant lost possession of the property by reason of a certain act on the Part of the Government which

necessitated the initiation of the proceedings under the Act should be taken as the relevant date for the purpose of awarding interest under Section 34 of the Act. The position is the same even under Section 28 of the Act which requires payment of interest on the amount of compensation enhanced by the Court on a reference under Section 18 of the Act. It is open to the Court to direct payment of interest payable under Section 34 of the Act by the Land Acquisition Officer if it is wrongly withheld.

4. Our view receives support from a Full Bench decision of the Andhra Pradesh High Court in the Revenue Divisional Officer, Guntur v. Vasireddy Rama Bhanu Bhupal, : AIR 1970 AP262 (FB). In that case the Commissioner of the Guntur Municipality by his letter dated 16-9-1953 applied for the acquisition of a land for the purpose of Guntur Water Supply Scheme. Even prior to the said request by the Commissioner, the Municipality had taken possession of the land in question on 30-11-1950. In response to the Commissioner's request, proceedings for the acquisition of the land were started under the Act and notification under Section 4(1) of the Act was published on 12-4-1956. The Land Acquisition Officer gave his award on 31-3-1958 whereby he assessed the value of the land at Rs. 8/- per square yard. He awarded interest on the said compensation from 30-11-1950 when the land was taken possession of by the Municipality till 31-3-1958, the date of the award. On a reference made to the Court under Section 18 of the Act at the instance of the owners of the land, the Subordinate Judge, Guntur, enhanced the compensation payable in respect of the land and allowed interest on the said amount from 30-11-1950 under Section 28 of the Act. Aggrieved by the award of the Subordinate Judge, the Revenue Divisional Officer preferred an appeal before the High Court of Andhra Pradesh. One of the contentions raised in the said appeal was whether the owners were entitled to be paid interest on the enhanced compensation from 30-11-1950. Dealing with the above contention, the High Court of Andhra Pradesh observed:--

'Section 28 of the Act states that the Collector shall pay interest from the date on which he took possession of the land. It does not say that the Collector should pay interest only from the date on which he takes possession under the Act. On a plain reading of the section it appears to us that the interest is payable from the date

when the Collector takes possession, whether he takes possession under any of the provisions of the Act or by private negotiations or otherwise in anticipation of valid proceedings under the Act for the acquisition of the land in question Even assuming that the expression 'taking possession of the land' under Section 28 of the Act, would only mean taking possession of the land under or in pursuance of the Act we do not see any reason why the taking of possession of the land prior to the Land Acquisition proceedings without any objection by the owner (in this case by private negotiation with his consent) followed by valid proceedings under the Act should not be held to be taking possession of the land under the Act. The Act does not prescribe when the Collector representing the Government should take possession of the land. Under Section 16 of the Act he may take possession after he had made an award but there is nothing in that section or in any other provision of the Act, which prevents the Collector from taking possession of the land earlier with the consent of the owner. On the other hand there are provisions in the Act, for instance. Section 17 which authorises the Collector, in case of urgency to take possession of any waste or arable land needed for public purposes, after expiration of fifteen days from the publication of the notice mentioned in Section 9(1) of the Act. The fact that on 30-11-1950 it was the Municipality that took possession and not the Government would not make any difference as the acquisition of the land by the Government was at the instance and for the purpose of the Municipality and it is also stated in the award that the cost of acquisition would be met from the amount deposited by the Municipality under Works Deposit in the name of the Revenue Divisional Officer, Guntur. Therefore no distinction can be made between the possession of the Municipality and the possession of the Government in the circumstances of this case'.

In arriving at the above decision, the High Court of Andhra Pradesh relied upon a decision of the Privy Council in *Vallabhadas v. Development Officer, Bandra*, (AIR 1929 PC 163). In that case the Government resolved to acquire the land in question in the year 1919 and by arrangement with the owners they took possession of the land and proceeded to erect buildings on it without the necessary notification under the provisions of the Act. The said notification was issued on 4th November, 1920. In the course of the proceedings before the Court, the claimant claimed compensation in respect of the land including the buildings

erected by the Government on it as on the date of the notification. The Civil Court while rejecting the said claim awarded compensation for the period to the date of the notification in the form of interest on the value of the land. When the above matter was taken up before the Privy Council, the Privy Council was of the opinion that the justice of the case was met by holding that the claimant was entitled to compensation for the occupation of the land by the officials before the notification of 4th November, 1920 in the form of interest on the value of the land.

5. In *Smt. Swarnamayi v. Land Acquisition Collector*. : AIR1964 Ori113 the facts of the case were almost similar to those in the case before the Privy Council referred to above. The Government which was in need of certain lands for construction of staff quarters for the officers of the Public Works Department, Ganjam. made negotiations with the owners and took possession of the lands on 28-12-1948 for the aforesaid purpose. After taking over possession, the Government proceeded to construct necessary quarters in the year 1949-50. The formal land acquisition proceedings were however taken up later on. The notification under Section 4(1) of the Act was issued on 8-7-1950 and the Land Acquisition Officer passed his award on 25-10-1957. Before the Court, the claimant claimed interest on the market value of the property from 28-12-1948 even though the notification under Section 4(1) of the Act had been issued on 8-7-1950. The High Court of Orissa was of the opinion that in those circumstances the claimants were entitled to interest on the market value of the land under Section 34 of the Act from the date on which the Government took possession of the land i. e. 28-12-1948 even though the notification was published on 8-7-1950.

6. We do not find much difference between the facts of this case and the facts in the three decisions referred to above. The only distinction however which requires to be noticed is that whereas in the decisions referred to above, the Government took possession of the land by a private arrangement or negotiations, in the present case the land of the claimant was submerged under water when the tank became full. It is to be assumed that the Government knew even before the tank was constructed that the land of the claimant would be submerged on the completion of the construction of the tank and that there was necessity for initiating proceedings under the Act for the acquisition of the same. The claimant did not in

any way protest against the action of the Government which resulted in the submersion of the land. It has, therefore, to be held that the claimant acquiesced in the act of the Government. We are therefore of the opinion that the principle enunciated in the three decisions referred to above would be equally applicable to the present case.

7. In the result, we set aside the award passed by the Court below and direct that there shall be an award for payment of interest on the compensation of Rs. 35,374/- (which includes statutory allowance also) awarded by the Land Acquisition Officer at five per cent, per annum from 31-3-1959 to 26-11-1963 as prayed for. The appeal is accordingly allowed with costs both in the Court below and in this Court.

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