

SUPREME COURT OF INDIA

Panna Lal Ghosh

Vs.

Land Acquisition Collector

(S.Rajendra Babu and Ruma Pal JJ.)

12.12.2003

JUDGEMENT

Rajendra Babu, J.

1. Leave granted.

2. The case relates to acquisition of land measuring 3.37 acres in Mouja Pabiacheura in Kailashahar, State of Tripura. The notification under Section 4(1) of the Land Acquisition Act, 1894 [hereinafter, 'the Act'] was issued on 24th December 1968 and on 13th October, 1969, declaration under Section 6 of the Act was published. The Land Acquisition Collector made his award in October 1974 awarding Rs.12,000/- per acre for 'nal land' and Rs.9,000/- per acre for 'chara land'.

3. On 21.10.1974, the appellants filed an application for reference under Section 18 of the Act for enhancement of compensation. On reference, the learned L.A. Judge passed an award enhancing compensation, allowing Rs.36,000/- per acre and also granted 15% solatium, and interest under Section 23(2) of the Act in 1985.

4. On appeal to the High Court, the claim for enhancement was dismissed. The High Court also denied the appellants benefits under Section 23(2) of the Act by relying on the decision of this Court in *K.S. Paripoornan vs. State of Kerala*¹.

5. Before this Court, the main issues are as follows:

“(1) Was the High Court justified in not awarding enhanced compensation? (2) Are the appellants entitled to solatium and interest @ 30% under Section 23(2) of the Act? Compensation payable on a piece of land acquired under the Act is determined by taking into account the market value of the land so acquired. The most reliable way to determine the market value is to rely on the instances of sale of portions of the same land as has been acquired or adjacent lands made shortly before or the after the Section 4 notification .

Accordingly, the appellants had produced before the High Court a certified copy of an award passed by the learned L.A. Judge in another acquisition proceedings. In this case, the land was 150 ft. away from the lands involved in the present proceedings.”

6. In those proceedings, the learned L.A. Judge had awarded Rs.1 lakh per acre as compensation. This was sought to be relied on by the appellants. The High Court chose not to rely on this document as no evidence was led to show that both lands are similar in nature having similar potentiality.

7. While determining the market value of land, it must be with reference to a piece of land which is comparable to the present lands being acquired. It must be similar in potentiality and nature. The document which the appellants seek to rely on relates to land which was acquired for the purpose of Assam- Agartala Road. It was 3 feet higher than the acquired land. Further, the two lands were not proved to be comparable in nature and potentiality. Therefore, the High Court is right in not relying on the said document and disallowing the claim for enhancement for compensation.

8. The second issue relates to the payment of solatium @ 30% under Section 23(2) of the Act.

9. Solatium is 'money comfort' quantified by the statute and given as a conciliatory measure for the compulsory acquisition of land of the citizen, by a welfare state such as India ". Thus the statutory amount of solatium is intended to compensate the owner for his disinclination to part with his property.

10. The main aspect that arises for consideration is the issue of the rate of solatium. By an amendment in 1984, the rate was increased to 30% from the original 15% by virtue of Section 30(2) of the Amending Act.

11. This increase was given a limited retrospectivity, in the sense that, the Amending Act, under Section 30(2) provided that the increased solatium is applicable to those awards passed by the Collector or the Court between 30.4.1982 and 29.9.1984. Can it be said that the present case would be entitled to this additional benefit? The award was made by the L.A. Collector way before the said period i.e. in 1974. However, the reference Court passed its award after the said period, i.e. in 1985. Therefore, the issue is whether the amendment would apply to a case pending during the period of 2 years from 30.4.1982 to 29.9.1984.

12. This precise issue has come up for consideration a number of times before this Court. In *Union of India v. Raghubir Singh*² it was held that the benefit of enhanced solatium would apply only in cases where the award by the Collector or Court is made between 30.4.1982 and 24.9.1984 or appeals against such awards decided by the High Courts or this Court, whether rendered before 24.9.1984 or after that date. This Court found that the language of the Section ruled out the applicability of the benefit to all pending proceedings.

13. In *Union of India v. Filip Tiago De Gama*³ the issue was whether the amendment would apply to an award made subsequent to 24.9.1984 even though the acquisition proceedings had commenced prior to the date. This Court looked at the intention behind giving retrospective effect to the amending Section. If the literal interpretation is taken, it was held, it will result in an anomaly. In order to avoid it, regard must be had to the purpose of Section 30(2). Consequently, this Court awarded higher solatium even though the Reference Court made the award in 1985.

14. Again in *K.S. Paripoornan's case* [supra], this Court widened the restricted interpretation given in *Raghubir Singh's case*. It held that the enhanced solatium would apply even to a case pending at the time the Act came into force.

15. Following this train of thought, the benefit of enhanced solatium would extend to the present case.

16. During the period between 30.4.1982 and 29.9.1984, the reference was pending in the Reference Court.

17. The court's award was passed in 1985. Following the above interpretation, the appellants are thus entitled to enhanced solatium @ 30% and interest under Section 23(2) of the Act.

18. The High Court in considering the case under Section 23(1-A) of the Act has committed an error.

19. The appellants are entitled to solatium under Section 23(2) of the Act and, therefore, the reference by the High Court to Section 23(1-A) is irrelevant in the present case.

20. The learned counsel for respondents has contended that solatium is not applicable because the *West Bengal Land Development and Planning Act, 1948*, under which this present area falls, does not contemplate it. The provision of solatium is mandatory and cannot be done away with. It has been held in a number of cases that the deprivation of solatium by the West Bengal Land Development and Planning Act is violative of Article 14 and Section 8(2) of the Act is held to be invalid. (See: *Monoranjan Routh v. State of W.B.*⁴, and *Ramendranath v. State of W.B.*⁵). Therefore, the contention that Section 8(2) of the Act excludes compensation by way of solatium does not hold good.

21. In the light of the above, the compensation @ 36,000/- per acre as awarded by the L.A. Judge is upheld. The solatium is to be paid @ 30% under Section 23(2) of the Act and an interest @ 9% per annum is also payable under Section 28 of the Act.

22. The award made by the Reference Court as affirmed by the High Court shall stand modified accordingly and the appeal is allowed to that extent. No orders as to costs.

¹AIR 1995 SC 1012

²(1989) 2 SCC 754

³AIR 1990 SC 981

⁴AIR 1972 Cal 487

⁵AIR 1975 Cal 325