

CASE NO.:
Appeal (civil) 993 of 2008

PETITIONER:
TENNETI KAMESAM

RESPONDENT:
LAND ACQUISITION OFFICER

DATE OF JUDGMENT: 04/02/2008

BENCH:
ALTAMAS KABIR & J.M. PANCHAL

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO. 993 OF 2008
[Arising out of SLP(C)No.4069 of 2007]

Delay condoned.
Leave granted.

In this appeal the appellant has questioned the decision of the Andhra Pradesh High Court with regard to the Award passed in respect of the land forming the subject matter of the appeal.

The Land Acquisition Collector has, while making the Award, deducted one third of the compensation awarded towards developmental charges, although it will be seen from the materials on record that the land in question was, in fact, situated within a developed area.

Aggrieved by the aforesaid deduction in the Collector's order, the appellant has filed two statutory appeals under Section 54 of the Land

Acquisition Act, 1894, before the High Court. While disposing of the two appeals by its impugned judgment, the High Court held that the deduction made was not unreasonable and it also held that the appellant before us would be entitled to claim interest not from the date when possession of the lands had been taken over by the respondent prior to issuance of the Section 4 notice, but from the date of the Section 4 notice itself, namely, 17th May, 1989, whereas interest had been granted in the Award from 11th July, 1987, i.e. date on which possession have been taken over by the respondent.

Having heard learned counsel for the respective parties, we are unable to agree with the High Court on both counts. We are also unable to agree with the Award of the Collector as far as one-third deduction of the compensation amount is concerned.

In the impugned order itself, it has been mentioned that there was no dispute with regard to the fact that the land in question was situated in a well-developed town surrounded by several structures, residential buildings and other commercial establishments, apart from being located near a railway station and other facilities. It is, therefore, evident that the land was already situated in a developed area and the question of deduction of development charges did not, therefore, arise.

As far as the second ground is concerned, learned counsel for the appellant referred to and relied on a three-Judge Bench of this Court in the case of R.L. Jain(D) by LRs Vs. DDA and others, [2004(4)

SCC 79], wherein in paragraph 18 it has been indicated as follows:-

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

Having regard to the aforesaid decision and also having regard to the fact that in our view also the appellant would be entitled to damages for the period which is not covered by the Notification but during which period the possession of the land in question have been taken over by the respondent, we allow the appeal on both counts.

We, accordingly, set aside that portion of the Award of the Land Acquisition Collector, which provides for deduction of one-third of the compensation amount towards development charges.

We also direct that the Collector will compute the damages payable for the period between 11th July, 1987 till 17th May, 1989 and include the same in his Award and also grant interest in respect thereof.

The appeal is accordingly allowed to the aforesaid extent. There will be no orders as to costs.