

Narain Das Jain (since deceased) By Lrs

Vs

Agra Nagar Mahapalika, Agra

Civil Appeal No. 2327 of 1977

(K. N. Saikia, M. M. Punchhi JJ)

14.02.1991

JUDGMENT

PUNCHHI, J.

1. This appeal by special leave is directed against the common judgment and order of the Division Bench of the Allahabad High Court dated May 23, 1975.
2. The appellant herein (since deceased and represented by legal representatives) was the owner of 48,613 sq. yards of land in village Ghatwasan, Teh. Sadar Dist. Agra. The same was acquired by the Agra Town Improvement Trust under the provisions of the U.P. Town Improvement Act, 1919. Notification under Section 36(2) of the aforesaid Act, which is analogous to Section 4 of the Land Acquisition Act, 1894 was issued on July 29, 1950 and the acquisition proceedings culminated in an award of the Land Acquisition Collector, followed by taking possession of the land from the appellant on March 11, 1953. For the land acquired, the appellant was paid a paltry sum of Rs 1344-2 annas and 6 paise as compensation. No solatium was awarded as none was awardable under the U.P. Town Improvement Act, 1919.
3. Feeling dissatisfied the appellant sought a reference under section 18 of the Land Acquisition Act before the Nagar Mahapalika Tribunal, a creature of the U.P. Town Improvement Act, 1919. The appellant asserted before the Tribunal that he should have been allowed a rate of Rs 8 per sq. yard for the acquired land. The Tribunal partly accepted the claim of the appellant by its order dated November 5, 1965 raising compensation to the rate of Rs 3 per sq. yard and thus held the appellant entitled to a total sum of Rs 1,45,839 inclusive of the sum of about Rs 1344 already received by him. The Tribunal also awarded interest on the amount due at the rate of 4 1/2 per cent per annum with effect from March 11, 1953, the date of taking possession of the land till its payment.
4. Still dissatisfied, the appellant moved the High Court of Allahabad in appeal; a forum provided under the U.P. Town Improvement (Appeals) Act, 1920, but on grounds analogous to Section 100 CPC. Correspondingly the Nagar Mahapalika also filed a cross appeal against enhancement. The Tribunal (sic High Court) disposed of both the appeals by a common judgment. The appellant was awarded enhanced compensation at the rate of Rs 4 per sq. yard. Consequently an additional sum of Rs 48,613 was held due to him. The High Court also changed the rate of interest from 4 1/2 per cent per annum to 6 per cent per annum, correcting the error committed by the Tribunal. The claim of the appellant to solatium at the rate of 15 per cent on the sum awarded upto the Tribunal's level was rejected as the appellant had not claimed the same before the Tribunal and had not made a grouse thereof in his memorandum of appeal before the High Court. So on the sum of Rs 1,45,839 assessed as market value by the Tribunal, so solatium was awarded. On the amount of Rs 48,613 enhanced

by the High Court, solatium at the rate of 15 per cent was awarded by the High Court, and interest thereon was also awarded from March 11, 1953, the date of taking possession till its payment. The appeal of the Nagar Mahapalika was dismissed. The appellant alone who is before us has challenged the common judgment of the High Court.

5. No dispute herein has been raised to any further increase in the market value of the land. The claim vehemently put forth is with regard to the solatium of 15 per cent on the market value of the land and which claim, partly has been negated by the High Court. It is not disputed that if the claim is valid, the rate of solatium would be 15 per cent of the market value. Though a faint attempt was made to raise claim to solatium at the rate of 30 per cent and interest to 9 per cent per annum in terms of the amendments made in the Land Acquisition Act, 1894 by means of Act 68 of 1984, but such claim was abandoned in the next breath. So we are thus concerned only with the claim of solatium which has been declined by the High Court.

6. Section 23(2) of Land Acquisition Act, as it then was, provided that in addition to the market value of the land, as provided in sub-section (1) of Section 23, the court shall in every case award a sum of rupees fifteen per centum on such market value in consideration of the compulsory nature of acquisition. Solatium, as the word goes, is "money comfort", quantified by the statute, and given as a conciliatory measure for the compulsory acquisition of the land of the citizen, by a welfare State such as ours. The concern for such a citizen was voiced by the Law Commission of India in its Report submitted in 1957 on the Need for Reform in the Land Acquisition by observing as follows :

"We are not also in favour of omitting Section 23(2) so as to exclude solatium of 15 per cent for the compulsory nature of the acquisition. It is not enough for a person to get the market value of the land as compensation in order to place himself in a position similar to that which he could have occupied had there been no acquisition, he may have to spend a considerable further amount for putting himself in the same position as before.... As pointed out by Fitzgerald the community has no right to enrich itself by deliberately taking away the property of any of its members in such circumstances without providing adequate compensation for it. This principle has been in force in India ever since the Act of 1870. The Select Committee which examined the Bill of 1893 did not think it necessary to omit the provision but on the other hand transferred it to Section 23,"

7. The importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.

8. It is pertinent to note here that the claim of the appellant to solatium was not entertainable before the Land Acquisition Collector, taking proceedings of the acquisition under the U.P. Town Improvement Act in the absence of a provision allowing it. Rather the amendments and modifications set out in the schedule attached to the U.P. Town Improvement Act read that way. The payment of solatium as awardable under Section 23(2) of the Land Acquisition Act was specifically

not made applicable to the land acquired under the U.P. Town Improvement Act. Such amendment to the schedule, however, being violative of Article 14 of the Constitution was struck down by this Court on December 14, 1973 in *Om Prakash v. State of U.P.* ((1974) 1 SCC 628 : (1974) 2 SCR 731). This Court took the view that if the government could acquire land for a Mahapalika or other local body by resort either to the Land Acquisition Act or the U.P. Town Improvement Act, it would in the former case have to pay solatium and in the latter case not at all and which would lead to discrimination, and consequentially granted relief of solatium to the land owner whose land was acquired. On the law laid down by this Court, the High Court rightly took the view that since the amendments made to the schedule to the Town Improvement Act had gone out of the way of the appellant, the compensation due to him would have to be assessed in accordance with the provisions of Section 23 of the Land Acquisition Act. Holding so, the High Court awarded solatium on the amount enhanced by it and for that part rightly.

9. The denial of the solatium to the appellant on the sum awarded by the Tribunal is based on the reasoning that firstly the Collector had not awarded solatium and the appellant while taking the matter to the Tribunal had not raised such claim. Secondly after the order of the Tribunal the appellant when taking the matter to the High Court in appeal, had not made a grouse and laid claim to it in his grounds of appeal. The High Court, it appears was even then prepared to grant solatium to the appellant and offered the appellant to seek amendment of the grounds of appeal but the appellant declined to do so asserting that his claim to solatium was not based on any demand at his instance but was rather a statutory duty of the court to grant it, as otherwise, the mandate of Section 23(2) would fail. The High Court negated such contention.

10. We do not appreciate the distinction made by the High Court in this regard. The appellant had all the same not pleaded for grant of solatium in the grounds of appeal before the High Court while claiming enhanced compensation, and yet the High Court felt that it was under the statutory duty to grant solatium on the amount enhanced by it. The High Court did not shut out the claim of the appellant on the ground that he had not asked for it specifically in the grounds of appeal. If that is so, the legal error which was otherwise patent needed to be rectified by the High Court in favour of the appellant; more so when there was a cross appeal of the Nagar Mahapalika before it and resort could be had to the provisions of Order XLI Rule 33 CPC. Additionally, the claim to solatium arose in this regard on the basis of *Om Prakash* case ((1974) 1 SCC 628 : (1974) 2 SCR 731) on December 14, 1973 by which the provisions of the U.P. Town Improvement Act where under solatium was withheld were struck down, and on that date the appeal of the appellant against the order of the Tribunal dated November 5, 1965 was pending before the High Court. The claim to solatium surfaced not only on the basis of the compulsory acquisition of the land but also on the law on the subject being declared by this Court in *Om Prakash* case ((1974) 1 SCC 628 : (1974) 2 SCR 731). We are thus of the view that the High Court should have measured the claim of the appellant to solatium on the sum awarded by the Tribunal with the same yardstick as to the sum awarded by it and modified the decree accordingly. We have thus no hesitation in upsetting the judgment and order of the High Court in this regard and award to the appellant at the rate of 15 per cent on the entire market value of the land, which would include a sum of Rs 1,45,839, left out by the Tribunal and the High Court. The appellant further shall be entitled to the interest at the rate of 6 per cent per annum from March 11, 1953, the date of taking possession, till the date of payment of the sum due as solatium. The appeal shall stand allowed accordingly.

11. Before parting with the judgment, we need to clarify that solatium in the scheme of Section 23(2) of the Land Acquisition Act is part of the compensation and Sections 28 and 34 of the said Act provided payment of interest on the amount of compensation. This Court recently in *Periyar* and

Pareekanni Rubbers Ltd. v. State of Kerala ((1991) 4 SCC 195 : AIR 1990 SC 2192) has ruled that compensation is recompense or reparation to the loss caused to the owner of the land and that payment of interest on solatium is to recompensate the owner of the land for the loss of user of the land from the date of taking possession till date of payment into court. Therein the land owner was held entitled to interest on solatium. Attention, however, may be invited to Dr Shamlal Narula v. CIT ((1964) 7 SCR 668). The quality of the sum paid as interest was held somewhat different. It was ruled therein that the statutory interest paid under the Act is interest paid for delayed payment of compensation amount and in no event can that be described as compensation for owner's right to retain possession, for he has no right to retain possession after possession was taken under Sections 16 and 17 of the Act. The quality of the receipt of interest can be left by us here, whether it be a recompense for the loss of user of land or is a sum paid for the delayed payment of compensation. Solatium being part of compensation must fetch statutory interest from the date of dispossession of the land owner till the date of payment.

12. Accordingly, we allow this appeal and direct that the appellant shall also be paid solatium at the rate of 15 per cent on the left out amount of Rs 1,45,839 and interest at the rate of 6 per cent per annum thereon from March 13, 1953, the date of taking possession till date of payment, and that too with costs.

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