

Market Committee, Hodal

Vs

Krishan Murari and Others

Civil Appeal No. 10498 of 1995

(K. Ramaswamy, B. N. Kirpal JJ)

06.11.1995

ORDER

1. Leave granted.

2. Having heard the learned counsel on both the sides we think that it is a case for our interference. Though there is an inordinate delay 3240 days, merely 9 years, from 26-2-1985 to 30-5-1994, the date on which SLP was filed, there is proper explanation given by the appellants in this case for the inordinate delay in filing the appeal. It was not in dispute that the matter was sent to the Central Agency and since the matter is of the State of Haryana, the Central Agency did not pursue the matter. When it was discovered that the Central Agency had not taken the steps in filing the appeal, the SLP came to be filed on 30-5-1994. The explanation offered is just and rational and can be acceptable. It is accordingly accepted. Delay is accordingly condoned.

3. It is contended by Shri Datta, learned Senior Counsel for the respondents that on account of the delay the appellants have constructed the oil mill expending considerable money. Though they have received the compensation under protest the respondents are prepared to return the compensation with suitable interest as may be determined by the Court and that, therefore, it may not be a case warranting interference. We find that there is no justification for accepting the contention.

4. It is seen that the notification under Section 4(1) of the Land Acquisition Act 1 of 1994 (for short 'the Act') was published on 22-1-1981. Declaration under Section 6 was published on 23-1-1981 and possession was taken on 29-4-1981, "though it is claimed that the possession was with the respondent". The award came to be made on 19-4-1984. Compensation was offered as required under Section 31 of the Act and it now transpires, though it was not mentioned in the High Court, that the amount was received under protest. The writ petition was filed four months thereafter, namely, on 19-12-1984. The High Court allowed the writ petition on 16-2-1985 holding that dispensing with enquiry under Section 5-A is invalid. It would be seen that the award having been validly made on 19-5-1984 and possession of the lands having been taken, the lands vest in the Government under Section 16 absolutely free from all encumbrances. The High Court was not justified in interfering with the exercise of power by the Government under Section 17(4) dispensing with the enquiry under Section 5-A at that belated stage. Under these circumstances the appeal is to be allowed.

5. However, since the respondents had claimed to have constructed the oil mill, on the facts and circumstances in this case, it would be proper that the District Judge, Faridabad is directed to have an enquiry made as to when the oil mill came to be constructed. If it was constructed between 22-1-1985 and 19-12-1984 or pending writ petition without permission of the court, the respondents are

not entitled to claim any equities by way of compensation. On the other hand, if the mill came to be constructed after 16-2-1985 i.e., after writ petition was allowed till date, then equity requires that the appellants shall have to make ex gratia compensation for the value of the building. The learned District Judge also would cause an enquiry to be made with regard to the value of the construction that was made. In the event of the finding that it was constructed after the judgment of the High Court, the appellant shall pay the compensation for the value of the construction of the mill within a period of four months from the date of the decision made by the learned District Judge. If the respondents had not made any application for reference, it may be open to them to make the application under Section 18 within one month from today.

6. The appeal is accordingly allowed. No costs.