

**THE HIGH COURT OF TRIPURA
AGARTALA**

L.A. APP. 09 of 2008

1. The Executive Engineer,
Minor Irrigation & Flood Control,
M I, Division No. – 1 (renamed as Water Resources
Department, Division No. – II)
Agartala, Tripura West.
2. The Land Acquisition Collector,
Agartala, Tripura West.

..... *Appellants.*

- Vs -

Sri Madhusudhan Bhowmik,
S/O. – Late Bipin Behari Bhowmik,
Resident of Barnarayan, P.O. – Bejimara,
Sonamura, Presently residing at Barjala,
Agartala, P.S. – West Agartala,
District – West Tripura.

..... *Respondent.*

C.O. (FA) 08 of 2008

Sri Madhusudhan Bhowmik,
S/O. – Late Bipin Behari Bhowmik,
Resident of Barnarayan, P.O. – Bejimara,
Sonamura, Presently residing at Barjala,
Agartala, P.S. – West Agartala,
District – West Tripura.

..... *Cross Objector.*

- Vs -

1. The Executive Engineer,
Minor Irrigation & Flood Control,
M.I. Division No. – 1 (renamed as Water Resources
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2. The Land Acquisition Collector,
Agartala, Tripura West.

..... *Respondents.*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Appellants/ : Mr. G.S. Bhattacharjee, Advocate.
Respondents

For the Respondent/ : Mr. K.N. Bhattacharjee, Sr. Advocate.
Cross-Objector : Mr. R. Debnath, Advocate.

Date of hearing : 22.09.2014.

Delivery of : 26.09.2014.
Judgment & order

Whether fit for : YES/NO.
reporting

JUDGMENT & ORDER

By means of this Judgment, L.A. APP No. 09 of 2008 and CO (FA) 08 of 2008 are being disposed of as they arise out of the same judgment.

2. Briefly stated the facts relevant of the case are that by Notification dated 28.10.1977 issued under Section 4 of the Land Acquisition Act, 1994, 1.13 acres of land was acquired for the purpose of diversion of River Gomati at Rangamati. Thereafter, another Notification under Section 4 was issued on 23.10.1979 whereby, another area of 0.13 acre was acquired. It is not disputed that thereafter, the matter was decided by the Land Acquisition Collector and compensation was paid to the petitioners. Thereafter, construction work was done at the spot. The petitioners did not raise any dispute with regard to the area of land at that time. 22 years after the first Notification was issued in the

year 1989, the petitioners filed a petition alleging that while utilizing the acquired lands for diversion of River Gomati, the State had encroached upon a further area of 1.02 acres. Writ petition in this regard was filed in the year 1999. During the course of the Writ Petition, an inquiry committee was constituted which submitted a report that in fact, the land in possession of the acquiring department was 0.54 acres in excess of the land acquired. Thereafter, the writ petition was disposed of with the following direction:-

"In that view of the matter, this writ petition is disposed of with a direction that the respondent i.e. the acquiring Department shall acquire the said excess land measuring 0.54 acres by payment of compensation in accordance with law within a period of 6 (six) months from the date of receipt of this order.

With the aforesaid direction this writ petition stands disposed of."

3. Consequent to the Judgment of the Division Bench, the 0.54 acres of land was also acquired by the State Government and notification under Section 4 was issued on 8th November, 2004. Thereafter, the Land Acquisition Collector assessed the market value of the land measuring 0.54 acres at Rs. 81,000/- and awarded additional compensation solatium and interest on the same. The land owner being dissatisfied by the assessment made by the Land Acquisition Judge filed a petition for enhancement of compensation and in this petition, they also claimed that interest on the compensation from the date of possession, which was taken over in the year 1978. The claimants also claimed that they could

not grow vegetables in the land since 1978 and they would have earned at least Rs. 75,000/- per year and later Rs.1,00,000/- per kani by growing vegetables on the land. One of the petitioners appeared in the witness box and made a similar statement. He stated that the production of vegetables is worth about Rs.1,00,000/- per year and since he was deprived of the land since 26 years, he is entitled to compensation of Rs.26,00,000/-.

4. It appears that the department was proceeded against *ex parte* and the learned Land Acquisition Judge vide Judgment dated 04.07.2007 relying upon one sale deed assessed the value of the land at Rs. 6,00,000/- per kani i.e. Rs. 1,50,000/- per kani. He also assessed the loss of mesne profit @ Rs. 15,000/- per year from the year 1978 till 2004 and the total loss was assessed Rs.3,90,000/-. The Land Acquisition Judge further directed that on this amount of Rs.3,90,000/-, the claimant would be entitled interest @ 9% per annum from the date of notification for one year and thereafter, @ 15% on the enhanced rate. Land Acquisition Appeal 09 of 2008 has been filed by the State challenging the validity of the law. It is urged that the department was wrongly proceeded against *ex parte* and the matter should be remanded. It is further urged that the learned Judge has assessed the loss of earnings at a very high level and that in fact, no award has been made under the same.

5. The land owners have filed cross objection in which they have claimed Rs. 13,00,000/- as mesne profits and have also claimed compensation @ Rs. 10,00,000/- per kani. As far as the rate of compensation assessed at Rs. 6,00,000/- per kani is concerned, in view of the sale deed relied upon by the claimants which gives the value of land at Rs. 7,00,000/- and the land of the petitioners being agricultural land as compared to the land in the sale deed which was urban land the assessment made by the learned Land Acquisition Judge is just and reasonable calling for no interference. The main issue, which arises in this petition, is whether the Land Acquisition Judge had power to grant compensation in respect of the damage suffered due to long utilization of land from the date when possession of the land was taken over till the date when Notification under Section 4 was issued and what interest should have been awarded thereon.

6. Mr. Bhattacharjee, learned counsel has placed reliance on the Judgment of the Apex Court in **R.L. Jain (D) By Lrs. Vs. DDA And Others, (2004) 4 SCC 79**, wherein in similar circumstances, the Apex Court held that where possession of the land had been taken over prior to the issues of notice under Section 4, the Land Acquisition Judge is not entitled to award interest or grant damages. After discussing the entire law on the subject, the Apex Court held as follows:-

"18. In a case where the land owner 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 of such amount appropriate interest at prevailing bank rate may be awarded.

19. The case may be examined from the equitable consideration as well. In the earlier acquisition proceedings the notification under Section 4(1) had been published on 13.11.1959 and the Collector had made an award for Rs.6301 for the plot in dispute on 30.12.1961. The award was made within 1½ months of dispossession which allegedly took place on 10.11.1961. This amount was paid to R.L. Jain and was retained by him. Learned counsel for the respondent has placed before the Court a copy of the sale certificate issued in favour of R.L. Jain on 31-8-1961 which shows that the plot was purchased by him for Rs. 3200 only and thus he had received almost double amount of compensation. Therefore, even on equitable ground he is not entitled to any amount from the date of dispossession till the date of second notification under Section 4(1) of the Act which was issued in 1992."

A perusal of this decision shows that the Apex Court clearly held that the amount to be awarded as compensation for the period prior to issuance of Notice under Section 4 of the Act was not an amount awarded under the Land Acquisition Act and is an amount awarded de hors the Act. Further the Apex Court held that on such amount only interest at prevailing bank rate may be awarded. It was clearly laid down that the interest as provided under the provisions of the Land Acquisition Act could not be awarded on such amount.

7. Reliance has also been placed on the Judgment of the Apex Court in ***Revenue Divisional Officer, Kurnool District Vs. M. Ramakrishna Reddy (Dead) By Lrs., (2011) 11 SCC 648***, wherein the Apex Court decided the question as to whether mesne profits could be awarded. The Apex Court held that where possession is taken prior to the date of notification under Section 4(1) of the Act, no additional amount is awardable under Section 23(1-A) of the Act and the award of such amount cannot be sustained. The Apex Court, however, went on to hold that if possession of the land had been taken over before the proceeding under the Land Acquisition Act was initiated then the land owner may be entitled to compensation for wrongful use and occupation of the land till date of notification under Section 4(1) of the Act.

The relevant portions of the Judgment are as follows:-

"11. The Reference Court has awarded additional amount under Section 23(1-A) at 12% per annum from the date of preliminary notification (27-8-1993). Award of additional amount under Section 23(1-A) of the Act would arise only where the possession is taken after the issuance of notification under Section 4(1) of the Act. Section 23(1-A) permits additional amount to be awarded from the date of notification under Section 4(1) of the Act to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. Where possession is taken prior to the date of notification under Section 4(1) of the Act, no additional amount is awardable under Section 23(1-A) of the Act. Award of such amount cannot be sustained."

"12. This appeal raises yet another issue. The Reference Court has awarded interest under Section 28 of the Act from the date of possession, that is 8-6-1988, and not from the date of notification under Section 4(1) of the Act. The High Court has not interfered with the award of such interest. The appellant relied upon the decisions of this Court in R.L. Jain Vs. DDA, (2004) 4 SCC 79 and in Land Acquisition Officer V. Karigowda, (2010) 5 SCC 708 to contend that interest could be awarded only from the date

of notification under Section 4(1) of the Act, even where possession had been taken on a date prior to the date of preliminary notification. We, therefore, hold that interest under Section 28 of the Act could have been awarded only from the date of preliminary notification, even if possession was taken prior to the date of the preliminary notification.

15. It is clear that even if the landowner may not be entitled to interest from the date of possession but only from the date of preliminary notification, he will be entitled to compensation for wrongful use and occupation from the date of actual dispossession till the date of notification under Section 4(1) of the Act. In this case, there is already a clear finding that the loss of income per year is Rs.94,500/- from the acquired lands. Therefore, instead of relegating the parties for a further enquiry in regard to damages for wrongful use and occupation from the date of dispossession to date of preliminary notification, we proceed to determine the same at Rs.94,500/- per annum for the period from 8-6-1988 to 27-8-1993 (which is rounded off to five years) with interest at 6% per annum from 30.6.1994 to date of payment."

8. It has been urged on behalf of the land owner that they have been deprived of their earnings and in terms of Section 23 of the Land Acquisition Act, the petitioner has lost his earnings and therefore, he is entitled to not only the loss of earnings but also interest on the said amount as per the provisions of the Land Acquisition Act. I am not at all in agreement with such submission. As held by the Apex Court, any payment or award for damages/rent or loss of earnings for the period prior to the date of notification issued under Section 4 is an amount payable de hors the Act and not under the Act. Therefore, the interest is not payable in terms of Section 28 or 34 of the Act.

9. The next question which arises in this case is whether the claimants are entitled to damage for the entire period or not.

As pointed out above, the illegal possession by the Government was done sometime in the year 1978 or 1979. According to the claimants, they never lived in the area thereafter and went to live in Orissa to which State they belonged. It is, therefore, obvious that they could not have looked after the land. For more than two decades, the petitioners did not raise any grievance and they raised a grievance only on 02.07.1999, when they filed the writ petition. The petitioners slept over this matter for 21 years and now they cannot be granted compensation for the period for which they were completely lax. The first notice was sent by the petitioner only on 05.08.1999 and I am clearly of the view that they are entitled to damages only from the said date till date of issuance of notification under Section 4 i.e. 8th November, 2004.

10. Mesne profits have been assessed by the learned Land Acquisition Judge at Rs. 15,000/- per year and I accept this to be correct since there is no evidence led to the contrary. However, the claimants shall be entitled to this amount only from 5th August, 1999 when they issued the notice till the date of notification i.e. 8th November, 2004 i.e. for 4 years and 3 months and @ Rs. 15,000/- per year. This works out to Rs. 63,750/-. On this amount, the claimants are not entitled to interest as per the Land Acquisition Act and they are awarded interest on this amount @ 9% per annum with effect from 08.11.2004 till payment of the same.

11. In view of the above discussion, the appeal filed by the acquiring department is allowed. Though the compensation for the value of the land is upheld, the compensation for mesne profits/damages is reduced from Rs. 3,90,000/- to Rs. 63,750/-. Furthermore, on this amount, the claimants shall only be entitled to interest @ 9% per annum from the date of notification i.e. 08.11.2004 till payment of the amount.

12. The Cross Objection filed by the cross objectors are dismissed.

CHIEF JUSTICE

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