

Collector Vs. Smt. Janki Devi

Collector Vs. Smt. Janki Devi

SooperKanoon Citation : sooperkanoon.com/889100

Court : Himachal Pradesh

Decided On : Mar-13-1961

Reported in : AIR1961HP42

Judge : C.B. Capoor, J.C.

Acts : [Land Acquisition Act, 1894](#) - Section 23(1)

Appeal No. : Civil Misc. First Appeal No. 21 of 1960

Appellant : Collector

Respondent : Smt. Janki Devi

Advocate for Def. : H.C. Anand., Adv.

Advocate for Pet/Ap. : R.N. Malhotra, Adv.

Disposition : Appeal partly allowed

Judgement :

C.B. Capoor, J.C.

1. This appeal by the Collector, Bilaspur is directed against an order of Shri Chet Ram, the learned Additional District Judge Bilaspur, whereby on a reference under Section 18 of the Land Acquisition Act the respondent was awarded a sum of Rs. 540/- as compensation for loss of earnings.

2. No compensation was awarded to the respondent by the learned Collector. The learned Additional District Judge determined the net monthly income of the respondent at Rs. 45/- and awarded such income for a period of one year as compensation.

3. The first contention that has been urged on behalf of the appellant is that the learned Court erred in fixing the income of the respondent at Rs. 3/- per day and in support of that contention reliance was placed upon the statement made by the respondent herself to the effect that her daily income varied from Rs. 2/- to Rs. 2/8/-. There is no doubt that in the face of the aforesaid statement the learned Court should not have determined the daily income of the respondent at Rs. 3/- per day. I assess the same at Rs. 2/- per day.

4. It was next contended on behalf of the appellant that as was done by the lower Court, a sum of Rs. 1/8/- on account of daily wages of the respondent should be deducted from her daily income that may be determined by this Court. On behalf of the respondent on the other hand it was contended that the learned Court had no legal justification to make any deduction on account of the daily wages of the respondent. Clause (4) of Sub-section (1) of Section 23 of the Land Acquisition Act runs as below:--

'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.'

5. What has, therefore, to be primarily seen is as to whether the earnings of the respondent have been injuriously affected as a result of the acquisition of the premises in which she carried on her business. The word 'earnings' has not been defined in the aforesaid Act and it has, therefore, to be assigned its ordinary dictionary meaning. According to the Concise Oxford Dictionary that word means 'money earned' and the word 'earned' means to obtain as reward of labour or merit. Now if a person earns any money by dint of his personal labour or skill that money should normally be regarded as his earning. Different considerations would of course arise if a person engages servants or labourers to assist him in the

running of his business. In such a case the expenditure that he incurs on his establishment will be deducted from the gross income in order to ascertain his earnings.

6. The learned Additional District Judge has not cited any authority in support of his view and it was conceded by the learned counsel for the appellant that there was no reported Indian case on the point under consideration. In Cripps Compulsory Acquisition of Land 4-235b 10th Edition-the following statement of law finds place:--

'Compensation for loss of goodwill is usually assessed on an average of the previous three years' profits and the average profit is multiplied by the appropriate number of years' purchase. Special cases may, however, require special methods. The average profits are arrived at after deducting rent interest on capital, labour and materials and other expenses.'

7. In the case of Pearce v. Bristol Corporation, (1950) 1 P. & C. R. 367 it was held that the wages to be deducted do not include those of the claimant. In the case of Matthews v. Bristol Corporation, (1954) 4 P. & C. R. 401 remuneration of the claimant as well as the wages of the employees was deducted, but in a later case Perezic v. Bristol Corporation, (1955) 5 P. & C. R. 237, the Tribunal refused to deduct from the gross profits the wages of the owner of a one-man business. The better opinion seems to be that in assessing the amount of compensation for loss of earnings of a businessman ousted from his business premises as a result of acquisition of the same no deduction should be made on account of the assumed daily wages of the claimant. The aforesaid cases have been noticed in the aforesaid Treatise by Cripps at pages 4169 and 4171.

8. I am, therefore, of the opinion that the learned Court erred in making a deduction of Rs. 1/8/- on account of the daily wages of the respondent.

9. The only other question that arises for determination is as to whether the learned Court was justified in awarding to the respondent 12 months income as loss of earnings.

10. In dealing with other similar cases I have held that normally a businessman ousted from his business premises as a result of proceedings under the Land Acquisition Act will be sufficiently compensated if he is awarded six months income.

11. The respondent carried on the work of a tailor and normally she should not take more than six months time to re-establish her business in some other locality. I, therefore, award to the respondent a sum of Rs. 360/- as compensation for loss of earnings.

12. The appeal is accordingly accepted in part, the order of the learned Additional District Judge is modified and a sum of Rs. 360/- is awarded to the respondent as compensation for loss of earnings. In the peculiar circumstances of the case no order is made as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com