

A CHANABASAPPA

v.

KARNATAKA NEERAVARI NIGAM LTD. & ANR.

(Civil Appeal No. 475 of 2020)

B JANUARY 21, 2020

[ARUN MISHRA AND INDIRA BANERJEE, JJ.]

Land Acquisition Act, 1894:

- s. 34 – Payment of interest under – Whether from the date of award or from the date prior thereto – Construction of dam after acquisition of land – Submergence of land in question after the full reservoir level breached in the year 1991 – Acquisition process of land in question started in the year 2007 – Award of compensation – High Court enhanced the compensation amount and directed payment of interest from the date of award i.e. 23.7.2009 – Appeal to Supreme Court seeking interest w.e.f. 1991 – Held: Interest u/s. 34 can start only from the date the possession of the acquired land is taken – No interest can be claimed for the period prior to s. 4 Notification – When possession is taken prior to issuance of preliminary Notification, land-owner is only entitled to rent or damage for use and occupation – In the present case submergence/possession of the land is disputed – Claim of damages would depend upon the factum whether the land has come under submergence in the year 1991 – The Collector is directed to examine whether the land in question came under submergence in 1991 and thereupon determine the quantum of damages to be paid from 1991 till the date of Notification u/s. 4 – If submergence proved, the land-owner shall be entitled to interest u/s. 34 also from the date of s. 4 Notification till the date of award.

Disposing of the appeal, the Court

- G HELD: 1. Interest under Section 34 or Section 28 of Land Acquisition Act, 1894 can start only from the date the possession of the land is taken. Unless there is a case of urgency under Section 17(1) of the Act where possession has been taken, or the acquisition process is initiated, in such cases, compensation would be payable by virtue of provisions of Section 17 of the Act.
- H [Para 6] [28-E-F]

Lila Ghosh v. State of West Bengal (2004) 9 SCC 337 : [2003] 5 Suppl. SCR 599 – relied on.

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2. In a case where the land-owner is dispossessed prior to the issuance of preliminary notification under Section 4 of the Act, it is open to the land-owner to recover the possession of his land by taking appropriate legal proceedings. Therefore, he is only entitled to get rent or damage for use and occupation for the period the Government retains possession of the property. When possession is taken prior to issuance of preliminary notification, the Collector may also determine the rent or damages. [Para 7] [29-C-E]

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R.L. Jain v. DDA & Ors. (2004) 4 SCC 79 : [2004] 2 SCR 1156 – relied on.

3. No interest can be claimed for the period prior to the Section 4 notification. Where possession has been lost prior to initiation of the acquisition proceedings, the land-owners can claim rent or damages before the Collector. [Para 9] [30-D-E]

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Special Land Acquisition Officer v. Karigowda & Ors. (2010) 5 SCC 708 : [2010] 5 SCR 164 – relied on.

4. On considering the provisions of Section 23, while determining the compensation under Section 23(1) of the Act, the Court shall take into consideration firstly, the market value of the land on the date of publication, secondly, the damage sustained by reason of taking of any standing crops or trees and other damages at the time of taking possession. Under Section 23(1)(A) of the Act, the additional compensation is awarded at the rate of twelve percent per annum on the market value from the date of notification under Section 4. Under Section 23(1A) of the Act, in addition to the market value, thirty percent solatium is awarded on such market value. [Para 11] [31-F-H]

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Siddhappa Vasappa Kuri & Anr. v. Special Land Acquisition Officer & Anr. (2002) 1 SCC 142 : [2001] 4 Suppl. SCR 236 – relied on.

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5. Under Section 34, nine percent interest is payable for the first year from the date of taking possession, and in case it is not paid within one year from the date of possession, the

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- A interest at the rate of fifteen percent per annum is payable. [Para 13] [32-D]
 - 6. In the instant case, the date of taking of the possession/ submergence is disputed, and there is no categorical finding recorded that area in question came under submergence with effect from the year 1991 and was not as a matter of fact in possession of the appellant. Certain documentary evidence has been pointed out, indicating that the land was in cultivating possession of the appellant. It is also not clear for how much period of a year the area in question remained in submergence. Certain documents have been filed by the appellant in this Court
- B in the form of correspondence showing that certain survey numbers in various villages came under submergence, which was required to be acquired. The claim of damages would depend upon the factum whether the land has come under submergence in the year 1991 for which adequate directions have been issued by the High Court to the Collector. [Para 15] [12-F-H]

- C 7. In these circumstances, the Collector is directed to examine whether the area had come under submergence and shall determine the quantum of damages to be paid from 1991 till the date of notification under Section 4. In case the area has
- E come in submergence, then the appellant shall be entitled to the interest under Section 34 from the date of notification under Section 4 till award also. [Para 16] [33-B-D]

Case Law Reference

[2003] 5 Suppl. SCR 599	relied on	Para 6
F [2004] 2 SCR 1156	relied on	Para 7
[2001] 4 Suppl. SCR 236	relied on	Para 8
[2010] 5 SCR 164	relied on	Para 9

- CIVIL APPELLATE JURISDICTION : Civil Appeal No. 475
of 2020.
- G From the Judgment and Order dated 17.02.2016 of the High Court of Karnataka, Circuit Bench at Dharwad in M.S.A. 552 of 2012 (LAC).

H Gourab Banerji, Sr. Adv., Arjun Krishnan, Ankur Singh, Ms. Shourya Bari, Raka Chatterjee, Ms. Ishita Mishra, Advs. for the Appellant.

Naveen R. Nath, Mrs. Lalit Mohini Bhat, Rahul Jain, Advs. for A
the Respondents.

The Judgment of the Court was delivered by

ARUN MISHRA, J.

1. This appeal has been preferred by the appellant-claimant B
aggrieved by the judgment and order dated 17.02.2016 passed by the
High Court of Karnataka, Circuit Bench at Dharwad, enhancing the
compensation to Rs.3,00,000/- per acre. Interest under section 34 of
the Land Acquisition Act, 1894 (for short, “the Act”) has also been
awarded from the date of the award, i.e. 23.07.2009 and not for the
period prior thereto.

2. Notification under section 4 was issued on 7.6.2007 for D
acquiring *inter alia* the land belonging to the appellant, and the award
was passed on 23.7.2009. It was submitted that under Malprabha
Reservoir Project, a dam was constructed in the district of Belgaum
across the Malprabha river by the Government of Karnataka. The
original height of the dam was 2074.5 feet. This was raised to 2079.5
feet. However, while raising the height, a proper survey was not
conducted as to the land which would come under submergence. As
a result thereof, in the year 1991 when the full reservoir level breached,
water entered into those lands which were not acquired. The issue
was raised in the Karnataka Legislative Assembly on 6.9.1991; however,
the acquisition process was initiated belatedly in the year 2007.

3. Notification under section 4 of the Act was issued on 7.6.2007. F
Declaration under section 6 of the Act was issued on 15.12.2007. The
award was passed on 23.7.2009, awarding a sum of Rs.56,672/- per
acre. Reference was sought on 1.9.2009, claiming compensation at
the rate of Rs.5,00,000/- per acre. The Senior Civil Judge, Bailhongal,
awarded a sum of Rs.2,70,000/- per acre. Aggrieved by the decision,
an appeal was preferred before the District Court. The District Court
reduced the compensation to Rs.2,25,000/- per acre by applying the
capitalization method. Aggrieved thereby, Misc. Second Appeal was
preferred in the High Court. The High Court awarded compensation
at the rate of Rs.3,00,000/- per acre. By the impugned order, the High
Court ordered payment of interest from the date of award, i.e.
23.7.2009, and not from the date of notification issued under section 4
or w.e.f. 1991. Hence this appeal has been preferred.

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- A 4. It was submitted by Shri Gaurav Banerjee, learned senior counsel appearing on behalf of the appellant that, as a matter of fact, the area came under submergence in the year 1991. Thus, the damages ought to have been awarded from the year 1991 till the date of notification under section 4, and interest under section 34 should have been awarded with effect from the date of notification under section 4.
- B 4. It was submitted that rent or damages may be awarded as the amount of interest to be awarded under section 34 of the Act.
- C 5. On the other hand, Shri Naveen R. Nath, learned counsel appearing for the respondent submitted that no case is made out to award the compensation from 1991 or from the date of notification under section 4. He also disputed that the area came under submergence from the year 1991 and submitted that several documents from the year 1993 to 2005 had been placed on record showing cultivation on the disputed land. Inquest conducted in the presence of panchas dated 9.6.2009 is on record in which crops of sugarcane, wheat, jwar, cotton
- D are shown. An inspection of the land was conducted on 20.07.2008, which shows the existence of open well, borewell in the said land. Thus, having claimed to be in cultivation possession of the land, the appellant cannot be said to be entitled for any compensation for the period 1991 till the date of the notification. Interest has been awarded from the date of the award. As such no interference is called for in the matter.
- E 6. In *Lila Ghosh v. State of West Bengal* (2004) 9 SCC 337, this court held that interest under section 34 or section 28 can start only from the date the possession is taken. Unless there is a case of urgency under section 17(1) of the Act where possession has been taken, or the acquisition process is initiated, in such cases, compensation would be payable by virtue of provisions of section 17 of the Act. This Court observed :
- G “19. Even though the authority in *Shree Vijay Cotton & Oil Mills Ltd* (1991) 1 SCC 262 appears to support the claimants, it is to be seen that apart from mentioning Sections 28 and 34, no reasons have been given to justify the award of interest from a date prior to commencement of acquisition proceedings. A plain reading of Section 34 shows that interest is payable only if the compensation, which is payable, is not paid or deposited before taking possession. The question of payment or deposit of compensation will not arise if there is no acquisition proceeding.

In the case where possession is taken prior to acquisition proceedings, a party may have a right to claim compensation or interest. But such a claim would not be either under Section 34 or Section 28. In our view, interest under these sections can only start running from the date the compensation is payable. Normally this would be from the date of the award. Of course, there may be cases under Section 17, whereby invoking urgency clause possession has been taken before the acquisition proceedings are initiated. In such cases, compensation, under the Land Acquisition Act, would be payable by virtue of the provisions of Section 17. As in cases under Section 17, compensation is payable; interest may run from the date possession was taken. However, this case does not fall into this category.”

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(emphasis supplied)

7. In *R.L. Jain v. DDA & Ors.* (2004) 4 SCC 79 this Court held that in a case where the landowner is dispossessed prior to the issuance of preliminary notification under section 4 of the Act, it is open to the landowner to recover the possession of his land by taking appropriate legal proceedings. Therefore, he is only entitled to get rent or damage for use and occupation for the period the Government retains possession of the property. When possession is taken prior to issuance of preliminary notification, the Collector may also determine the rent or damages. This Court has observed thus:

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“18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act, the Government merely takes possession of the land, but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment

A of such amount appropriate interest at prevailing bank rate may be awarded.”

8. In *Siddhappa Vasappa Kuri & Anr. v. Special Land Acquisition Officer & Anr.* (2002) 1 SCC 142 this Court has laid down:

B “6. It is, as we see it, clear from Section 23(1-A) that the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per centum per annum on the market value, is the date of publication of the Section 4 notification. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier. In the present case, possession of the land having been taken prior to the publication of the Section 4 notification, that terminal is not available. The only available terminal is the date of the award. The High Court, therefore, was in no error in holding that the appellants were entitled to the additional compensation under Section 23(1-A) for the period 8-3-1991 to 6-2-1993.”

D 9. In the *Special Land Acquisition Officer v. Karigowda & Ors.* (2010) 5 SCC 708 has observed that no interest can be claimed for the period prior to the Section 4 notification. Where possession has been lost prior to initiation of the acquisition proceedings, the landowners can claim rent or damages before the Collector. Following observations

E have been made in *Karigowda* supra:

F “101. As is evident from the above dictum of the Court, despite dispossession, the title continues to vest in the landowners and it is open for the landowners to take action in accordance with law. Once notification under Section 4(1) of the Act has been issued and the acquisition proceedings culminated into an award in terms of Section 11, then alone the land vests in the State free of any encumbrance or restriction in terms of provisions of Section 16 of the Act. The court, in situations where possessions have been taken prior to issuance of notification under Section 4(1) of the Act, can direct the Collector to examine the extent of rent or damage that the owners of land would be entitled to, the provisions of Section 48 of the Act would come to aid and the court would also be justified in issuing appropriate direction. This was the unequivocal view expressed by the Court in *R.L. Jain case* as well. This legal question is no more open to controversy and stands settled by this Court. We would follow the view taken

and accept the contention of the appellant State that the Reference Court as well as the High Court could not have granted any interest under the provisions of the Act, for a date anterior to the issuance of notification under Section 4 of the Act. However, following the dictum of the Bench in *R.L. Jain case*, we direct the Collector to examine the question of payment of rent/damages to the claimants, from the period when their respective lands were submerged under the backwater of the river, till the date of issuance of the notification under Section 4(1) of the Act, from which date, they would be entitled to the statutory benefits on the enhanced compensation.”

10. In *Karigowda* supra, the question came up for consideration as to interest payable on taking of possession. This Court considered various issues and observed that the decision of Larger Bench in *R.L. Jain's* case (supra) is binding. It has been observed that once notification under section 4(1) has been issued and the award has been passed, then only the land will vest in the State. In case its possession has been taken earlier to the issuance of notification under section 4(1) of the Act, the Court can direct the Collector to examine the extent of rent or damage that the owners of the land would be entitled to. The Collector was directed to examine the question of payment of rent/damages from the period their respective lands were submerged in the backwater of the river, till the date of issuance of notification under section 4(1) from which date, they would be entitled to claim benefits on the enhanced compensation. The question of interest arises after the date of notification under Section 4 and not prior to under section 28 or 34 of the Act.

11. When we consider the provisions of section 23, while determining the compensation under section 23(1) of the Act, the Court shall take into consideration firstly, the market value of the land on the date of publication, secondly, the damage sustained by reason of taking of any standing crops or trees and other damages at the time of taking possession. Under section 23(1)(A) of the Act, the additional compensation is awarded at the rate of twelve percent per annum on the market value from the date of notification under section 4. Under section 23(2) of the Act, in addition to the market value, thirty percent solatium is awarded on such market value.

- A 12. In the present matter, we are concerned with the question of interest to be awarded under section 34. Section 34 of the Act is extracted hereunder:
- B “34. 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:
- C [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.]”
- D 13. Under section 34, nine percent interest is payable for the first year from the date of taking possession, and in case it is not paid within one year from the date of possession, the interest at the rate of fifteen percent per annum is payable.
- E 14. In the present matter, interest has been awarded from the date of the award under section 34, not from the date of notification under section 4. It was submitted on behalf of the respondents that it was not claimed before the reference court that possession was deprived of in the year 1991. Compensation / Damages were not claimed from the year 1991 and the factum of submergence has been disputed.
- F 15. In the instant case, the date of taking of the possession/ submergence is disputed, and there is no categorical finding recorded that area in question came under submergence with effect from the year 1991 and was not as a matter of fact in possession of the appellant.
- G Certain documentary evidence has been pointed out, indicating that the land was in cultivating possession of the appellant. It is also not clear for how much period of a year the area in question remained in submergence. Certain documents have been filed by the appellant in this Court in the form of correspondence showing that certain survey numbers in various villages came under submergence, which was

required to be acquired. The question is, which were those survey numbers that came under submergence has to be examined by the Collector. The claim of damages would depend upon the factum whether the land has come under submergence in the year 1991 for which adequate directions have been issued by the High Court to the Collector.

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16. In these circumstances, we direct the Collector shall examine whether the area had come under submergence and shall determine the quantum of damages to be paid from 1991 till the date of notification under section 4. In case the area has come in submergence, then the appellant shall be entitled to the interest under Section 34 from the date of notification under Section 4 till award also. Interest under Section 34 at the most can follow from the date of notification under section 4, in case the area had come under submergence at any point of time before the notification was issued. The Collector shall determine the aforesaid aspect within six months after hearing the parties and the evidence as may be adduced. The appeal is accordingly disposed of.

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Kalpana K. Tripathy

Appeal disposed of.