

Bhag Singh and Others

Vs

Union Territory of Chandigarh Through The Land Acquisition Collector, Chandigarh

Civil Appeal Nos. 1519-23 of 1985

(CJI P. N. Bhagwati, A.N. Sen, D.P. Madon JJ)

14.08.1985

JUDGMENT

P. N. BHAGWATI, C.J. -

1. This appeal by special leave raises a short but interesting question of law relating to the interpretation of Section 30 sub-section (2) of the Land Acquisition (Amendment) Act, 1984 (hereinafter referred to as the Amending Act). There are divergent views expressed by different Benches of this Court in regard to the interpretation of this provision and hence it is necessary to examine this question afresh in order to arrive at a proper interpretation, particularly since the interpretation placed by us will affect the determination of compensation in a large number of cases.

2. The facts giving rise to this appeal are few and may be briefly stated as follows. On October 19, 1974 a notification was issued by the State of Punjab under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) stating that a large chunk of land admeasuring 10,768 Bighas 18 Biswas was likely to be needed for the purpose of establishment of a cantonment within the revenue estate of Bhatinda. This notification was followed by another notification issued by the State of Punjab under Section 6 of the Act declaring that the entire area admeasuring 10,768 Bighas 18 Biswas was needed for the establishment of a cantonment. The Land Acquisition Collector thereafter issued a notice under Section 9 of the Act and required persons interested in the land forming the subject matter of the declaration to submit their claims for compensation for acquisition of their interest in the land. The claims submitted by various claimants including the appellants in the present appeal were considered by the Land Acquisition Collector and he made an award on October 9, 1975 dividing the land acquired into three belts and awarding compensation at varying rates according to the belt in which a particular piece of land was situated. The appellants and other claimants being aggrieved by the award made by the Land Acquisition Collector, sought references under Section 18 of the Act and the Additional District Judge, Bhatinda, hearing the references, amalgamated belts 2 and 3 and enhanced the rates of compensation for the two belts. The appellants and the other claimants were still dissatisfied with the award made by the Additional District Judge and they thereupon preferred appeals to the High Court. On appeal, the learned Single Judge of the High Court enhanced the amount of compensation by awarding the rate of Rs. 72,600 per acre for the first belt and Rs. 25,000 per acre for the second belt and in addition, directed that the claimants shall be entitled to interest at the rate of 6% per annum and solatium at the rate of 15% on the enhanced amount of compensation. This order awarding enhanced compensation was, however, made subject to the claims put forward in the memoranda of appeal preferred by the claimants and the court fee paid on such claims. It seems that the appellants had not paid the requisite court fee on the enhanced amount of compensation and they, therefore, could not get the benefit of the order of the learned Single Judge. They accordingly preferred a Letters Patent appeal to a Division Bench of

the High Court and the other claimants also being dissatisfied with the order made by the learned Single Judge preferred Letters Patent appeals to the Division Bench. The Division Bench of the High Court, by an order dated December 8, 1982, affirmed the judgment of the learned Single Judge in regard to the rate of compensation for the land situate in first belt but so far as the land situate in the second belt was concerned, it enhanced the rate of compensation to Rs. 38,720 per acre. The Division Bench, however, restricted the benefit of the enhanced compensation only to those claimants who had made payment of proper court fee. The result was that the letters patent appeal of the appellants was dismissed, though according to the view taken by the Division Bench the appellants were entitled to the enhanced amount of compensation for acquisition of their land. The appellants thereupon preferred the present appeal with special leave obtained from this Court.

3. We are of the view that when the learned Single Judge and the Division Bench took the view that the claimants whose land was acquired by the State of Punjab under the notifications issued under Sections 4 and 6 of the Act, were entitled to enhanced compensation and the case of the appellants stood on the same footing, the appellants should have been given an opportunity of paying up the deficit court fee so that, like other claimants, they could also get enhanced compensation at the same rate as the others. The learned Single Judge and the Division Bench should not have, in our opinion, adopted a technical approach and denied the benefit of enhanced compensation to the appellants merely because they had not initially paid the proper amount of court fee. It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned Single Judge and Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice, with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen. We are, therefore, of the view that, in the present case, the Division Bench as well as the learned Single Judge should have allowed the appellants to pay up the deficit court fee and awarded to them compensation at the higher rate or rates determined by them.

4. But this view taken by us does not put an end to the present appeal because another more important question has been raised before us arising out of Section (30 sub-section 2) of the Amending Act. The appellants on the basis of this provision, have contended that they are entitled

to be paid solatium at the rate of 30% of the compensation ultimately awarded to them instead of 15% awarded by the Division Bench as also interest at the rate of 9% instead of 6% per annum on the enhanced amount of compensation. It is necessary, in order to adjudicate upon the validity of this contention, to refer to a few relevant provisions of the Act as it stood prior to its amendment by the Amending Act. Section 23 sub-section (2) of the unamended Act provided inter alia as follows :

23(2). In addition to the market-value of the land, as above provided, the court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Section 28 of the unamended Act provided for payment of interest on excess compensation in the following terms :

If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into court.

The Act was amended by the Amending Act with effect from September 24, 1984. Section 15 clause (b) of the Amending Act reads as follows :

15. In Section 23 of the principal Act :

#(a) \* \* \*##

(b) in sub-section (2), for the words "fifteen per centum", the words "thirty per centum" shall be substituted.

Section 18 clause (a) of the Amending Act provides that "in Section 28 of the principal Act for the words 'six per centum' the words 'nine per centum' shall be substituted". Section 30 sub-section (2) is the material provision which falls to be construed and since the entire controversy between the parties turns upon the true interpretation of this provision, we may reproduce it in extenso. It runs as follows :

30(2). The provisions of sub-section (2) of Section 23 and Section 28 of the principal Act, as amended by clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.

The question is as to what is the extent to which retrospective effect is given by the provision enacted in Section 30 sub-section (2). Does it make the amended provisions in Section 23 sub-section (2) and Section 28 applicable only to cases where an award is made by the Collector or court after April 30, 1982 or does it make these amended provisions applicable also to cases where an award may have been made by the Collector or court prior to April 30, 1982 but the proceedings by

way of appeal were pending in the High Court or the Supreme Court on April 30, 1982 and were disposed of subsequent to that date. The former view has prevailed with Chinnappa Reddy, J. and Sabyasachi Mukharji, J. in *K. Kamalajammanniavar v. Special Land Acquisition Officer* ((1985) 1 SCC 582) while the latter view has found acceptance with S. Murtaza Fazal Ali, J., Varadarajan, J. and Ranganath Misra, J. in *State of Punjab v. Mohinder Singh* (Civil Appeal 3267 of 1979, decided on May 1, 1985). Since the latter decision is one given by a Bench of three Judges, we would have ordinarily regarded it as overruling the earlier decision in *Kamalajammanniavar* case ((1985) 1 SCC 582) which was a decision of only two Judge, but it seems that the earlier decision was not cited before the Bench of three Judges in *Mohinder Singh* case (Civil Appeal 3267 of 1979, decided on May 1, 1985) and moreover there is no discussion of the provision enacted in Section 30 sub-section (2) and hence we have to consider for ourselves which decision, on a true interpretation of the language of Section 30 sub-section (2) represents the correct view.

5. We may first consider what would be the position if Section 30 sub-section (2) were not enacted and the amendments in Section 23 sub-section (2) and Section 28 were effective only from the date on which they were made, namely, September 24, 1984 when the Amending Act received the assent of the President and was brought into force. If at the date of the commencement of the Amending Act, any proceedings for determination of compensation were pending before the Collector under Section 11 of the Act or before the court on a reference under Section 18 of the Act, the amended Section 23 sub-section (2) and Section 28 would admittedly be applicable to such proceedings. This much indeed was conceded by the learned counsel appearing on behalf of the respondents and even in *Kamalajammanniavar* case ((1985) 1 SCC 582) it was accepted to be the correct position. Chinnappa Reddy, J. speaking on behalf of the Court in *Kamalajammanniavar* case ((1985) 1 SCC 582) observed (SCC p. 584) : "The new Section 23(2), of course, necessarily applies to awards made by the Collector or court after the commencement" of the Amending Act. But if an award were made by the court on a reference under Section 18 prior to the commencement of the Amending Act and an appeal against such award were pending before the High Court under Section 54 at the date of commencement of the Amending Act, which provisions would the High Court have to apply in deciding the appeal and determining the amount of compensation : the amended provisions in Section 23 sub-section (2) and Section 28 or the unamended provisions. The answer can only be that the High Court would have to apply the provisions in the amended Section 23 sub-section (2) and Section 28. The appeal against the award would be a continuation of the proceeding initiated before the court by way of reference under Section 18 and when the High Court hears the appeal, it would in effect and substance be hearing the reference and while determining the amount of compensation, it would have to give effect to Sections 23 and 28 as it finds them at the date of decision of the appeal. When Section 23 sub-section (1) provides that in determining the amount of compensation the court shall take into consideration matters specified in the various sub-clauses of that sub-section and sub-section (2) of Section 23 directs that in addition to the market value of the land the court shall in every case award a sum of 15 per centum of such market value in consideration of the compulsory nature of the acquisition, the mandate of these two sub-section must apply equally whether the court is hearing a reference or the High Court is hearing an appeal against an award made by the court. The amended provisions in Section 23 sub-section (2) and Section 28 would therefore have to be applied by the High Court in determining the amount of compensation. The same position would obtain where an appeal against an award has been decided by the High Court prior to the commencement of the Amending Act and an appeal against the order

of the High Court is pending before the Supreme Court at the date of commencement of the Amending Act or is filed after such date. The Supreme Court also while deciding the appeal and determining the amount of compensation would have to take into account the amended provisions in Section 23 sub-section (2) and Section 28, because when the Supreme Court decides the appeal and determines the amount of compensation, it would have to comply with the mandate contained in Section 23 sub-section (2) and Section 28 and that mandate would be as found in the amended provisions of Section 23 sub-section (2) and Section 28. Thus the amended provisions of Section 23 sub-section (2) and Section 28 would apply in determination of the amount of compensation where proceedings are either pending at the date of commencement of the amending Act or are filed subsequent to the date, whether before the Collector or before the court or before the High Court or the Supreme Court.

6. Now, as we have already pointed out above, the Amending Act came into force with effect from September 24, 1984 but the Bill which ultimately became the Amending Act was introduced in Parliament on April 30, 1982. Parliament obviously desired that the amended provisions of Section 23 sub-section (2) and Section 28 should be given effect from the date of introduction of the Bill in Parliament and therefore enacted Section 30 sub-section (2) making the provisions of the amended Section 23 sub-section (2) and Section 29 applicable to and in relation to "any award made by the Collector or court or to any order passed by the High court or Supreme Court in appeal against any such award ... after the 30th day of April 1982 ... and before the commencement of this Act", that is, the Amending Act. The object of Parliament clearly was that the amended provisions of Section 23 sub-section (2) and Section 28 should be applicable in determination of compensation where proceedings before the Collector or the court or the High Court or the Supreme Court were pending on April 30, 1982 or were commenced after that date, even if such proceedings had finally terminated before the enactment of the Amending Act and no proceedings were pending before the Collector or the court or the High Court or the Supreme Court at the date of enactment of the Amending Act. If the proceedings had not finally concluded before the enactment of the Amending Act and were pending on that date or were started subsequently, whether before the Collector or the court or the High Court or the Supreme Court, the amended provisions of Section 23 sub-section (2) and Section 28 would apply on their own terms in determining compensation. But by virtue of Section 30 sub-section (2), the amended provisions of Section 23 sub-section (2) and Section 28 were made applicable also where the proceedings were pending on April 30, 1982 or were commenced after that date even though they might have finally come to an end before the enactment of the Amending Act. Of course, if the proceedings had finally terminated on or before April 30, 1982, the amended provisions of Section 23 sub-section (2) and Section 28 could not possibly be intended to apply to the determination made in such proceedings. This was clearly the intendment of Parliament in enacting Section 30 sub-section (2).

7. This intendment is brought out in no uncertain terms by the express language of Section 30 sub-section (2). It says that the provisions of the amended Section 23 sub-section (2) and Section 28 shall apply and shall be deemed to have applied to and in relation to any award made by the Collector or court or to any order passed by the High Court or the Supreme Court in appeal against any such award after April 30, 1982 and before the commencement of the Amending Act. It is significant that the adverbial phrase "after the 30th day of April, 1982 .. and before the commencement of this Act" governs not only the words "any award made by the Collector or court" but also the words "any order passed by the High Court or Supreme Court in appeal against any such award". The amended provisions of Section 23 sub-section (2) and Section 28 are applicable not only in relation to an award made by the Collector or court after April 30, 1982 and before the commencement of the Amending Act but also in relation to an order passed by the High Court or

Supreme Court in appeal between April 30, 1982 and the commencement of the Amending Act. The appeal in which the order is passed by the High Court or Supreme Court may be against an award made by the Collector or court prior to April 30, 1982 or subsequent to that date. The only requirement is that the order must have been passed by the High Court or Supreme Court in appeal against such award, after April 30, 1982 but before the commencement of the Amending Act. If it was the intention of Parliament to confine the applicability of the provisions of the amended Section 23 sub-section (2) and Section 28 only to an award made by the Collector or court after April 30, 1982 and before the commencement of the Amending Act and to an order made by the High Court or the Supreme Court in appeal only against such an award, Parliament would have inserted the adverbial phrase "after the 30th day of April, 1982 ... and before the commencement of this Act" immediately after the words "any award made by the Collector or court" so as to indicate clearly and beyond doubt that the adverbial phrase was intended to govern only award made by the Collector or court and in that event the words "such award" would have carried only one meaning, namely, award made by the Collector or court after April 30, 1982 and before the commencement of the Amending Act. The words "any order passed by the High Court or Supreme Court in appeal against any such award" would then have had a limited meaning, namely, order passed by the High Court or Supreme Court in an appeal preferred against an award made by the Collector or court after April 30, 1982 and before the commencement of the Amending Act. These words would not in that event have comprehended order passed by the High Court or Supreme Court in appeal against an award made by the Collector or court on or before April 30, 1982. But Parliament deliberately and advisedly introduced the adverbial phrase "after the 30th day of April, 1982 ... and before the commencement of this Act" at the end of the sentence, so as to qualify both "any award made by the Collector or court" as also "any order passed by the High Court or Supreme Court in appeal against any such award". The words 'such award' in the context in which they occur mean only the award made by the Collector or court and do not import the time element which finds place only at the end of the sentence and not immediately following the words "any award made by the Collector or court". It is therefore clear that under Section 30 sub-section (2) the provisions of the amended Section 23 sub-section (2) and Section 28 are made applicable to all proceedings relating to compensation pending on April 30, 1982 or filed subsequent to that date, whether before the Collector or before the court or the High Court or the Supreme Court, even if they have finally terminated before the enactment of the Amending Act. It would not be a correct interpretation of Section 30 sub-section (2) to say that the provisions of the amended Section 23 sub-section (2) and Section 28 would be applicable in relation to an order passed by the High Court or Supreme Court only if the order is passed in appeal against an award by the Collector or court between April 30, 1982 and the commencement of the Amending Act. Even if an award is made by the Collector or court on or before April 30, 1982 and an appeal against such award is pending before the High Court or the Supreme Court on April 30, 1982 or is filed subsequent to that date, the provisions of the amended Section 23 sub-section (2) and Section 28 would be applicable in relation to an order passed in such appeal by the High Court or the Supreme Court. We accordingly affirm the view taken by the Bench of three Judges in Mohinder Singh case (Civil Appeal 3267 of 1979, decided on May 1, 1985) and express our respectful disagreement with the view taken by the Bench of two Judges in Kamalajammanniavar case ((1985) 1 SCC 582). The latter decision cannot be regarded as laying down the correct law in regard to the interpretation of Section 30 sub-section (2).

8. Here in the present case the award of the Collector was made on October 9, 1975 and the award of the court was made on July 31, 1979. The award of the court as well as the award of the Collector were thus made prior to April 30, 1982. So also was the order passed by the learned Single Judge of the High Court in appeal against the award of the court made on November 10, 1981, that is, before

April 30, 1982. But on April 30, 1982, the Letters Patent appeal preferred by the appellants was pending before the Division Bench of the High Court and that was disposed of on December 8, 1982 and this was followed by the present appeal before this Court. The order in the Letters Patents appeal was thus passed by the Division Bench after April 30, 1982 and before the commencement of the Amending Act and the provisions of the amended Section 23 sub-section (2) and Section 28 were therefore applicable in relation to this order passed by the Division Bench, on the interpretation placed by us on Section 30 sub-section (2). Moreover, the present appeal was pending at the date of commencement of the Amending Act and therefore, in any view of the matter, this Court is bound to give effect to the provisions of the amended Section 23 sub-section (2) and Section 28 in determining the amount of compensation.

9. We must therefore allow the present appeal and set aside the order passed by the Division Bench insofar as it refused to grant enhanced compensation to the appellants on account of non-payment of deficit court fee and direct that the appellants shall be paid enhanced compensation at the rate determined by the Division Bench, according as the land belonging to them fell within one or the other belt, and they shall also receive solatium calculated at the rate of 30 per cent on the amount to enhanced compensation under the amended Section 23 sub-section (2) as also interest at the rate of 9 per cent per annum on the enhanced amount of compensation from the date on which possession of their land was taken up to the date of payment of such enhanced compensation. The appellants will pay up the deficit amount of court fee within two months from today and a final order in the above terms will be drawn up in favour of the appellants only after payment of the deficit court fee is made within the time stipulated by us. We think that the fair order of costs in the present case would be that each party shall bear and pay its own costs throughout.

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