

Union of India and Others

Vs

Munsha and Others

Civil Appeal No. 10023 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

09.11.1995

JUDGMENT

RAMASWAMY, J.

1. Leave granted.

2. This appeal by special leave arises from the judgment and order dated 5-3-1993 passed in CWP No. 316 of 1993 by the High Court of Punjab and Haryana at Chandigarh. The competent authority, viz., the Special Land Acquisition Collector made an award under Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short 'the Act') and awarded compensation @ Rs 375 per kanal. This was done as early as in 1970. In 1986, Civil Writ Petition No. 2391 of 1986 was filed by the respondents for appointment of an arbitrator. The High Court allowed the writ petition on 28-7-1986 and directed the appellants to appoint an arbitrator. The arbitrator thus appointed, by his award dated 12-12-1991 determined compensation @ Rs 150 per marla. He also awarded solatium @ 30% and interest @ 9% per annum for one year and on expiry thereof @ 15% on the enhanced compensation. Aggrieved by the said award, the appellants filed an appeal in the High Court which was dismissed on 20-5-1992. A Letters Patent Appeal, viz., 392 of 1992, was filed against the said order of the learned Single Judge and the same is pending in the High Court. Since the respondents challenged the award in question, the appellants sought for stay and the stay was refused. The High Court directed by the impugned order dated 5-3-1993 to release the payment of the compensation forthwith in lieu of the land acquired by it subject to any order obtained otherwise by it in any appropriate proceedings. Feeling aggrieved thereby, this appeal by special leave has been filed.

3. It is contended for the respondents that on failure to accept the offer of payment of compensation determined by the competent authority, viz., the Special Land Acquisition Collector, though the respondents had not communicated in writing their refusal to accept the award, on expiry of the prescribed period, a duty was cast on the competent authority and the Central Government to appoint an arbitrator. Since an arbitrator was not appointed for no fault on their part, the appellants are enjoined to make good the loss by paying interest. Therefore, the appellants are not relieved from paying interest as this Court in Union of India v. Hari Krishan Khosla [1993 Supp (2) SCC 149], despite holding that law has conferred no power on the arbitrator to award solatium and interest on the amount of compensation determined under Section 8 of the Act, had upheld in paragraph 79 (p. 172) on the facts of some appeals, award of solatium and interest, as there was delay in appointment of arbitrator, which was of 16 years in those appeals. The delay here also was of 16 years.

4. The question, therefore, is whether the appellants are liable to pay interest to the respondents for the delay in appointment of arbitrator. Section 8(1) of the Act envisages that where any property is requisitioned or acquired under the Act, there shall be paid compensation the amount of which shall be determined in the manner and according to the principles set out thereunder. Manner laid down are two : (i) fixation by agreement and (ii) determination by arbitrator to be appointed by the Central Government where no agreement can be reached. Section 9 of the Act enjoins payment of amount of compensation under the award subject to any rules made under the Act. The competent authority is, therefore, enjoined to pay the amount of compensation to the person or persons entitled thereto in such manner and within such time as may be specified in the award. Under sub-rule (3) of Rule 9, the competent authority, viz., the Land Acquisition Officer is enjoined, as soon as may be practicable, to communicate to each interested person an offer, which is fair in his opinion, of the amount of compensation payable to such person in respect of the acquired property. Under sub-rule (5)(i), when an offer is made to such a person, he shall within 15 days of the receipt of the offer, communicate in writing to the competent authority his acceptance or otherwise of the offer. If he accepts the offer, the competent authority should enter into an agreement with him on behalf of the Central Government in Form K. Clause (ii) of sub-rule (5) is not material and hence omitted. Under sub-rule (6), if the person to whom an offer is made, does not accept the offer or does not communicate within 15 days of the receipt of the offer, in writing to the competent authority his acceptance or otherwise of the offer, the competent authority should, as soon as may be, submit to the Central Government a report setting forth the full facts of the case, particularly as regards the nature and extent of the disagreement between himself on the one hand and the interested person on the other, and he should forward with the report all connected papers. The competent authority should at the same time deposit in court the amount offered by him to the said person under sub-rule (3).

5. Reading of these rules does indicate that after an award has been made, the competent authority is enjoined to communicate its offer in writing to the person interested. Such interested person is also enjoined, emphasised by the use of the word 'shall', to communicate, within 15 days of the receipt of the offer, in writing to the competent authority "his acceptance or otherwise of the offer". If he accepts the offer, the competent authority is further enjoined to enter into an agreement, on behalf of the Central Government, with him in Form K and to pay the compensation awarded by him. If the interested person does not accept the offer, nor communicate within 15 days of the receipt of the offer, in writing to the competent authority his acceptance or otherwise of the offer, the competent authority is enjoined to submit to the Central Government a report setting forth the full facts, in particular the nature and extent of the disagreement between himself and the interested person, and should forward with the report all connected papers to the Central Government. He is also enjoined to deposit in the court the amount offered by him to the interested person.

6. Thus, it may be seen that the interested person is enjoined to communicate within 15 days from the date of the receipt of the acceptance or otherwise in writing of the offer made by the competent authority. The ratio in *Seeto Devi v. Union of India* [CA arising out of SLP No. 7411 of 1995, decided on 28-7-1995] on which reliance was placed by the counsel for the respondents has no application to the facts of this case. Therein, it was found by this Court that "in fact, the case of the appellants is that they had accepted the amount set to them under protest to which there is no demur and, therefore, they did not sign the agreement in Form K which was sent to them". In those circumstances, this Court had held that the competent authority and the Central Government ought to have appointed arbitrator to determine the compensation payable to the claimants. In this case, however, since admittedly the appellants had not communicated their acceptance or otherwise of the offer made by the competent authority, there was no duty cast on it to appoint arbitrator under

Section 8(1)(b) of the Act. In paragraph 79 of the decision in Hari Krishan Khosla case [1993 Supp (2) SCC 149], this Court considered the observations made in Harbans Singh Shanni Devi v. Union of India [CAs Nos. 470-71 of 1985, decided on 11-2-1985].

7. What was stated in Hari Krishan Khosla case [1993 Supp (2) SCC 149], cannot assist the respondents because the general ratio laid in that case, viz., the provisions of the Land Acquisition Act have no application to the acquisition under the Act and the payment of solatium and interest cannot be fastened since the Act did not provide for payment of interest and solatium, squarely applies to the facts in this case, for the reason that there was no laches on the part of the appellants in appointing arbitrator, which was assumed in Hari Krishan Khosla case [1993 Supp (2) SCC 149]. We have said about there being no laches in appointment of arbitrator in the case at hand as the obligation to appoint arbitrator arises where the interested person communicates his non-acceptance of the offer enjoined by sub-rule (5)(i) of Rule 9. The requirement of sub-rule (6) to submit a report to the Central Government where the person to whom offer has been made does not communicate within 15 days, cannot be regarded as requiring the Central Government to appoint arbitrator on knowing about the fact of non-communication of the interested person. According to us, something more is needed to require appointment of arbitrator - the interested person must communicate about this non-acceptance of the offer, which was not done here in the case at hand. In Hari Shankar Khosla case [1993 Supp (2) SCC 149] this Court had assumed laches on the part of the Central Government due to delay of 16 years in appointment of arbitrator. We would not draw such a presumption here.

8. Since the determination of the compensation by the arbitrator is the subject-matter of the letters patent appeal, we decline to go into the merits. However, the award of the arbitrator awarding solatium @ 30% and interest @ 9% for one year from the date of taking possession and @ 15% thereafter till the date of deposit, stands set aside. In other respects, we express no opinion.

9. The appeal is accordingly allowed but, in the circumstances, with no order as to costs.