

ASTEKAAR NAGANAATHA RAO AND ORS. ETC.

v.

THE ASSISTANT COMMISSIONER AND LAND ACQUISITION
OFFICER AND ORS. ETC.

JANUARY 5, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Land Acquisition Act, 1894 :

Lands acquired for establishment of Air Force Station—Civil Court enhancing compensation adopting method of hypothetical lay out—High Court rejecting the method adopted—Since the land other than the land acquired were not available for sale in open market, held High Court rightly rejected the method—On appeal, in response to Supreme Court's suggestion parties agreeing for Rs. 45,000 per acre with solatium at 30% and additional amount at 12% per annum under S. 23(1A) from taking possession—Ordered accordingly—Interest entitlement at 9% from date of publication of notification and 15% from date of expiry of one year thereof—Land revenue not to be deducted from amount payable as rent.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1616-25 of 1996.

From the Judgment and Order dated 12.11.91 of the Karnataka High Court in M.F.A. Nos. 1821, 1769, 1772-73, 1775, 1797-99, 1815 and 1916 of 1989.

S.S. Javali R.K. Anand C.S. Kothwale, Ms. Kiran Suri, R.C. Mishra, Ms. Dr. Meera Aggarwal, Ms. Anil Katiyar, Ms. Sushma Suri, A.D.N. Rao, K.H. Nobin singh and M. Veerappa for the appearing parties.

The following Order of the Court was delivered :

Leave granted.

Around 300 acres of agricultural land situated in Sambre (Belgaum Airport), Balekundri, Mutage were requisitioned in 1942, possession thereof was taken in 1942 and the court below had put the date on December 31, 1942, for the defence purposes, via., establishment of Air Force Station. The notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") acquiring these lands was published on February 24, 1983. The Land

Acquisition Officer (LAO) determined the compensation @ Rs. 6,000 per acre. On reference, the civil Court enhanced the compensation to Rs. 70,400 per acre adopting the method of hypothetical lay-out. The High Court in the impugned judgment made in MFA Nos. 1821/89 & batch remanded the matters without upholding the hypothetical lay-out giving reasons in support thereof. (When the lands are frozen for open sale the hypothetical lay-out is an artificial embellishment to award higher compensation). The question would arise : Whether the lands other than the acquired land, were available for sale in the open market. In 1942, when possession was taken as agricultural land for air field, the lands could not have been sold in 1942 for building purposes as hypothetical for lay-out. The High Court was, therefore, right in rejecting the application of principle of hypothetical lay-out which is but a figment.

In view of the fact that cases are pending for a long time, we have suggested to the counsel for the Union of India as well as for the claimants to have a negotiation for settlement of the amount. We are informed that pursuant to directions of this Court the parties have settled the amount at Rs. 45,000 per acre with solatium at 30% and also entitlement of additional amount at 12% per annum under Section 23(1-A) of the Act, payable from the date of taking possession. The only point on which the parties could not reach a consensus is the entitlement to payment of interest. It is contended by Shri Javali, the learned senior counsel that from 1942 no amount as rent has been paid and now stated to have been paid partly a sum for 1975-76 to 1982 and it cannot be considered to be lease amount. In view of the settlement by the parties that the compensation payable to the appellants is Rs. 45,000 per acre, the question of determination of the compensation does not arise. Consequently, they are also entitled to the compensation at that rate and solatium at 30% and also additional amount at 12% under Section 23(I-A) of the Act, as agreed upon by the parties, from the date of taking possession which the Court has fixed viz., December 31, 1942. In other words, the claimants would be entitled to the additional amount from January 1, 1943 till the date of publication of notification under Section 4(1). The question that arises for consideration is from what date the appellants are entitled to interest. The additional affidavit filed in this Court would show that the Tehsildar had directed the Union of India payment of rent to the owners of the land and to send the same for the period from 1975-76 to 1981-82. In other words, upto December 31, 1982, he directed a sum of Rs. 2,60,683.98 to be sent. Accordingly, a demand draft dated January 2, 1984 was sent to the Tehlisdar. For the earlier period, no record was available in their office. Therefore, no direction for payment for the said period was given. We agree that it would

be difficult to decide whether payment of rent was paid for the earlier period. It would appear that the Tehsildar deducted Rs. 1,99,815.07 towards land revenue and a sum of Rs. 46,174.05 was paid to the claimants towards rent. That appropriation appears to be obviously incorrect. They could not deduct the land revenue from the amount payable to the appellants as rent. Consequently, the respondents are liable to pay the rent payable to the tune of Rs. 2,60,683.98 for the above period. The Tehsildar shall accordingly make over the payment. Out of total amount, it is an admitted case, that Rs. 46,174.05 has already been paid to the respective persons. Giving credit to the amount already received, the balance amount shall be paid to the land owners.

Since notification under Section 4(1) of the Land Acquisition was published on February 24, 1983, the appellants are entitled to interest @ 9% for one year from that date and on expiry thereof, they are entitled to the payment of 15% from 25th February 1984 till the date of deposit.

The appeals, accordingly, are allowed as indicated above. No costs. The respondent are directed to pay the amount without a period of six months from the date of the receipt of this Order.

Appeal allowed.