

Abhay Singh Surana and Others

Vs

Secretary, Ministry of Communication and Others

Civil Appeal No. 859 of 1987

(Sabyasachi Mukharji, G. L. Oza JJ)

19.08.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This appeal by special leave is confined solely to the question of interest. In other words, the entitlement of interest on the amount awarded by Arbitrator for the requisition of the premises under the Requisitioning and Acquisition of Immovable Property Act, 1952 is the issue. The principals upon which the compensation on this aspect is payable are by now well settled. In *Satinder Singh v. Amrao Singh* ((1961) 3 SER 676 : AIR 1961 SC 908) this Court reiterated the principles at page 694 of the report as follows :

In *Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission* (1928 AC 429 : AIR 1928 Journal PC and Notes 287) it was held by the Privy Council that "upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest upon the principal sum awarded from the date when possession was taken, unless the statute clearly shows a contrary intention". Dealing with the argument that the expropriation with which the Privy Council was concerned was not effected for private gain, but for the good of the public at large, it observed "but for all that, the owner is deprived of his property in this case as much as in the other, and the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. The right to receive the interest takes the place of the right to retain possession and is within the rule". It would thus be noticed that the claim for interest proceeds on the assumption that when the owner of immovable property loses possession of it he is entitled to claim interest in place of right to retain possession. The question which we have to consider is whether the application of this rule is intended to be excluded by the Act of 1948, and as we have already observed, the mere fact that Section 5(3) of the Act makes Section 23(1) of the Land Acquisition Act, 1894 applicable we cannot reasonably infer that the Act intends to exclude the application of this general rule in the matter of the payment of interest. That is the view which the Punjab High Court has taken in *Surjan Singh v. East Punjab Government* (AIR 1957 Punj 265) and we think rightly.

2. The same principle was reaffirmed not in the context of Acquisition of Immovable Property, which Mr. Mahajan, learned counsel for the respondents tried to make a point before us, was highlighted in *National Insurance Co. Ltd., Calcutta v. Life Insurance Corporation of India* (1963

Supp 2 SCR 971, 992 : AIR 1963 SC 1171 : (1963) 33 Com Cas 513), where speaking for the court Mr. Justice Hidayatullah, as learned Chief justice of India then was observed :

The reason of the rule was stated a long time ago by Lord St. Leonard L. C. in Birch V. Joy ((1852) 3 HLC 565 : 10 ER 222) as follows :

The parties change characters, the property remains at law just where it was, the purchaser has the money in his pocket, and the seller still has the estate vested in him; but they exchange characters in a Court of Equity, the seller becomes the owner of the money and the purchaser becomes the owner of the estate.

On entering possession the purchaser becomes entitled to the rents but if he has not paid the price, interest in equity is deemed payable by him on the purchase price which belongs to the seller. This principle was applied by the House of Lords in cases of compulsory purchases. In Swift & Co. v. Board of Trade (1925 AC 520) Viscount Cave L. C. gave the reason that the practice rests upon the principle that the taking of possession is an implied agreement to pay interest which was stated by Sir William Grant M. R. in Fludyer v. Cocker ((1805) 33 ER 10). This principle was further extended by the Privy Council to the compulsory taking over of a business as a going concern in International Railway Co. v. Niagara Parks Commission (1944 AC 328).

3. It was noted by justice Hidayatullah that this principle has also been accepted by this Court in Satinder Singh v. Amrao Singh ((1961) 3 SER 676 : AIR 1961 SC 908). The principle stated was followed in Hirachand Kothari (dead) through Lrs. v. State of Rajasthan (1985 Supp 1 SCR 644 : 1985 Supp SCC 17 : AIR 1985 SC 998) where this Court noted the principle at page 655 of the report. (SCC p. 25)

4. In the light of the aforesaid decisions we are of the opinion that the appellants herein are entitled to the interest for the period from March 1975 to July 31, 1987 when principle amount of compensation had been paid and/or when the premises in question had been de-requisitioned and handed back to the owner, on the amount awarded. As to how the interest would vary, but the right of interest was well averred and also should have been considered in the light of the observations of Privy Council in Inglewood pulp and paper Co. Ltd. v. new Brunswick Electric power commission (1928 AC 429 : AIR 1928 Journal PC and Notes 287). We are of the opinion that from the period from March 7, 1975 to February 28, 1985 being the date on which the judgment of the High Court was pronounced in the case the appellants are entitled to the interest on the amount awarded at the rate of 6 per cent per annum and from the period from August 8, 1985 to July 31, 1987 and for that period only at the rate of 12 per cent annum. Interest will be payable only on the balance amount which remained to be payable to the appellants i.e. the amount due minus what has been paid from the respective dates. The appellants are entitled to the costs of this appeal.

5. The amount is directed to be paid within three months from this date by the respondents. In case there is any difficulty in calculating the parties will be at liberty to apply to the High Court of Calcutta. The appellants are entitled to costs of this appeal. The appeal is thus disposed of.

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