A THE SPECIAL TEHSILDAR (LA) P.W.D. SCHEMES, VIJAYAWADA

v.

M.A. JABBAR

JANUARY 11, 1995

B

[K. RAMASWAMY AND SUJATA V. MANOHAR, JJ.]

Land Acquisition Act, 1894—Amendment Act 68/84 :

C *S.23(1-A)—Additional amount—Claimant entitled from date of publication of notification under s. 4(1) till date of award since possession taken before the Amending Act.*

A notification under s.4(1) of the Land Acquisition Act was published on March 6, 1980, though possession of the land was taken on February
D **15, 1965. The award was made by the Collector on September 30, 1983. On appeal, the High Court determined the compensation at Rs. 120 per sq. yard and awarded solatium @ 30% on enhanced compensation.**

In this appeal, the State contended that since possession had already been taken prior to the Amending Act 68 of 1984 came into force, the
E **claimant was not entitled to additional amount.**

In the cross-appeal, the respondent-claimant contended that since possession was already taken and the owner was deprived of the enjoyment of the land, additional amount should be paid from the date of taking
F **possession since s. 23(1A) stipulated that the amount shall be payable from the date of the award or taking possession whichever is earlier.**

Dismissing the appeals, this Court

HELD : 1. The claimants would be entitled to additional amount of
G **the enhanced market value at 12% per annum from the date of the publication of the notification under s.4(1) of the Land Acquisition Act till the date of the award, since possession had already been taken before the Amending Act has come into force. [183-D]**

2. In interpreting (sub-s.1A) of S.23, the High Court is right in
H **concluding that the claimants are entitled to the additional amount at the**

rate of 12% per annum from March 6, 1980, the date of publication of the notification till the date of award, namely, September 30,1983. The owner of the land who has deprived of the enjoyment of the land by having been parted with possession, the Act intended that the owner be compensated by awarding an additional amount calculated at the rate of 12% per annum on the enhanced market value for the period between the date of notification and the date of award or date of taking possession of the land whichever is earlier. Admittedly, possession having already been taken on February 15, 1965, before publication of the notification under s.4(1) on March 6, 1980 the award of additional amount for the period from March 6, 1980 to September 30, 1983, i.e., the date of making the award under s.11 is perfectly correct. In addition to other statutory benefits the owner also is entitled to the additional amount but to give it from February 15, 1965, i.e. from the date of taking possession, though apparently earlier in point of time mentioned in s. 23 (1-A), in effect amounts to giving retrospective effect to Sub-s. (1-A) to s. 23 under the Amendment Act 68/84, though the Amendment Act was prospective and the transitory provision had only retro limited activity. [182-F-H, 183-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1891-92 of 1989.

From the Judgment and Order dated 8.9.88 of the Andhra Pradesh High Court in A. No. 95 of 1987.

G. Prabhakar for the Appellant.

K.R. Nagaraja for the Respondent.

The following Order of the Court was delivered :

The short point that arises for consideration in these appeals is whether the claimant-respondent in C.A. No. 1891/89 would be entitled to the additional amount in terms of s. 23(1) of the Land Acquisition Act of 1894 (for short 'the Act') from the date of taking possession, namely, February 15, 1965. Indisputably, facts are that the notification under s. 4(1) of the Act was published on March 6, 1980, though possession of the land was taken on February 15, 1965. The award under s.11 was made by the Collector on September 30, 1983. The High Court of A.P. in A.S. No. 95 of 1987 while determining the compensation at Rs. 120 per sq. yard

A awarded solatium @ 30% on enhanced compensation. The additional amount @ 12% per annum on the market value from the date of the notification from March 6, 1983 till the date of award, namely, September 30, 1983 and interest @ 9% after taking possession from 15.2.1965 till 14.2.1966 and thereafter @ 15% till the date of payment.

B This court while granting leave confined the question of entitlement of the benefits under Amending Act 68/1984. In view of the fact that the award itself was made after the Amending Act came into force, the claimant entitled to the benefits under sub- s.(2) of S.23, solatium on the enhanced marked value at 30% and also interest under s.28. The only area C of dispute is whether the claimant is entitled to additional amount under s.23(1A), and if so from what date. It is contended for the State that since possession had already been taken prior to the Amending Act 68 of 1984 has come into force, the claimant is not entitled to the additional amount. On the other hand it is contended for the claimant that since possession was already taken and the owner was deprived of the enjoyment of the D land, additional amount should be paid from the date of taking possession since it was stated under s.23(1A) that the amount shall be payable from the date of the award or taking possession which ever is earlier. Since possession was taken earlier, the claimants are entitled to the additional amount @ 12% per annum from the date of taking possession, namely, E February 15, 1965.

On a true interpretation of sub-s. (1-A) of s.23, we are of the considered view that the High Court is right in concluding that the claimants are entitled to the additional amount at the rate of 12% per F annum from March 6, 1980, the date of publication of the notification till the date of award, namely, September 30, 1983. Sub-s. (1-A) of s.23 adumbrates that "in addition to the market value of the land, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under s.4(1), in G 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". In other words, the owner of the land who has been deprived of the enjoyment of the land by having been parted with possession, the Act intended that the owner be compensated by awarding an additional amount calculated at the rate of H 12 per centum per annum on the enhanced market value for the period

between the date of notification and the date of award or date of taking possession of the land whichever is earlier. Admittedly, possession having already been taken on February 15, 1965, before publication of the notification under s.4(1) on March 6, 1980, the award of additional amount for the period from March 6, 1980 to September 30, 1983, i.e. the date of making the award under s.11 is perfectly correct. In addition to other statutory benefits, the owner also is entitled to the additional amount but to given award additional amount from February 15, 1965, i.e. from the date of taking possession, though apparently earlier in point of time mentioned in s.23 (1-A), in effect it amount to giving retrospective effect to Sub-s. (1-A) to s.23 under the Amendment Act 68/84. Even though the Amendment Act was prospective and the transitory provision had only retro limited activity.

Therefore, we hold that the claimants would be entitled to additional amount of the enhanced market value at 12% per annum from the date of the publication of the notification under s.4(1) till the date of the award, since possession had already been taken before the Amendment Act has come into force. Both the appeal by the State and cross appeal by the claimant are accordingly dismissed. No costs.

G.N. Appeals dismissed.