

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 962 OF 2007

STATE OF WEST BENGAL

Appellant (s)

VERSUS

DEBENDRA NATH KARSHARMA & ANR.

Respondent(s)

(With office report)

WITH Civil Appeal NO. 8208 of 2003
(With office report)

Date: 07/04/2011 These Appeals were called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s)

Mr. Avijit Bhattacharjee, Adv.
Ms. Sarbani Kar, Adv.

For Respondent(s)

Mr. Santosh Mishra, Adv.
Mr. Pawan Kishore Singh, Adv.
Ms. Sharmila Upadhyay, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed
order.

(DEEPAK MANSUKHANI)
Court Master

(RENU DIWAN)
Court Master

(The signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(s). 962 OF 2007

STATE OF WEST BENGAL

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DEBENDRA NATH KARSHARMA & ANR.

Respondent(s)

WITH
CIVIL APPEAL NO. 8208 OF 2003

O R D E R

Since issues raised in these two appeals are identical, we propose to dispose of both these appeals by this common judgment and order. The appellant herein acquired land of the respondents under the provisions of the Land Acquisition Act. So far the appeal no. 962 of 2007 is concerned, it is indicated from the judgment and order of the High Court that there is no dispute that originally the proceeding was started way back in the year 1959-60 when possession of the land was taken but no award was made and subsequently on the basis of direction of the Court, an award was made by the Land Acquisition Collector. Thereafter, a separate proceeding was started being L.A. Case no. 17 of 1999-2000.

After the issuance of the notifications under Sections 4 and 6, the Land Acquisition Collector passed an award. Being dissatisfied with the aforesaid award, reference case was filed by the respondent on the basis of which case was referred to the District Judge in terms of the provisions of Section 18 of the Land

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Acquisition Act. The Reference Court having considered the case of the parties determined the compensation as against which appeal was filed before the High Court. The High Court in the impugned judgment and order enhanced the compensation and also directed for payment of the said compensation along with all other statutory benefits. Besides, an order was also passed to pay to the respondents interest over the entire compensation of 9% p.a. from the date of taking over the possession of the land till the date of issuance of the notification under Section 4. The claimants are satisfied with the judgment and order passed and the compensation awarded finally by the High Court, and, therefore, it did not prefer any further appeal. However, so far the State of West Bengal is concerned, they have accepted the quantum of market value determined and are really not aggrieved by the amount of compensation as awarded by the High Court finally but they are actually and in the real sense aggrieved by the order passed by the High Court directing for payment of interest over the entire compensation of 9% p.a. from the date of taking over the possession till the date of issuance of the notification under Section 4.

It is settled law that compensation is payable to the claimants on the basis of the notification issued under Section 4 of the Land Acquisition Act. Compensation is determined on the basis of market value as prevailing upon on the date when the notification under Section 4 is issued. Therefore, compensation in the manner of market value of the land along with all statutory benefits like additional compensation and interest are required to be calculated on the basis of the said market value which is relatable and calculated on the basis of value of the land on the date of issuance of the notification under Section 4(1) of the Land Acquisition Act.

If possession is taken by the Government prior to the issuance of the notification under Section 4, in that event, the State Government is required to pay damages/rent and not compensation or interest on compensation for the period from the date of taking over the possession of the land till the date of issuance of the notification

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under Section 4. The aforesaid position has since been also settled by this Court in R.L. Jain (D) by LR's vs. DDA and others (2004) 4 SCC

79. In paragraph 18, it was stated by this Court that 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 a title thereof continues to vest with the land owner and that it would be fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings for which he would be entitled to get rent or damages for use and occupation for the period the Government retains possession of the property.

Having held thus, this Court expressed an opinion that where possession is taken prior to the issuance of the preliminary notification, it would be just and equitable that the Collector would determine the rent or damages for use of the property to which the land owner is entitled for while determining the compensation amount payable to the land owner for the acquisition of the property. That being the position, it is now settled law that the respondents herein cannot claim interest on compensation even for the period during which the Government had taken over possession but did not issue any notification under Section 4 of the Land Acquisition Act. For the aforesaid period, as observed in the aforesaid decision, the claimants would be entitled to rent/damages for which there could be two options open. One would be for filing a civil suit for recovery of damages and the second as provided for in paragraph 18 of the aforesaid judgment.

Considering the factum of delay that would be caused if we relegate the respondents to the Civil Court for the recovery of the rent or damages, we take recourse to the second option available. We accordingly direct the Collector to consider and determine the damages/rent which may be payable to the respondent in accordance with law and as expeditiously as possible. While doing so, it shall be open to the parties to lead any evidence with regard to the entitlement to the quantum of damages/rent which shall be considered

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by the Collector in accordance with law while passing appropriate orders as against which remedy as available could be resorted to by the parties in accordance with law.

The present appeals, in terms of the aforesaid order, stand disposed of.

.....J.
(DR. MUKUNDAKAM SHARMA)

.....J.
(ANIL R. DAVE)

NEW DELHI
APRIL 07, 2011