

SUPREME COURT OF INDIA

Jai Krishan (D) Thr.LRs.

Vs.

State of Uttarakhand

(Sudhansu Jyoti Mukhopadhaya and Dipak Misra JJ.)

01.07.2014

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J

1. Leave granted.
2. These appeals are directed against the judgment and order dated 16th July, 2005 passed by the High Court of Uttaranchal (now Uttarakhand) at Nainital in first Appeal No. 56 of 2001 (Old No.325/1995). By the impugned judgment, the Division Bench of the High Court partly allowed the appeal preferred by the State of U.P., set aside part of the judgment and award dated 23rd March, 1995 passed by the Reference Court.
3. The factual matrix of the case is as follows:

A Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 14th September, 1977 for the purpose of acquiring land measuring 36 acres situated at Glenmire Estate, cosycot and cosynook in Mussoorie. The acquisition was so made for the purpose of extension of Lal Bahadur Shastri National Academy of Administration, Mussoorie. Thereafter follow up Notification under Section 6 of the L.A.Act was issued on 30th January, 1978 which was also published. The possession of the land was taken over on 3rd July, 1986. The Special Land Acquisition Officer, after hearing the parties passed the award on 27th November, 1984 determining the amount of compensation at Rs.4,89,615.75.

4. Col. Jai Krishan (since deceased) represented by Lrs. (appellant herein) and Mahesh Chandra- respondent no.8, got filed reference under Section 18 of the L.A. Act. The said reference No. L.A.154 of 1985 heard by the Additional District Judge, Dehradun. The aforesaid claimants alleged before the Reference Court that considering the fact that Mussoorie is a famous tourist place, its land is of immense potential value, the market value of the land in question is Rs.25 lakh per acre. As such they claimed compensation for 36 acres of acquired land. They further claimed that the value of the constructed building cannot be assessed less than Rs. 100/- per sq. feet and, therefore, considering the plinth area of 3786 sq. feet of Glenmire building, 2528 sq. ft. of Cosynook building and other construction, the valuation should be Rs.6,31,400/- and after deducting the amount on account of depreciation factor the value of building is Rs. 4,73,550/-. There were 6990 trees on the aforesaid 36 acres of land. The claimants also submitted before the reference court that considering the fact that value of the trees which has been assessed @ Rs.15/- per tree, should have been at least Rs.50/- per tree. In reply, the stand of the State of U.P. was that the claimants have already claimed Rs.7,50,000/- as compensation for the acquired land and as such they are not entitled to claim any amount more than that. It was further pleaded that the land being sloppy and uneven as such it cannot be assessed more than Rs.5,000/- per acre. The respondents based their claim on the basis of the rate shown in exemplar sale deed dated 26th December, 1976.

5. The Reference Court after framing necessary issues, taking into consideration the evidence and hearing the parties enhanced the amount of compensation of land from Rs.1,80,000/- to Rs.19,76,000/- and that of trees from Rs.1,05,155.50 to Rs.4,00,000/- . Aggrieved by the order passed by the Reference Court the State and Union of India preferred the appeal.

6. The Division Bench of Uttarakhand High Court by the impugned judgment dated 16th July, 2005 applied the principle of Belting area on following presumption:

No doubt that Mussoorie is an important tourist place and its land is of immense potential value but simultaneously it is also true that the land in Mussoorie is sloppy and hilly. As such for assessing a true market value that flat rate, for entire land of 36 acres, cannot be applied.

7. The claimants also claimed 12% additional compensation u/s 23(1A) of the L.A. Act, which the Court below had not granted. The claimants also claimed that they were entitled to receive a sum of Rs. 7,01,875/- towards Fuel value/Timber value of the tree standing on the acquired land as approved by the retired Forest Ranger. They also pleaded that the compensation having been paid after more than one year from the date on which possession was taken, they are entitled for interest @ 15% per annum as provided under proviso to Section 28 of the L.A. Act. Such claim was made by the appellant and another by means of cross-objections. However, the High Court without deliberating on such issues as raised in the cross objections passed the impugned judgment. In the circumstances, the appellant and another preferred Review Petition No. 87 of 2005 before the High Court with a petition for condonation of delay.

8. The impugned judgment was delivered on 16th July, 2005 and a review petition was filed on 15th September, 2005 i.e. after 30 days delay. The appellant and another took specific plea that their lawyer used to come from Allahabad to Nainital who when came to know about the judgment, applied for the certified copy of it on 4th August, 2005 which was delivered on 9th August, 2005. Thereafter sometime was taken to file the review petition. The High Court dismissed the petition for condonation of delay and review petition on the ground of non-prosecution. The restoration petition filed by the appellant was also dismissed.

9. Learned counsel for the appellants submitted that the High Court wrongly applied the principle of belting area. The 36 acres of land is adjacent to the Lal Bahadur Shastri National Academy of Administration. Mussoorie and is located at tourist spot. He further contended that the appellants were entitled for 12% additional compensation u/s 23(1A) in addition 15% solatium u/s 28 of the L.A. Act in view of delayed payment of compensation after more than one year. The stand of the learned counsel for the respondent-State is that the High Court rightly applied the principle of belting area as the land is sloppy and uneven.

10. As noticed above, the High Court noticed that Mussoorie is an important tourist place and it is the land of immense potential value. But without any basis or pleadings, the High Court presumed that total land in Mussoorie is sloppy and hilly. The High Court though noticed the exemplar sale-deed dated 31.3.1977 (paper no. 17-C) which shows the market value of the land at Rs. 54,896/- per acre and the said sale-deed pertains to the land nearer to the Lal Bahadur Sastri National Academy. But without

any basis, the High Court observed as under:

We are of the view that the rate mentioned in this sale-deed cannot be applied as exemplar for entire land acquired. Value of the land cannot be said to be same for all the 36 acres acquired as part of the land would be nearer to it and part of it would be a far.

The aforesaid observation made by the Division Bench of the High Court is not based on any evidence but on presumption and surmises. It cannot be a ground that the Mussoorie is a hilly place and therefore the principle of Belting area is to be applied. It was not the case of the State of U.P. that in all land acquisition proceedings in Mussoorie the principle of Belting area is applied. In this background on mere presumption it was not open to the High Court to apply principle of belting area for determination of compensation. The High Court has also accepted that the market value of the land in question is Rs. 54,896/- per acre as decided by the Reference Court; therefore in absence of any pleading on the part of State of U.P. it was not open for the High Court to apply the principle of belting area.

11. It has not been disputed that the site of new town of the acquired land is almost at the same elevation as Mussoorie as it has been developed as a Hill resort and has immense potential value. It is adjacent to the Lal Bahadur Shastri National Academy, which is the beneficiary of such acquisition.

12. For the reason aforesaid, the part of the impugned judgment dated 16th July, 2005 passed by the High Court in so far as it relates to the valuation of land is set aside and the award passed by the Revisional Court under Section 18 is upheld.

13. The provisions of Section 23(1A) of the L.A. Act mandate as follows: 23 Matters to be considered in determining compensation. ” (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration first, the market value of the land at the date of the publication of the notification under section 4, sub-section (1); secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking

possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land. [(1A) 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 cent 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 award to the Collector or the date of taking possession of the land, whichever is earlier.

Explanation- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]

14. In *Gurpreet Singh vs. Union of India*, (2006) 8 SCC 457 this Court noticed the claim which envisages award of compensation at different stages. In all the stages, it is necessary to take note of the provisions of Sections 23(1) and 23(1-A). In *Gurpreet Singh* (supra) this Court held as under:

32. In the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed. Obviously, the award takes in all the amounts contemplated by Section 23(1), Section 23(1-A), Section 23(2) and the interest contemplated by Section 34 of the Act. The whole of that amount is paid or deposited by the Collector in [pic]terms of Section 31 of the Act. At this stage, no shortfall in deposit is contemplated, since the Collector has to pay or deposit the amount awarded by him. If a shortfall is pointed out, it may have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage. On the deposit by the Collector under Section 31 of the Act, the first

stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest.

33. The second stage occurs on a reference under Section 18 of the Act. When the Reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under Section 23(1), Section 23(1-A), Section 23(2) and interest on the enhanced amount as provided in Section 28 of the Act and costs in terms of Section 27. The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made, falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference.

In view of the decision in Gurpreet Singh(Supra), we hold that the claimants are entitled to additional compensation @ 12% per annum as provided u/s 23(1A) of the L.A. Act.

15. Section 28 of the L.A. Act deals with interest payable on excess compensation which reads as under:

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 awarded 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 67 [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.].

16. In *Sunder vs. Union of India*, (2001) 7 SCC 211 this Court held that the interested persons are also interested on amount of solatium. The Court further observed as under:

15. When the court is of the opinion that the Collector should have awarded a larger sum as compensation the court has to direct the Collector to pay interest on such excess amount. The rate of interest is on a par with the rate indicated in Section 34. This is so provided in Section 28 of the Act. x x x x x x

In *Gurpreet Singh (supra)* the reasons in this regard was explained as under:

54. One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in courts all over the country, we permitted the counsel to address us on that question. That question is whether in the light of the decision in *Sunder(supra)* the awardee/deeree-holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on *Sunder(Supra)* on the ground that the execution court cannot go behind the decree. But if the award of the Reference Court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of *Sunder(supra)* and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery from the date of the judgment in *Sunder (Supra)(19-9-2001)* and not for any prior period. We also clarify that this will not entail any reappropriation or fresh appropriation by the decree-holder. This we have indicated by way of clarification also in exercise of

our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question.

The aforesaid principle has also been followed by this Court in *Chhanga Singh and Another vs. Union of India and Another* (2012) 5 SCC 763.

17. The Reference Court awarded enhanced compensation but such amount was deposited in the Court after the date of expiry of period of one year. In the circumstances, we hold that the appellants are also entitled to interest @ 15% per annum under proviso to Section 28 of the L.A. Act.

18. The High Court failed to notice that the provisions of Section 23(1A) of the L.A. Act are mandatory and the claimants-appellants are entitled to 12% enhanced compensation for the period commencing from the date of publication of Notification under Section 4 of the L.A. Act. The High Court also failed to appreciate that the appellants are entitled to interest @ 15% per annum as contemplated under proviso to Section 28 of the L.A. Act as the compensation was paid after the expiry of period of one year.

19. The High Court instead of dismissing the review petition ought to have condoned the delay, reason of which was sufficiently explained by appellant and ought to have allowed the revision application in favour of the appellant.

20. In view of the findings recorded above, we set aside the part of the impugned judgment dated 16th July, 2005 so far as it relates to payment of compensation for the land, uphold the award passed by the Reference Court to the extent above and direct the respondents to pay 12% enhanced compensation in terms of Section 23(1A) and another 15% interest in terms of proviso to Section 28 of the L.A. Act as ordered above within three months..

21. The appeals are allowed with the aforesaid observations and directions. There shall be no order as to costs.