

Union of India and Another

Vs

Zora Singh and Others

Civil Appeal Nos. 4568-4686 of 1991

(CJI Ranganath Misra, M. H. Kania, Kuldeep Singh JJ)

22.11.1991

JUDGMENT

KANIA, J. -

1. Leave granted. Counsel heard.
2. As the controversy before us is a limited one and relates only to the question of granting of benefit of the provisions of Section 23 (1-A) introduced into the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") by the Land Acquisition (Amendment) Act, 1984, (referred to hereinafter as "the Amendment Act of 1984") only a few facts are necessary for the appreciation of the submission made before us.
3. This appeal, arising out of SLP (Civil) No. 14297 of 1990 by special leave, is directed against the judgment of a Division Bench of the Punjab and Haryana High Court in Letters Patent Appeal No. 1251 of 1987. The other appeals before us are connected appeals filed by the Union of India or the claimants. The respondent was the owner of a piece of land in one of the villages in District Bhatinda in Punjab. Land admeasuring 74,375 acres situated in various villages in Bhatinda District including the land of the respondent was acquired by the appellants under the said Act.
4. The Notifications under Section 4 and 6 of the said Act were published on may 10, 1979 and March 27, 1981, respectively. The Special Land Collector made and declared his award of compensation in respect of the acquisition of the said land and several other plots of land on March 31, 1981. Being aggrieved by the said award, the respondent and other landowners filed reference applications under Section 18 of the said Act which were decided by the learned District Judge concerned in 1985 and 1986. The land acquired was classified into various grades and compensation awarded accordingly. In the case before us and several other similar cases the benefits under Section 23(1-A) of the said Act were granted to the land owners. The state appealed to the High Court. In several other cases where the land owners were not satisfied with the compensation awarded, including the cases where the benefits conferred by Section 23(1-A) were not awarded the land owners filed appeals before the High Court.
5. What is relevant for our purpose is that a learned Single Judge of the High Court confirmed the grant of benefits under Section 23(1-A) of the said Act where such benefits had been granted by the learned District Judge and awarded the same where that had not been done by the learned District Judge. Letters patent appeals were filed by the State being dissatisfied with the judgment of the learned Single Judge.

6. It was submitted on behalf of the Union of India before the Division Bench deciding the letters patent appeals that the claimants/landowners were not entitled to the benefit of Section 23(1-A) of the said Act introduced by the said Amendment Act, 1984 as aforesaid. It was submitted on behalf of the appellants that the right to get additional amount at the rate of 12 per cent per annum on the enhanced amount of compensation from the date of Notification under Section 4 of the said Act and till the date of the award of the collector or the date of taking possession whichever is earlier conferred under the provisions of Section 23(1-A) of the said Act was available only in cases where the Collector made his award after April 30, 1982 being the date of the introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People, whereas in the present case, the Collector had made his award on March 31, 1981. Reliance was placed on the judgment of a Full Bench of the Punjab and Haryana High Court in State of Punjab v. Krishan Lal (AIR 1987 P&H 222 : (1987) 91 Punj LR 688 : 1987 Punj LJ 335). The Division Bench repelled this contention and pointed out that the learned Chief Justice H. N. Seth, who spoke for the Full Bench in Krishan Lal case (AIR 1987 P&H 222 : (1987) 91 Punj LR 688 : 1987 Punj LJ 335) had explained that judgment in the subsequent decision rendered in Maya Devi v. Union Territory of Chandigarh (1988 Punj LJ 189) and pointed out that the land owner was entitled to the additional amount in terms of Section 23(1-A) of the Amendment Act of 1984 if the proceedings for determination of compensation were decided after September 24, 1984, and since the regular first appeal in respect of the proceedings for determination of the compensation was decided after September 24, 1984, the Court while adjudicating upon the amount of compensation payable to the claimant was bound to grant the additional amount in terms of Section 23(1-A) of the said Act. The Division Bench in its impugned judgment gave to the claimant the benefit of the added amount referred to in Section 23(1-A) of the said Act. The same submissions have been made on behalf of the respective parties before us.

7. Before discussing the submissions of the respective parties, it would not be out of place to set out the relevant provisions of the said Act.

8. The said Act, namely, the Land Acquisition Act, 1894, provides for compulsory acquisition of land. The term 'award' has not been defined in the said Act. Sub-clause (d) of Section 3, the definition section, defines the expression 'Court' as follows :

"3. (d) the expression 'Court' means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act."

Part II of the said Act deals with the question of acquisition of land. Section 11 of the said Act deals with the enquiry and award of compensation by the Collector. Section 11-A which was introduced into the said Act by the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) provides for the period within which the award shall be made. Generally speaking, it prescribes that the period for making the award is limited to two years, and the section provides that, if the award is not made within that period, the entire proceedings for acquisition of land shall lapse. There is a proviso to the said section and an Explanation, but it is not necessary to consider the same for the purpose of this case, Sub-section (1) of Section 18 which is included in part III of the said Act runs as follows :

"18 Reference to Court, - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is

payable, or the apportionment of the compensation among the persons interested."

Section 23 deals with the matters to be considered by the Court for determining the compensation to be awarded for the land acquired under the said Act. We may mention here that under the general scheme of the said Act, the land owner whose land has been acquired is entitled to be paid the market value of the land acquired as prevailing at the time of the publication of the notification under Section 4 issued together with the solatium at the prescribed rate in consideration of the compulsory nature of the acquisition. Prior to the coming into effect of the Amendment Act of 1984 solatium was fixed at the rate of 15 per centum. Sub-section (1-A) which was introduced into Section 23 of the said Act by the Amendment Act of 1984 runs as follows :

"23. (1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

9. By the said Amendment Act of 1984 the expression "30 per centum" was substituted in place of the expression "15 per centum" in sub-section (2) of Section 23 of the said Act. Sub-section (2) of Section 23 now runs 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 thirty per centum on such market value, in consideration of the compulsory nature of the acquisition."

10. These amendments were effected in the Land Acquisition Act (the said Act) by the Land Acquisition (Amendment) Act, 1984, ("the Amendment Act of 1984") as set out earlier, Sub-sections (1) and (2) of Section 30 of the Amendment Act of 1984 run as follows :

"30. Transitional provisions - (1) The provisions of sub-section (1-A) of Section 23 of the principal Act, as inserted by clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to, -

(a) every proceeding for the acquisition of any land under the principal Act pending on the thirtieth day of April, 1982 the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People, in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act.

(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 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 thirtieth 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."

11. On behalf of the appellants reliance was placed by learned counsel on the decision of this Court in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama* ((1990) 1 SCC 277). The respondent, on the other hand, placed strong reliance on the decision of a Full Bench of the Bombay High Court in *Jaiwant Laxman P. Sardesai v. Government of Goa, Daman and Diu* (AIR 1987 Bom 214 : (1987) 89 Bom LR 111 : 1087 Mah LJ 564). On the basis of the aforesaid judgment of the Bombay High Court it was submitted by the respondent/claimant that a wide and liberal interpretation should be given to the provisions of sub-section (1-A) of Section 23 and the amount calculated as set out in the said sub-section awarded in all cases where any proceeding was pending in any court including the High Court or this Court in connection with the determination of Compensation for the land acquired. We may mention that both the parties referred us to the decision of a Constitution Bench of this Court in *Union of India v. Raghbir Singh* ((1989) 2 SCC 754). We propose to discuss these decisions a little later but before doing so, we propose to analyse the relevant provisions of the said Act and the effect thereof.

12. A perusal of the provisions of sub-section (1-A) of Section 23 makes it clear that the said sub-section deals with substantive rights and it confers a substantive right to claim the additional amount calculated as set out in the said sub-section in the circumstances set out therein. Similarly, sub-section (2) of Section 23 also confers a substantive right on the claimant to a higher solatium. Under the well settled rules of interpretation, the said provisions of the said Act, being substantive in nature, can have only prospective application unless the language in which the provisions are couched, read in the context, shows that the intention of the legislature was to give retrospective effect to them. The language of Sub-section (1-A) of Section 23 shows that a duty is cast on the court to award an amount calculated as stated therein in addition to the market value of the land acquired for the period commencing from the date of the publication of the Section 4 Notification to the date of the award of the Collector or the date of taking possession, whichever is earlier.

13. The expression "award" used in Section 23(1-A) suggests that the intention of the legislature was to make the provisions of the said sub-section applicable to cases where the Collector had yet to make his award or the trial court hearing the reference under Section 18 of the Land Acquisition Act had still to make its award after the coming into force of the said sub-section on September 24, 1984. The expression "award" is to be distinguished from the expression "decree" and hence, it appears that in the absence of any contrary or inconsistent provision in the said Act the provisions of sub-section would not come into play where the award had been made by the Collector earlier as well as by the Reference Court but on the date of coming into effect of the said sub-section, an appeal from the said award might have been pending in a Court. In that case, the Court would not be "awarding" any amount but would be making a "decree" for an amount.

14. By reason of the provision of Section 30(1)(a) of the Amendment Act of 1984 the provisions of Section 23(1-A) of the said Act were, by a deeming provision, made also applicable to every proceeding for the acquisition of land under the said Act where the Collector had not made his award by April 30, 1982. On a correct interpretation of the provisions of Section 23(1-A) read with Section 30 (1)(a) of the Amendment Act of 1984, an additional amount calculated in the manner indicated in Section 23(1-A) is also payable in those cases where the Collector had not made his award on or before April 30, 1982, even in cases where the court might have made its award before September 24, 1984.

15. It is true that the aforesaid construction we are giving to the provisions of Section 23(1-A) and

Section 30(1)(a) will, in a sense, limit the benefits strictly conferred by Section 30(1)(a) to only those cases where the Collector as well as the Court have made their respective awards between April 30, 1982 and September 24, 1984 but, in our view, that cannot be helped as that is the result of the plain grammatical construction of the clear language used in the relevant provisions. We are of the opinion that we would not be justified in giving an unduly restricted meaning to the provisions of Section 23(1-A) unwarranted by the plain language of that sub-section as appears to have been done in the case of *Union of India v. Filip Tiago De Gama Vedem Vasco De Gama* ((1990) 1 SCC 277) discussed more particularly hereinafter, in order to give a wider meaning of the provisions of Section 30(1)(a). Section 23(1-A) refers clearly to the duties of the court. As we have already pointed out, the court is defined by Section 3(d) as the principal court of original jurisdiction, except in the circumstances set out in the said sub-section, which would be the court having jurisdiction to decide the reference under Section 18 of the said Act. There is, therefore, no warrant to read in the place of the word "Court" in Section 23 (1-A) the word "Collector". Moreover, the decision of such a court determining compensation is regarded as an award under the said Act. In the light of these provisions, there is no warrant to give an unduly restricted meaning to section 23(1-A) of the said Act, as pointed out above.

16. Coming now to the decisions cited before us we find that in the case before the Full Bench of the Bench of the Bombay High Court in *Jaiwant Laxman P. Sardesai v. Government of Goa, Daman and Diu* (AIR 1987 Bom 214 : (1987) 89 Bom LR 111 : 1987 Mah LJ 564) the facts were that the Notification under Section 4 of the said Act was published on October 3, 1969, in the government gazette of the Government of Goa. The Notification under Section 6 was published on June 10, 1971. The Land Acquisition Officer declared his award on August 2, 1972. All these event undoubtedly occurred prior to April 30, 1982. However, on a reference made under Section 18 of the said Act on December 24, 1973, the civil court investigated the claim and gave its award on June 24, 1985. The award was, therefore, made by the Court not before April 30, 1982, but after September 30, 1984, when the provisions of the Land Acquisition (Amendment) Act, 1984, had already come into effect. It was, therefore, strictly speaking, not necessary for the Court to make any observation regarding the legal position in a case where both the Collector as well as the court in a reference under Section 18 had made their respective awards before April 30, 1982. Moreover, we find that the judgment appears to proceed on a somewhat unwarranted assumption. This is clear from the following observations which appear at paragraph 5 of the aforesaid report : (AIR p. 217)

"It is not in dispute that where on 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 under reference under Section 18 of the Act or before the High Court in appeal under Section 54 of the Act, then the amended Section 23(1-A) would be applicable to such proceedings, in absence of sub-section (1) of Section 30."

17. In our view, it was erroneously taken as undisputed that had the provisions of sub-section (1) of Section 30 not been in existence, the provisions of the amended Section 23 (1-A) would have applied to a case where the Collector as well as the Court had already made their award before April 30, 1982, but an appeal was pending in the High court on April 30, 1982, or on the commencement of the Land Acquisition (Amendment) Act. As we have already pointed out, the correctness of this assumption is very much in dispute before us. In these circumstances, we find ourselves unable to accept as correct the view taken by the Full Bench of the Bombay High Court to the extent that it extends the operation of the provisions of Section 23(1-A) even to cases where the Collector as sell as the Reference Court had made their awards before April 30, 1982, in the case before the Full

Bench of the Bombay High Court in *Jaiwant Laxman p. Saradesai v. Government of Goa, Daman and Diu* (AIR 1987 Bom 214 : (1987) 89 Bom LR 111 : 1987 Mah LJ 564).

18. As far as the decision of a division Bench comprising two learned Judges of this Court in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama* ((1990) 1 SCC 277) strongly relied upon by the appellants is concerned, we find that in that case the Land Acquisition Officer made his award determining the compensation on March 5, 1969. On a reference under Section 18 the civil court made its award on May 28, 1985, that is, even after September 24, 1984, when the Amendment Act of 1984 came into effect. The view taken by the Division Bench is that, as the Collector had made his award before April 30, 1982, then the additional amount referred to in Section 23(1-A) could not be awarded. This view has been taken on the basis that sub-section (1)(b) of Section 30 of the said Act provides that the provisions of Section 23(1-A) shall be applicable to every acquisition proceeding commenced after April 30, 1982, irrespective of the fact whether the Collector has made the award on or before September 24, 1984, and that sub-section (1) of Section 30 does not refer to court award and the court award is used only in sub-section (2) of Section 30. (See para 21 of the said report). We find that on the plain language of Section 23(1-A) itself, which we have set out earlier, the duty was cast on the court to award an additional amount calculated as prescribed therein which would mean that it is directed to be awarded by the court, namely, the Reference Court, in all cases which are pending before that court on September 24, 1984. Sub-section (1)(a) of Section 30 undoubtedly lays down that the provisions of Section 23(1-A) of the Act are also made applicable to all proceedings for the acquisition of any land under the said Act pending on April 30, 1982, where no award had been made by the Collector before that date. At first glance this would appear to suggest that the additional amount referred to in Section 23(1-A) could not be awarded where the Collector had made his award before April 30, 1982. But this provision cannot be allowed to cut down the benefits available to the claimants on a plain reading of Section 23(1-A). This is clear from the use of the word "also" in the opening part of Section 30(1). In our opinion, the view taken by the bench comprising two learned Judges of this Court in that case cannot be accepted as correct as it is too narrow and unduly cuts down the operation of the benefit conferred under the plain language of Section 30(2) are concerned, we do not feel that we are called upon to interpret the same in this decision. In our view, therefore, the said decision cannot be accepted as good law insofar as it lays down that in order to bring the provisions of Section 23(1-A) of the said Act into play the Collector must have made his award after April 30, 1982.

19. Coming to the decision in *Union of India, v. Raghbir Singh* ((1989) 2 SCC 754) referred to earlier, we find that it mainly concerned itself with the provisions of Section 30(2) of the said Amendment Act with which we are not directly concerned here and in that connection, the Constitution Bench of this Court has made the following observations : (SCC pp. 779-80, para 31)

"In construing Section 30(2), it is just as well to be clear that the award made by the Collector referred to here is the award made by the Collector under Section 11 of the parent Act, and the award made by the Court is the award made by Principal Civil Court of Original Jurisdiction under Section 23 of the parent Act on a reference made to it by the Collector under Section 19 of the parent Act. There can be no doubt that the benefit of the enhanced solatium is intended by Section 30(2) in respect of an award made by the Collector between April 30, 1982, and September 24, 1984. Likewise the benefit of the enhanced solatium is extended by Section 30(2) to the case of an award made by the court between April 30, 1982, and September 24, 1984, even though it be upon reference from an award made before April 30, 1982."

The court went on to point out that : (SCC pp. 780-81, para 32)

"... Section 30(2) of the Amendment Act extends the benefit of the enhanced solatium to cases where the award by the Collector or by the Court is made between April 30, 1982, and September 24, 1984, or to appeals against such awards decided by the High Court or the Supreme Court whether the decision of the High Court or the Supreme Court are rendered before September 24, 1984, or after that date. All that is material is that the award by the Collector or by the Court should have been made between April 30, 1982, and September 24, 1984. We find ourselves in agreement with the conclusion reached by this Court in *K. Kamalajammanniavaru v. Special land Acquisition Officer* ((1985) 1 SCC 582) and find ourselves unable to agree with the view taken in *Bhag Singh v. Union Territory of Chandigarh* ((1985) 3 SCC 737). The expanded meaning given to Section 30(2) in the latter case does not, in our opinion, flow reasonably from the language of that sub-section. It seems to us that the learned Judges in that case missed the significance of the word 'such' in the collocation 'any such award' in Section 30(2). Due significance must be attached to that word, and to our mind it must necessarily intend that the appeal to the High Court or the Supreme Court, in which the benefit of the enhanced solatium is to be given, must be confined to an appeal against an award of the Collector or of the Court rendered between April 30, 1982, and September 24, 1984."

20. We find that this decision which was rendered by a Constitution Bench of this Court comprising five learned Judges runs in no way counter to the view which we have taken and, in fact, it lends some support to the view which we are taking. In the case before us, as the Reference Court has made its award after September 24, 1984 the benefit of the provisions of Section 23(1-A) was clearly available to the claimant as held in the impugned judgment.

21. In the result, the appeal arising out of Special Leave Petition (Civil) No. 14297 of 1990 in *Union of India v. Zora Singh* must be dismissed with cost.

22. As far as the other appeals filed by the Union of India which have been heard together with the *Zora Singh* case are concerned, learned counsel for the Union of India has not drawn our attention to any material difference in the relevant facts therein from the facts in *Zora Singh* case. In fact, the arguments proceeded on the footing that all the relevant facts were the same as in the case of *Zora Singh*. In a result, all these appeals must also be dismissed, however, with not order as to costs.

23. As far as the appeals before us which have been filed by the claimants are concerned, the same will have to be placed before appropriate benches of this Court for disposal in the light of this decision.

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