

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 14078 of 2019

RB Dealers Private Limited .. Petitioner

Versus

The Metro Railway, Kolkata .. Respondent

WITH

SPECIAL LEAVE PETITION (CIVIL) NO. 14170 of 2019

Kishan M. Agarwal .. Petitioner

Versus

The Metro Railway, Kolkata .. Respondent

J U D G M E N T

M. R. Shah, J.

1. The short question which is posed for consideration of this Court in the present Special Leave Petitions is as to whether the solatium as contemplated under sub-section (1) of Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the '2013 Act') has to be calculated only on the market value and assets or the sum total of the market value, the assets and additional 12% per annum on the market value stipulated under sub-section (3) of Section 30 of the 2013 Act?

2. That the lands owned by the petitioner herein came to be acquired for the purpose of construction of the Metro railway. That the said land was acquired under the provisions of the Metro Railways (Construction of Works) Act, 1978 (hereinafter referred to as the '1978 Act'). That the Central Government published a notification under Section 10 of the 1978 Act, inter alia, declaring that the said land should be acquired in connection with the aforesaid project. That, in the year 2014, the petitioner filed an application under Section 13(1) of the 1978 Act, inter alia, praying for the compensation in respect of the said land and the same was registered as Claim Case No. NGA-32 OF 2014. That, on 05.12.2016, the petitioner filed an application for amendment of the original claim, inter alia, praying for compensation to be determined under the provisions of the 2013 Act. That the said application for amendment came to be allowed.

2.1 That by an order dated 16.12.2016, the competent authority disposed of the aforesaid claim case awarding Rs.1,48,29,312/- towards the market value and a sum of Rs.6,75,526/- within two months from the date of the order on account of value of structure.

2.2 That, on 11.01.2017, the petitioner preferred an appeal under Section 13(3) of the 1978 Act before the Appellate Authority, which was registered as Claim Appeal No. 1 of 2017. That, by an order dated 28.02.2018, the Appellate Authority allowed the appeal and enhanced the amount of compensation and held that the petitioner is entitled to get a sum of Rs.6,20,52,215/- on account of market value of the land and a further sum of Rs.6,75,526/- on account of value of structure. The Appellate Authority

also held that the petitioner shall be entitled to a further sum at the rate of 12% per annum on market value in terms of sub-section (3) of Section 30 of the 2013 Act and also held that the petitioner is entitled to get solatium @ 100% on the total compensation i.e. Rs.6,20,52,215/- (market value) + Rs.6,75,526/- (on account of value of structure) + Rs.3,66,91,239/- (further sum at the rate of 12% per annum on market value in terms of sub-section (3) of Section 30 of the 2013 Act) = Rs.9,94,18,980/-.

2.3 That, being aggrieved and dissatisfied with the order passed by the Appellate Authority dated 28.02.2018, the respondent preferred an application under Article 227 of the Constitution of India before the High Court of Calcutta, being C.O. No. 1895 of 2018. That, by the impugned judgment and order dated 07.02.2019, the High Court has partly allowed the said revision application and has held that the solatium payable under sub-section (1) of Section 30 of the 2013 Act has to be calculated only on the market value of the land acquired and the assets thereon and not on the total arrived at upon assessing the market value with additional 12% per annum thereon (further sum payable under sub-section (3) of Section 30 of the 2013 Act). Consequently, the High Court has directed to reassess the total amount payable to the petitioner.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court holding and directing to determine and to pay the solatium payable under sub-section (1) of Section 30 of the 2013 Act on the market value of the land acquired and the assets thereon and excluding the further sum at the rate of 12% per annum payable under

sub-section (3) of Section 30 of the 2013 Act, the original owner-the petitioner herein has preferred the present Special Leave Petitions.

2.5 Therefore, the short question which is posed for consideration of this Court is as to whether the solatium payable under sub-section (1) of Section 30 of the 2013 Act has to be calculated only on the market value of the land acquired and the assets thereon or on the total arrived at upon adding the additional 12% per annum on the market value?

3. Shri Huzefa Ahmadi, learned Senior Advocate appearing on behalf of the petitioner -original land owner-original claimant has vehemently submitted that the High Court has committed a grave error in holding that the solatium payable under sub-section (1) of Section 30 of the 2013 Act has to be calculated only on the market value of the land acquired and the assets thereon, and not on the total arrived at upon adding further sum of 12% per annum on market value.

3.1 It is vehemently submitted by the learned Senior Counsel appearing on behalf of the petitioner that the impugned judgment and order passed by the High Court holding that the solatium has to be calculated only on the market value arrived at and the assets thereon and not on the total arrived at adding the further sum of 12% per annum on market value, is against the scheme of the 2013 Act for awarding the compensation for the land acquired.

3.2 It is further submitted by the learned Senior Counsel appearing on behalf of the petitioner that the amount of solatium stipulated under sub-section (1) of Section 30 of the 2013 Act, which is to the amount equivalent

to 100% of the compensation amount, shall include additional 12% per annum on the market value stipulated under sub-section (3) of Section 30 of the 2013 Act.

3.3 It is submitted by the learned Senior Counsel appearing on behalf of the petitioner that, as per the scheme of the 2013 Act, Section 26 of the Act refers to the manner in which the market value as defined in Section 3(u) has to be determined by the Collector. Section 27 of the Act refers to the determination of the amount of compensation to be paid to the land owner by including all assets attached to the land. It is submitted that Section 28 provides the parameters to be considered by the Collector for determining the amount of the compensation to be awarded for the land acquired. It is submitted that the expression “compensation” has to be defined in the Act and would therefore take into its fold any amount statutorily due and payable to a person whose land stands acquired under the Act.

3.4 It is submitted by Shri Ahmadi appearing on behalf of the petitioner that sub-section (1) of Section 30 of the 2013 Act provides, inter alia, that the solatium amount is equivalent to 100% of the compensation amount. It is submitted that sub-section (3) of Section 30 of the 2013 Act expressly provides that the Collector shall award in addition to the market value of the land under Section 26, an amount calculated at the rate of 12% per annum on such market value. It is submitted that said amount at the rate of 12% is yet another kind of compensation which is payable to the land owner in lieu of the compulsory acquisition. It is submitted that, therefore, while construing/considering the “total compensation” under sub-section

(1) of Section 30 of the 2013 Act, the sum payable at the rate of 12% per annum under sub-section (3) of Section 30 of the 2013 Act is required to be included. It is submitted that the sum payable under sub-section (3) of Section 30 of the 2013 Act shall be a part of the award while determining and paying and compensation for the land acquired. It is submitted that as 2013 Act is a beneficiary Act, a liberal interpretation should be adopted in favour of the land owners whose land has been compulsory acquired.

3.5 It is further submitted by the learned Senior Advocate appearing on behalf of the petitioner that even sub-section (3) of Section 69 of the Act also provides that solatium shall be 100% over the “total compensation” amount. It is submitted that, therefore, a beneficial construction of sub-section (3) of Section 69 would illustrate the legislative intent which is that solatium under sub-section (1) of Section 30 would be the aggregate of 100% of the market value determined under Section 26, the asset value determined under Section 27 of the Act and 12% of the market value determined under sub-section (3) of Section 30 of the 2013 Act. He submitted that any interpretation contrary to the above, would be contrary to the Statement of Objects and Reasons of the 2013 Act.

3.6 Making the above submissions, it is prayed to allow the present Special Leave Petitions.

4. We have heard the learned counsel appearing on behalf of the petitioner at length. As observed hereinabove, the short question posed for consideration of this Court in the present Special Leave Petitions is as to whether the solatium as contemplated under sub-section (1) of Section 30

of the 2013 Act, has to be calculated only on the market value and the assets thereon or the sum total of the market value, the assets and 12% per annum on the market value stipulated under sub-section (3) of Section 30 of the 2013 Act? While considering the aforesaid question, the relevant provisions of the 2013 Act and the scheme for determination of the amount of compensation for the land acquired are required to be referred to and considered. The relevant provisions of the 2013 Act are Sections 26, 27, 28, 29 and 30. Section 26 of the Act provides for determination of market value of the land by the Collector. Section 27 of the Act provides for determination of the amount of compensation and Section 28 of the Act provides the parameters to be considered by the Collector in determination of the award. Section 29 of the Act provides for determination of the value of things attached to the land or building. Section 30 of the Act provides that the Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a "Solatium" amount equivalent to one hundred per cent of the compensation amount. Sub-section (3) of Section 30 further provides that in addition to the market value of the land provided under Section 26, the Collector shall, in every case, award the amount calculated at the rate of 12% per annum on such market value for the period commencing on and from the date of the publication of the notification under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Therefore, on conjoint reading of the aforesaid provisions and the scheme of the Act, it is to be seen that before the final

award is passed by the Collector, the Collector has to determine the market value of the land as provided under Section 26 of the Act. That, thereafter, after determination of the market value of the land as provided under Section 26 of the Act, the Collector has to determine the amount of compensation as per Section 27 of the Act, which includes the market value of the land as well as the value of all assets attached to the land. Therefore, the amount of compensation determined shall be including the market value of the land to be acquired (as per Section 26 of the 2013 Act) and the value of all assets attached to the land. The determination of the value of the things attached to the land or building shall be as per Section 29 of the 2013 Act. Over and above the amount of compensation so determined by the Collector as per Sections 26, 27 and 28 of the 2013 Act, at the time of the final award, the Collector has to impose a "solatium" amount equivalent to one hundred per cent of the compensation amount, as per Sections 29 and 30 of the 2013 Act. The land owner whose land has been acquired shall also be entitled to, in addition to the market value of the land provided under Section 26 of the Act, an amount calculated at the rate of 12% per annum on such market value. Therefore, on conjoint reading of the aforesaid provisions and the scheme of the 2013 Act, the final award declared by the Collector shall be in three parts/components, namely the amount of compensation (which shall include the market value of the land to be acquired and the value of the assets attached to the land); the solatium determined and payable under sub-section (1) of Section 30 which shall be equivalent to one hundred per cent of the compensation amount

(the market value + value of assets attached to the land) and the amount calculated at the rate of 12% per annum on such market value (as per sub-section (3) of Section 30 of the 2013 Act). All the three components would be independent which shall ultimately form part of the final award. At this stage, it is required to be noted that unlike the market value (as defined under Section 3(u) of the Act), the “Compensation” is not defined. However, on reading Sections 26 and 27 of the Act, it is to be held that the total amount of compensation shall be the market value of the land to be acquired as determined under Section 26 of the Act and the value of assets attached to the land determined under Section 29 of the Act. It is required to be noted that in sub-section (1) of Section 30 of the 2013 Act, the word used is “Solatium” amount equivalent to one hundred per cent of the **COMPENSATION AMOUNT**. At this stage, it is required to be noted that Section 28 of the Act provides for parameters to be considered by the Collector in determining the compensation to be awarded for the land acquired, which includes the market value as determined under Section 26 of the Act and other parameters, but does not include the amount calculated and payable under sub-section (3) of Section 30 of the 2013 Act. It is also required to be noted that unlike Section 23 of the old Land Acquisition Act, 1894, under the 2013 Act, the award of solatium and the additional amount calculated at the rate of 12% per annum on such market value is provided in the different section. Even the solatium payable under the old Land Acquisition Act was at the rate of 30 per cent on the market value and, in the new 2013 Act, the solatium amount is equivalent

to one hundred per cent of the compensation amount. Therefore, there is a material change in determination of the market value, determination of the amount of compensation, determination of the amount of solatium and declaration of the final award. Therefore, on a fair reading of the relevant provisions of the 2013 Act, namely Sections 26 to 30, we are of the opinion that the High Court has rightly observed and held that the solatium amount to be determined and calculated under sub-section (1) of Section 30 of the 2013 Act shall be equivalent to 100% of the market value determined under Section 26 of the Act plus the value of all assets attached to the land i.e. the total amount of the compensation and shall not include an amount calculated at the rate of 12% per annum on such market value payable under sub-section (3) of Section 30 of the 2013 Act. On fair reading of the aforesaid provisions and the scheme of the 2013 Act, we are of the opinion that any other interpretation would be contrary to the scheme of the 2013 Act.

4.1 Insofar as the reliance placed by the learned counsel for the petitioner upon Section 69 of the 2013 Act is concerned, it is required to be noted that Section 69 of the Act provides for the determination of the award/final award, which shall include the amount of compensation determined as per Sections 26, 27, 28 and 29 of the 2013 Act; the additional amount calculated at the rate of 12% per annum on such market value determined and payable under sub-section (1) of Section 30 of the 2013 Act and solatium at the rate of one hundred per cent over the total compensation

amount determined and payable under sub-section (3) of Section 30 of the 2013 Act. Determination of the final award which shall be including the aforesaid three components, shall be different than that of the determination of amount of compensation. The amount of compensation is one part of the final award. Therefore, the submission on behalf of the petitioner relying upon Section 69 of the 2013 Act that the solatium amount equivalent to one hundred per cent of the compensation amount includes the amount calculated at the rate of 12% on such market value (as per sub-section (3) of Section 30 of the 2013 Act) has no substance and cannot be accepted. What is provided under sub-section (1) of Section 30 of the 2013 Act is the “compensation amount” and not the total amount payable as per the final award. The total amount of compensation payable would be only that amount compensation determined as per Sections 26 to 29 of the 2013 Act.

5. In view of the above and for the reasons stated above, it is held that the solatium as contemplated under sub-section (1) of Section 30 of the 2013 Act has to be calculated only on the market value plus the value of the assets attached to the land i.e. total compensation amount as determined as per Sections 26, 27 and 28 of the 2013 Act which shall not include the additional amount at the rate of 12% per annum on such market value as payable under sub-Section (3) of Section 30 of the 2013 Act. We are in complete agreement with the view taken by the High Court. Both these

Special Leave Petitions fail and deserve to be dismissed and are accordingly dismissed.

.....J.
(ARUN MISHRA)

.....J.
(M. R. SHAH)

New Delhi,
July 17, 2019