

SUPREME COURT OF INDIA

Krishi Utpadan Mandi Samiti

Versus

Kanhaiya Lal

(A.P. Misra and S.S.M. Quadri, JJ.)

Civil Appeal No. 13293 of 1996.

29.09.2000

JUDGMENT

A.P. Misra, J. - This appeal raises two questions :

(A) Whether the High Court could at all have awarded the compensation exceeding the claim made by the owners in the reference. The claim being Rs. 10,000/- per Bigha while the High Court awarded @ Rs. 11/- per sq. yd.

(B) Whether the High Court was right in awarding interest @ 9% and 15% to the respondent-land owners in a case where the award was rendered on 27.12.1977 and the reference order was also passed on 28.2.1981.

2. In order to appreciate the controversy we are hereunder giving essential matrix of facts. The appellant desiring to establish mandi and its office complex, sent the proposal to the Special Land Acquisition Officer in which acquisition of certain compact land falling in villages, namely, Sangrampur and Kasba Khair both in Tehsil and Pargana District, Aligarh. Accordingly a notification under Section 4(1) of the Land Acquisition Act was published on 28.5.1976. Invoking the urgency clause under Section 17(1) possession of the land was taken on 28.8.1976. Award was made by the said Special Land Acquisition Officer on 27.12.1977. By this he awarded the market value of the land, as agricultural land @ Rs. 5159/- per acre, having 'Parata' rate of Rs. 4.43 per acre. The respondent-land owner preferred reference under Section 18 which concluded by an award dated 28.2.1981 under which market value @ Rs. 3/- per square yard was fixed with solatium at 15% and interest at 6% per annum. Aggrieved by this the appellant filed an appeal in the High Court for restoration of the order passed by the Special Land Acquisition Officer while respondent-land owner preferred cross-objection for further enhancement of the compensation. The appellant raised three questions before the High Court :

(1) The reference application moved by the respondent-land owners was beyond the period of limitation.

(2) The reference application moved under Section 18 of the Act was non-maintainable as several persons, having separate and distinct interest, had joined together therein.

(3) The market value determined by the Special Land Acquisition Officer was just and adequate and the reference court ought not to have enhanced compensation.

3. As against this respondent-land owners in their cross-objection sought for a higher rate of market value and assailed the impugned order on the ground that the assessment of market value was on much lower side. The High Court on the first question raised, held that the reference was filed within the period of limitation and on second question held that the reference was not incompetent because of several persons having joined. On third question read with cross-objections of the respondent-land owners enhanced the rate of compensation from Rs. 3/- per square yard to Rs. 11/- per square yard.

4. Now, we proceed to take up the questions raised by the appellant. Submission with reference to the first question is, in view of the Section 25 as it stood then, the High Court should not have enhanced the compensation over and above what is claimed by the land owners.

5. It is relevant to quote the then existing Section 25 under the aforesaid Act which is quoted hereunder :

"25. Rules as to amount of compensation -

(1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, *the amount awarded to him by the Court shall not exceed the amount so claimed* or be less than the amount awarded by the Collector under Section 11.

(2) When the applicant has refused to make such claim or has omitted sufficient reasons (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed the amount awarded by the Collector."

(Emphasis supplied)

6. The aforesaid Section 25 was substituted by Act No. 68 of 1984 which is recorded hereunder :

"25. Amount of compensation by Court not to be lower than the amount awarded by the Collector. - The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11."

7. Section 25 before its substitution by Act 68 of 1984, mandated the court not to award compensation exceeding the amount so claimed by the owners and not to be less than the amount awarded by the Collector. This very clearly limits awarding of compensation within the amount claimed. On the facts of the present case it is not in dispute the award itself was given on 27.12.1977 and even proceedings pursuant to referring order, was concluded on 28.2.1981, i.e., much prior to the aforesaid Amending Act. Thus, on the facts of this case it is unamended Section 25 to be applicable and not the amended section. In view of this the peripheral limitation on the

court awarding the compensation, would equally apply to the High Court exercising its power as the first appellate Court. The case of ***Gobardhan Mahto v. State of Bihar, 1979(4) SCC 330***, was also a case in which unamended Section 25 was applicable. The court held :-

"The short answer to this contention is to be found in the provisions of Section 25 of the Land Acquisition Act. *By sub-section (1) of that section, when an applicant makes a claim to compensation pursuant to a notice given to him under Section 9 the amount awarded to him by the court shall not exceed the amount so claimed.* By sub-section (2) of Section 25, when the applicant has refused to make such claim or has omitted without sufficient reason to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector."

8. Thus, on the facts of this case compensation cannot exceed what is claimed. that the High Court committed error in enhancing the compensation from Rs. 3/- per square yard to Rs. 11/- per square yard. The enhancement could only be to the extent the respondent-land owners claimed. It is also not in dispute that the claim by the land owners was Rs. 10,000/- per Bigha. Hence, though the enhancement to Rs. 11/- per square yard is not sustainable yet enhancement to the extent of Rs. 10,000/- per Bigha is held to be valid.

10. With reference to the next question raised, awarding of interest @ 9% and 12% respectively, the first question arises, whether on the facts of the present caes, amended or unamended Section 28 would be applicacable in granting the interest ? The present Section 28 as it stands now is quoted hereunder :-

"28. *Collector may be directed to pay interest on excess compensation.* - If the sum which, in the opinion of the court, the Collector ought to have regarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into court :

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry."

11. The only difference on the structure of Section 28 is, prior to the Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984), the interest rate was 6% instead of 9% and the proviso did not exist. If unamended section is applicable the rate of interest would only be 6% per annum and further interest @ 15% per annum as provided through the proviso would not be applicable. We may refer here that the High Court granted interest as per amended section @ 9% per annum from the date on which possession of land was taken to the date of payment of such excess amount in Court. It further held, if this excess amount is paid after the expiry of a period of one year the interest admissible to land owners would be @ 15% per annum. The High Court relied

on the cases of this Court in *Bhag Singh and others v. Union Territory of Chandigarh*, AIR 1985 SC 1576 and in *Union of India and another v. Raghbir Singh (Dead) by L.Rs. etc.*, 1989(2) SCC 754 : 1989(1) RRR 552 (SC). It further held, in view of the decision on *Union of India v. Zora Singh and others*, 1992(1) SCC 673 : 1992(1) RRR 162 (SC), the appellant is not entitled to the additional benefit under Section 23(1-A).

12. In *Union of India v. Raghbir Singh (dead) by LRs. etc.* 1989(2) SCC 754 (supra), this Court was considering Sections 30(2) and 15 whether claimant was entitled for the increase in solatium to 30% which was enhanced from 15% through the aforesaid Amending Act. It was held that this amending proviso would only be applicable to the awards given by the Collector or Court between 30th April, 1982 and 24th September, 1984. The benefit of amended provisions would not apply and cannot be granted either by the High Court or the Supreme Court in respect of awards made by the Collector or court prior to 30th April, 1982. This decision overruled *Bhag Singh* (supra) which was relied by the High Court. It held :

"Para 32.....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.

Para 34.The word 'or' is used with reference to the stage at which the proceeding rests at the time when the benefit under Section 30(2) is sought to be extended. If the proceeding has terminated with the award of the Collector or of the Court made between the aforesaid two dates, the benefit of Section 30(2) will be applied to such award made between the aforesaid two dates. If the proceeding has passed to the stage of appeal before the High Court or the Supreme Court, it is at that stage when the benefit of Section 30(2) will be applied. But in every case, the award of the Collector or of the Court must have been made between April 30, 1982 and September 24, 1984."

13. Learned Counsel for the respondent made attempt to submit that the compensation awarded by the Court under Section 25 is only procedural right and not substantive right hence the aforesaid Amending Act would be applicable in both computing the compensation and the interest as per the Amending Act. He relied in *K.S. Paripoornan v. State of Kerala and others*, 1994(5) SCC 593 : 1995(1) RRR 40 (SC).

"64. A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before the commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct."

14. He also referred to *Jose Da Costa and another v. Basoora Sadasiva Sinai Narcornim and others, 1976(2) SCC 917*. In para 31 it held that procedural right is declaratory in nature and is restrictive in operation while substantive right is prospective unless the legislature intends otherwise is well settled. The question is, whether Section 25 of the Act, would be said to be procedural right and not substantive right. In support, submission is, looking to the scheme of the Act the preceding Sections 23 and 24 merely refer how compensation is to be determined and what matters to be neglected in determining compensation in the background, Section 25 is merely procedural. We have no hesitation to reject such a submission. Section 25 deals with amount of compensation to be awarded by the Court. It mandates the Court that such compensation shall not be less than the amount awarded by the Collector under Section 11. Awarding of compensation, curtailing, restricting or adding right to the compensation can never be said to be procedural. The language of this section clearly reveals, it is substantive in nature, hence it cannot be held to be retrospective as to make the Amending Act applicable. In fact, this second question, regarding granting of interest, with reference to the applicability of the Amending Act, this Court has considered it in *Mir Fazeelath Hussain and others v. Special Deputy Collector, Land Acquisition, Hyderabad, 1995(3) SCC 208 : 1995(2) RRR 247 (SC)*. This Court held, awards made by Collector and Reference Court prior to 30.4.1982 but amount of compensation enhanced by the Supreme Court in appeal long after the period of 30.4.1982 to 24.9.1984. The claimant is entitled to interest on enhanced amount of compensation at the old rate of 6 per cent only. It further held, interest under Section 28 and solatium under Section 23(2) are not parts of the award hence what was stated in Raghbir Singh case, solatium would equally apply to the interest also.

15. Accordingly, we hold on the facts of the present case interest admissible to the respondent-claimant would only be 6% as per unamended provision. Thus the High Court granting interest @ 9% and 15% under the proviso of the amended section cannot be sustained. Accordingly, we set aside that part of the High Court order which enhanced the compensation to respondent-claimant over and above what is claimed and also set aside award of compensation with reference to the interest at 9% and 15% respectively. Interest admissible to the claimant would be 6%. Accordingly, the present appeal succeeds and is allowed. The impugned order of the High Court to the aforesaid extent is set aside. However, on the facts and circumstances of the case, costs on the parties.

Review Petition (C) No. 33 of 1995

in Special Leave Petition (C) No. 12623 of 1993 :

16. The case of the petitioner while filing review petition is that the petitioner's advocate was under the impression that one bigha of land comprised of 1000 square yards and, therefore, what was granted by the High Court, was not beyond the claim made by the land-owners. It is only in connection with another special leave petition relating to the land in the same village, it transpired that one bigha of land comprised of 2756 square yards. In view of this the petitioner submits that the claim of the respondent is only Rs. 15,000/- per pucca bigha, i.e., Rs. 5.45 per square yard, therefore, the High Court has no jurisdiction to award @ Rs. 9/- per square yard. We have considered this submission. We do not find any merit in this review petition.

17. Awarding being in this case between the dates 30th April, 1982 and 24th September, 1984 and as per the Union of India and another v. Raghubir Singh (deed) by LRs. etc. (supra), the amended provisions would be applicable under which there is no restriction that award could only be upto the amount claimed by the claimant. Hence High Court order granting compensation more than what is claimed cannot be said to be illegal or contrary to the provisions of the Act. Hence the review itself, as is confined for the aforesaid reasons, has no merit.

18. The faint submission was also made that example relied by the High Court for enhancing the compensation being agreement to sale should not have been relied. Firstly, we would not like to enter into this question as scope of review was not to re-assess or re-appraise the evidence which was considered by the High Court and finally dismissed by this Court. Even otherwise while fixing the market value, in totality of circumstances if any rate is specified in a document, namely, agreement to sale, that could not be said to be either inadmissible or if considered makes the fixation of valuation illegal. Hence we do not find any merit in this review petition. Accordingly the same is dismissed.

Petition dismissed.