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State of M.P. and ors. Vs. Shobha Bai Singh and anr.

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Court : Madhya Pradesh

Decided On : Feb-13-2009

Reported in : 2009(2)MPHT339

Judge : R.S. Garg and ;U.C. Maheshwari, JJ.

Appellant : State of M.P. and ors.

Respondent : Shobha Bai Singh and anr.

Advocate for Def. : Shri. Yadav

Advocate for Pet/Ap. : Shri. Awasthy

Disposition : Petition dismissed

Judgement :

R.S. Garg, J.

1. The appellant being aggrieved by the order dated 7-8-2008 passed in W.P. No. 245/08 (Shobha Bai Singh and Anr. v. State of M.P. and Ors.), allowing the petition filed by the present respondents, are before this Court with a submission that the order passed by the learned Single Judge runs contrary to the provision of Section 23(1-A) and Section 34 of Land Acquisition Act, 1894 (for short 'the Act').

2. The material facts necessary for disposal of the present appeal are that the notification under Section 4 for acquisition of the land of the petitioners was published on 29-10-1969. A declaration under Section 6 was made and ultimately the award passed on 25-11-1985. It was directed that particular amount be paid to the petitioners and land in lieu of the land be also given to the original petitioners. On 6-2-2003 a supplementary award was made determining the amount of compensation for trees, solatium at the rate of 30% and compensation under Section 23(1-A) of the Act from the date of notification issued under Section 4 of the Act up to the date of award. Against the award dated 6-2-2003 the present appellants filed an appeal before the Collector under Section 17 of the Indian Forest Act, which was dismissed on 8-8-2003, the revision filed against the same also came to be dismissed by Revisional Authority on 14-2-2005. Thereafter an application under Section 18(1) read with Section 13(A) of the Act was filed. The application was dismissed. A writ petition bearing W.P. No. 630/06 challenging the said order was filed, which also was dismissed on 3-5-2008.

3. As the petitioners were not paid their dues, they came to this Court in W.P. No. 4708/04, which was finally disposed of on 19-4-2005 with a direction to the respondents to implement the orders of the Revisional Authority. In pursuance to the said direction the petitioners were paid compensation of Rs. 9,75,131/- and Rs. 21,73,351/- on 13-8-2004 and 11-9-2006 respectively. As the petitioners were not paid the interest under Section 34 of the Act, they filed Contempt Petition No. 3864/05, which was disposed of by this Court on 27-9-2006 observing that in absence of direction for payment of interest under Section 34, non-compliance would not lead to any contempt on the part of the present appellants.

4. The petitioners thereafter filed an application on 6-10-2006 before Collector/Forest Settlement Officer with a submission that they were entitled to interest under Section 34 of the Act and such order be passed in their favour. The application filed by the original petitioners was allowed with a direction that interest under Section 34 of the Act be paid, but however, the concerning Land Acquisition Officer deleted the earlier direction to pay compensation under Section 23(1-A) of the Act. Being aggrieved by the said directions contained in order dated 24-12-2007 (Annexure P-13), the petitioners again filed W.P. No. 245/08, the learned

Single Judge allowed the said petition, therefore, the State and its Officer are before this Court.

5. Shri Awasthy, learned Counsel for the appellant submitted that as the interest is to be paid under Section 34 of the Act the petitioners would not be entitled to compensation under Section 23(1-A) of the Act. His submission is that if the petitioners were not dispossessed from their land then they would not be entitled to claim payment of interest on the amount of compensation.

6. Shri Yadav, learned Counsel for the respondents on the other hand submitted that the order in relation to Section 23(1-A) of the Act, attained finality, and therefore, such order could not be recalled by the Collector/Forest Settlement Officer. It is submitted by him that Forest Settlement Officer was not justified in not appreciating that the amount paid to the respondents under Section 23(1-A) of the Act could not be adjusted or appropriated towards the amount now proposed to be paid under Section 34 of the Act.

7. Section 23 of the Land Acquisition Act refers to the matters to be considered in determining the compensation. Sub-section (1) of Section 23 provides that while determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration the aspects referred in Sub-section (1). Sub-section (1-A) of Section 23 provides that in addition to the market value of the land, as provided in Sub-section (1), the Court shall in every case award an amount calculated at the rate of twelve per cent 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-section (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.

8. From the perusal of Sub-section (1-A) of Section 23, it would clearly appear that the compensation is required to be paid from the date of the publication of the notification under Section 4(1) of the Act to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

9. Sub-section (1-A) of Section 23 has nothing to do with the interest, it simply provides that if a notification under Section 4 is issued then compensation is required to be paid from the date of the notification up to the date of the award or from the date of the notification up to the date of dispossession. The basic reason behind introducing Sub-section (1-A) was that in number of the cases notifications were issued, declaration were not made and the owners of the land were deprived of their valuable rights, they were not entitled to sell the land and being in state of suspension were not even in a position to develop the land and get better usufruct. It was thought prudent that if a notification is issued and ultimately the land is acquired then such person who is in the state of suspension should not unnecessarily suffer because of the delay on the part of the State and he should be paid extra compensation @ 12% from the date of the notification to the date of award or to the date of dispossession.

10. Section 34 reads as under:

Payment of interest.- 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 interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

11. A perusal of Section 34 would make it clear that if the compensation amount is not paid or deposited on or before taking the possession of the land the Collector shall pay the amount awarded with interest thereon @ 9% per annum from the time of taking possession until it shall have been so paid or deposited. Section 34 nowhere talks of providing additional compensation. It talks of paying interest on the amount of compensation. Undisputedly compensation is to be determined under Section 23 of the Act and interest on the said amount of compensation is required to be paid under Section 34 of the Act.

12. Section 34 of the At is not in derogation of Section 23(1-A). A juxtapose reading would show that it is a step in aid and holds thread from where Section 23(1-A) leaves it.

13. On one side Section 23(1-A) directs payment of compensation from the date of notification up to the date of the award or of dispossession while on the other hand Section 34 directs for payment of interest on the amount of compensation from the date of dispossession till the amount of compensation is paid. Sections 23(1-A) and 34 act in different fields and cover different contingencies, while Section 23(1-A) covers the field up to the date of dispossession, Section 34 talks of the situation which emerges after the dispossession. Sections are to be read in harmony and supplementary to each other.

14. On this legal question we are in conformity with the order passed by the learned Single Judge.

15. Even otherwise it will clearly appear that the question relating to compensation under Section 23(1-A) came to be settled between the parties on an earlier occasion, the State and its Officer never challenged the said part of the award. If the State wanted to challenge that part of the award then they were required to take separate proceedings. On an application filed by the petitioners, the officers of the State/Collector/Forest Settlement Officer could not pass an order contrary to the interest of the land owners.

16. Taking into consideration the totality of the circumstances, we hold that there is no force in this appeal. It is accordingly dismissed.

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