

BOMBAY HIGH COURT

Jaiwant

Vs.

Govt. of Goa

First Appeals Nos. 83 of 1984 and 94, 95, 98, 99, 102, 104, 123, 124, 125, 135, 136 and 147 of 1985

(Pendse, Couto and Kamat, JJ.)

28.01.1987

JUDGMENT

Pendse, J.

1. A group of thirteen appeals filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') challenging the judgement delivered by Court in reference under Section 18 of the Act were posted for hearing before the Division Bench of this Court. During the arguments, the Division Bench noticed conflict between the decisions delivered by two Division Benches reported (*Union of India v. Smt. Maria Olivia Carvalho*¹) and (*Hiraji Budho Bhake v. State of Maharashtra*²) about the application of provisions of Section 23(1-A) of the Act, and thereupon the Division Bench decided to refer the issue to a larger Bench. The Division Bench also referred the question as to whether the enhanced rate of 15 per cent of interest prescribed by proviso to Section 28, as per the amendment, is to be granted in every case or the grant, lies in the discretion of the Court. The two questions referred are as follows :-

- (a) Whether the provision of Section 23(1-A) is applicable retrospectively only to those pending cases where no award has been made by the Collector (LAO) before the 30th April, 1982, or whether the said provision of law is to be applied to all pending cases, even to those in appeal to the High Court or the Supreme Court; and
- (b) Whether the enhanced rate of fifteen percentum of interest spoken of in the proviso to Section 28 of the Act as amended is to be mandatorily awarded or whether its grant lies within the discretionary powers of the reference or appellate Court.

As the Division Bench has referred these specific two questions and not the appeals, it is not necessary to set out the facts which gave rise to these appeals, and it would suffice if only relevant facts involved in First Appeal No. 94 of 1985 are set out to appreciate the controversy

arising in this reference.

¹ in AIR 1986 Bom 1

² AIR 1986 Bom390

2. By Notification under Section 4 of the Act published in the Government Gazette on October 3, 1969, the Government of Goa, Daman and Diu declared intention to acquire plots Nos. 13, 14 and 92 situated at Cavolossim for construction of Air to Ground range for the use of Indian Navy. Notification under Section 6 was published on June 10, 1971 and after holding inquiry as contemplated under Section 11 of the Act, the Land Acquisition Officer declared award on August 2, 1972 determining compensation for Plots Nos. 13 and 14 at the rate of Rs. 1.25 per sq. metre and at the rate of Rs. 2.50 per sq. metre for Plot No. 92. The claimant sought reference to the Civil Court under Section 18 of the Act on December 24, 1973 and the reference when duly made, the Civil Court investigated the claim and judgment was delivered on June 24, 1985. The Civil Court came to the conclusion that the claimant was entitled to the compensation at the rate of Rs. 5/- per sq. metre for all the three plots in addition to 15% solatium and 6% interest per annum from the date of recovery of possession till the date of payment of compensation. The claimant being dissatisfied with the quantum of enhancement of compensation, preferred appeal to this Court. During the course of hearing of the appeals, question arose as to whether the claimant would be entitled to the advantage of amended provisions of Section 23(1-A) and proviso to Section 28 of the Act, and in view of the conflicting decisions, the reference was made to the larger Bench.

3. On April 30, 1982, the Land Acquisition (Amendment) Bill, 1982 was introduced in the House of People for amending various provisions of the Act, and after the two Houses passed the Bill, the Land Acquisition (Amendment) Act, 1984, being Act No. 68 of 1984 received assent of the President on September 24, 1984. By Section 15 of the amending Act, Section 23 of the principal Act was amended by introduction of Sub-section (1-A), which reads as under :

"(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award as amount calculated at the rate of twelve per centum 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 the award of 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 proceedings for the acquisition of the land were held up on account of any stay or injunction by the under of any Court shall he excluded.

(b) In Sub-section (2), for the words "fifteen per centum", the words "thirty per centum" shall be substituted."

By introduction of Sub-section (1-A), the claimant was granted a right to receive an amount calculated at the rate of 12 per centum per annum of the market value for the period commencing from the date of publication of the Notification under Section 4 and ending with the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. The

introduction of this Sub-Section confers an additional right on the claimant to receive the amount over and above the market value of the land and the solatium. Section 18, Clause (a) of the amending Act provides that in Section 28 of the principal Act for the words "six per centum" the words "nine per centum" shall be substituted. Section 28 of the principal Act confers power on the Court to direct the Collector to pay interest on excess amount of compensation which would be determined in a reference.

Section 30 of the amending Act deals with transitional provisions, and it is necessary to set out these provisions in its entirety.

"30. Transitional provisions.- (1) The provisions of Sub-section (1-A) of Section 23 of the principal Act, as inserted by Clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,-

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of People), in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the date of commencement of this Act.

(2) The provisions of Sub-section (2) of Section 23 and Section 28 of the principal Act, as amended by Clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the Provisions of the Principal Act after the 30th day of April, 1982 (the Bill 1982, in the House of People) and before the commencement of this Act.

(3) The provisions of Section 34 of the principal Act, as amended by Section 20 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,-

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People), and the amount of compensation for such acquisition had not been paid or deposited under Section 31 of the principal Act until such date, with effect on and from that date; and

(b) every case in which such possession has been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said Section 31, with effect on and from the date of taking such possession."

4. The claimants on the basis of amended Section 23(1-A) have contended that they are entitled to receive the additional amount at the rate of 12 per centum per annum, on the market value

determined, for the period commencing from October 3, 1969 till the date of award or recovery of possession. The claimants contend that Section 23(1-A) applies and shall be deemed to have applied to the acquisition proceedings all along, and though the award was declared on August 2, 1972 reference proceedings under Section 18 were over after the amendment came into force, and therefore claimants are entitled to benefit of amendment. On the other hand it was urged on behalf of the Land Acquisition Officer that Section 30 of the amending Act deals with pending cases and Sub-section (1) is partly prospective and partly retrospective in nature, the retrospective being only in relation to these cases falling strictly within the field specified in Clauses (a) and (b). It was contended that Clause (a) applies to cases pending before the Collector on April 30, 1982 and where the Collector has not made the award, while Clause (b) applies to cases where the proceedings for acquisition were initiated after April 30, 1982 and where the award is either passed or not passed before the date of commencement of the Act. The contention is that the claimants would not be entitled to the advantage of amending provisions of Section 23(1A) as the proceedings for acquisition of land were not pending before the Collector on April 30, 1982 and Clause (b) has no application as the proceedings were commenced prior to April 30, 1982. In view of these rival contentions, it is necessary to consider on a true interpretation of language of Section 30, Sub-section (1) as to whether the amending provisions of Section 23(1-A) are applicable only to cases referred to in Sub-Sections (1)(a) and (b) of Section 30, or whether the amended provisions are applicable to all proceedings pending either before the Collector, the reference Court, High Court and the Supreme Court, on April 30, 1982.

5. We will first consider what would be position if Section 30, Sub-section (1) was not enacted and the amended Section 23(1-A) became effective only from the date on which the amending Act came into force, that is September 24, 1984. It is not in dispute that where on the date of the commencement of the amending act any proceedings for determination of compensation were pending before the Collector under Section 11 of the Act or before the Court under reference under Section 11 of the Act or before the High Court in appeal under Section 54 of the Act, then the amended Section 23(1-A) would be applicable to such proceedings, in absence of Sub- Sec. (1) of Section 30. It is obvious that authorities like Collector or Court to which reference is made or the Court in which appeal is filed, must apply the provisions of the amended Section 23(1-A) when such proceedings come for determination after September 24, 1984. The express words of Section 23(1-A) clearly enjoin a duty on the Court to award the amount in every case and the mandate of the legislation in this respect cannot be ignored. A reference can be usefully made in his connection to the decision of the Supreme Court reported in (*Bhag Singh v. Union Territory of Chandigarh*³) where the Supreme Court examined the true interpretation of the language of Section 30, Sub- Sec. (2) and in para 5 of the judgement Chief Justice Bhagwati observed that in absence of provisions of Section 30, Sub-section (2) the amended provisions of Section 23, Sub-section (2) and Section 28 would have been effective from September 24, 1984 and each of the authorities exercising powers under the Act for determination of compensation would have been bound to award solatium and the interest at the enhanced rate, irrespective of the fact when the award was passed. The Supreme Court further observed that the object of the Parliament was that

the amended provisions should be given effect from the date of the introduction of the Bill in the Parliament and therefore enacted Section 30 of the amending Act. It was further observed that the intention of Parliament in enacting Section 30, Sub-section (2) was to confer advantage on the claimants whose proceedings for determination of compensation were concluded between April 30, 1982 and September 24, 1984. Thereafter the Supreme Court considered the ambit of Sub- Sec. (2) of Section 30 and concluded that the amended provisions of Section 23, Sub-section (2) and Section 28 are made applicable to all proceedings relating to compensation pending on April 30, 1982 or filed subsequent to that date, whether before the Collector or before the Court of Reference or the High Court or the Supreme Court. even if they have finally terminated before the enactment of the

³ AIR 198S SC 1576

amending Act. In the light of the conclusions reached by the Supreme Court in this judgment, it is necessary to consider the exact ambit of provisions of Section 30(1)(a) and (b).

6. Section 30 of the amending Act deals with transitional provisions. The expression "transitional" according to Concise Oxford Dictionary means change from one place or state or act or set of circumstances to another'. The transitional provisions by its very nature are enacted to deal with the claims arising during the inter Regulation m, that is between the date of introduction of the Bill and coming into force of the amending Act. The provisions of Sub-Sections (1) and (2) of Section 30 are entirely independent and their fields of application are distinct and separate. Sub-section (2) of Section 30 prescribes that amending provisions of Section 23(2) and Section 28 shall apply and shall be deemed to have applied also to, and in relation to, any award made by the Collector Court or to any order passed by the High Court or Supreme Court between April 30, 1982 and September 24, 1984. By Sub-section (2) Section 30a right is conferred on the claimant to receive solatium at the rate of 30%, instead of 15% and interest at the enhanced rate even though the proceedings are finally concluded between the two cut-off dates, that is April 30, 1982 and September 24, 1984. The legislature has enacted this provision to remove the bar of finality of the proceedings and to enable the claimant to receive the additional amount even though the proceedings have been finally concluded. provided the final order is passed between the two cut-off dates. In other words, the claimant. whose claim for compensation is not decided on April 30, 1982 by any of the authorities prescribed under the Act or the appellate authorities. but determined before September 24, 1984 can make a fresh claim for the amount available, in view of the amendment of Sub-section (2) of Section 23 and amendment of Section 28. It is therefore, clear that the transitional provisions enacted under Sub-section (2) of Section 30 confer power on the claimant to demand additional amount as per the amended provisions, irrespective of the fact that the award is passed before April 30, 1982 provided that the proceedings for determination of compensation were pending before reference Court or appellate Court on that date. The Supreme Court in Bhag Singh's case has laid down this principle.

7. Now turning to the provisions of Sub-section (1) of Section 30, it is clearly recited that Sub-

section (1-A) of Section 23 shall apply and shall be deemed to have applied, also to and in relation to every proceedings for acquisition of any Land pending on April 30, 1982 in which no award has been made by the Collector before that date. It was contended that the advantage of amended Sub-section (1-A) of Section 23 is available only to those proceedings for acquisition which were pending on April 30, 1982 before the Collector and where no award was made. It is not possible to give such a restricted meaning to Sub-section(1) of Section 30. Section 23(1-A) prescribes that the Court shall in every case award an amount calculated at the rate of 12 per centum per annum on the market value to be determined. The mandate is to Court and not to the Collector. It is no doubt true that the Collector while determining compensation is guided by the provisions contained in Sections 23 and 24, but the legislature by enacting Sub-section(1) of Section 30 desired to make it crystal clear that the amended provisions of Section 23(1-A) - "shall apply even in relation to the proceedings pending before the Collector on April 30, 1982 and in which no award has been made. The crucial words in Sub-section(1) of Section 30 are that the provisions of Sub-section(1-A) of Section 23 - "shall apply and shall be deemed to have applied, also to, and in relation to "cases covered by Clauses (a) and (b). The expression "also to and in relation to" clearly indicates that the cases set out in Clauses (a) and (b) are not the only cases to which the amended provisions of Sub-section (1-A) of Section 23 apply. The sweep of Sub-section(1) of Section 30 is very wide and takes in its embrace even the cases set out under Clauses (a) and (b). In our judgment, it is not possible to read down the provisions of Sub-section (1) of Section 30, so as to restrict the application of the amended provisions of Sub-section (1-A) of Section 23 only to two categories of cases set out in Clauses (a) and (b). Clause (a) covers the cases where the acquisition proceedings had already commenced before April 30, 1982 but in which no award has been made by the Collector by that date. while Clause (b) deals with the cases where proceedings for acquisition were commenced after April 30, 1982 and where the award has been made or not made before September 24, 1984. It is obvious that the legislature desired to confer the advantage of amended provisions of Sub-section(1-A) of Section 23 even to those cases where the acquisition proceedings before Collector commenced and concluded between the cut-off dates. In our judgment the provisions of amended Sub-section(1-A) of Section 23 apply to all cases pending on April 30, 1982 either before the Collector or before the Court in reference or before the High Court or Supreme Court in appeals, irrespective of the fact whether the award is declared prior to April 30, 1982 or on a subsequent date. We are unable to accept the submission that the Parliament enacted Sub-section (1) of Section 30 to indicate clearly and beyond doubt that the amended Sub-section (1-A) of Section 23 was to govern only the awards made by the Collector after April 30, 1982 and is not applicable to the proceedings pending before the reference Court or before the appellate Courts where the awards are declared by the Collector prior to April 30, 1982. In case the Parliament intended to prescribe such a restricted application of the amended provisions, then the phraseology of Section 30(1) would have been totally different. The Statement of Objects and Reasons of the amending Act clearly recites that the amendment was enacted as a large number of cases for the acquisition of land are pending before various authorities for a very long time and payment of market value of the land obtaining on the date of preliminary notification under Section 4 of the

Act likely to be unrealistic and iniquitous. By insertion of amending provision of Sub-section (1-A) of Section 23 the object proposed to be achieved was payment of simple interest at 12 per centum per annum on the amount of compensation for the period commencing from the date of issue of notification under Section 4 to the date of tender of payment, in respect of all pending proceedings on April 30, 1982. The Statement of Objects indicates that the Parliament did not desire to restrict the advantage of the amended provisions only to those cases where the award was declared subsequent to April 30, 1982, but was desirous of conferring the benefit in favor of claimants whose proceedings for determination of compensation were pending before the authorities under the Act or the appellate Courts. It was strenuously urged on behalf of Land Acquisition Officer that while interpreting the true ambit of Sub-section (1) of Section 30, the different phraseology used by legislature in Sub-Secs. (1) and (2) should be borne in mind. Sub-section (1) refers to every proceeding for acquisition in which no award has been made by Collector, while Sub-section (2) refers to award made by Collector or Court and order passed by High Court and Supreme Court. Proceedings for acquisition, it was contended, commence with Section 4 notification and ends with award and taking over of possession and therefore Sub-section (1) keeps out reference proceedings before Court and proceedings thereafter before appellate authorities. It was submitted that in case Sub-section (1) was not limited only to cases covered under Clauses (a) and (b), then there was no occasion to enact different Sub-Sections (1) and (2) of Section 30. The submission overlooks that Sub-Sections (1) and (2) covers different areas, Sub-section (2) deals with cases decided between cut-out dates and deals with enhanced amount of solatium and rate of interest, the rights which were already available to claimant under unamended act, while Sub-section (1) covers all cases where the proceedings are not concluded before April 30, 1982 and deals with a new right to receive amount in accordance with amended Section 23(1-A) of the Act. The enactment of different Sub-Sections and different phraseology cannot, therefore, warrant a conclusion that advantage of Section 23(1-A) is available only to those cases where the award is passed by Collector after April 30, 1982.

8. We are therefore in agreement with the view taken by the Division Bench on June 25, 1985 in the case of *Smt. Nayantara w/o Gangadhar Agrawal v. Government of Goa, Daman and Diu*³, and decision of the Division Bench reported in AIR 1986 Bombay 1, (*Union of India v. Smt. Maria olivia Carvalho*) and express our disagreement with the view taken by the Division Bench reported in (*Hiraji Budho Dhake v. State of Maharashtra*⁴). The decision in Hiraji's case cannot be regarded as laying down the correct law in regard to the interpretation of Sub-section (1) of Section 30. The decision in Hiraji's case in regard to the interpretation of Sub- Sec. (2) of Section 30 stands overruled by the decision of the Supreme Court in Bhan Singh's case. We are also in agreement with the conclusion reached by Delhi High Court in the decision reported in (*Raghibir Singh v. Union of India*⁵) and the conclusions reached by the Full Bench of the Karnataka High Court in the decision reported in⁶, (*Special Land Acquisition Officer, Dandeli v. Soma Gopal Gawda*) and decision of the single Judge of the Punjab and Haryana High Court reported in (*Puran v. State of Haryana*⁷). Our answer to point No. 1 referred to the larger Bench is that the amended provision of Sub-section (1-A) of Section 23 of the Act is applicable to all cases

pending on April 30, 1982 whether before the Collector or before the Court of reference under Section 18 or before the High Court or Supreme Court in appeals.

9. Section 28 of the Act prior to its amendment read as under :

"28. 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 six 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."

By Section 18 of the amending Act, the words "six per centum" were substituted by the words "nine per centum" and a proviso was inserted at the end of the Section. which reads as under :

"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

³First Appeals Nos. 62 and 63 of 1984 ⁵AIR 1985 Del 228 ⁷AIR 1986 Punand Har 305

⁴AIR 1986 Bom 390

⁶AIR 1986 Karn 179

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."

It was contended that the view taken by the Division Bench in *Union of India v. Maria Olivia Carvalho*⁸, that the enhanced rate of fifteen per centum per annum prescribed under the proviso must be awarded in all cases is not correct. It was urged that payment of such enhanced interest is not mandatory but its grant lies exclusively in the discretion of the Court. Reliance was placed on the use of the expression "may", both in Section 28 and the amended proviso, to contend that the grant of enhanced rate of interest is not a must in every case. but lies within the discretion of the Court. In support of the submission reliance is placed on the decision of the Supreme Court reported in (*Raghubans Narain Singh v. Uttar Pradesh Government*⁸) where the question considered was whether the Court has a discretion to grant interest under Section 28 of the Act. The Supreme Court observed (at p. 469) :

"In its plain language the discretion that is conferred on the Court is whether in the given circumstances of a particular case the Court should award interest or not. The words "may direct" mean that it is discretionary on the part of the Court to grant or refuse to grant interest. But the words following those words, viz. "the Collector shall pay interest on such excess at the rate of six per centum per annum" would mean that once the discretion to grant interest is exercised there is no further discretion and the interest if awarded has to be at the rate of six per centum per annum."

In view of the dictum laid down by the Supreme Court, it is obvious that it is not obligatory on the Court to award interest either under Section 28 or the enhanced interest under the amended proviso, though it must be made clear that the discretion to be exercised is judicial in nature and not arbitrary. In normal course the claimant is entitled to the award of interest under Section 28 of the Act and also to enhanced interest under the amended proviso to Section 28, and unless specific case is made out, the claimant could not be deprived of the advantage. It should not be overlooked that the proceedings in acquisition are compulsory in nature and the claimant must be awarded all the benefits provided under the statute unless it is shown by the acquiring authority that the claimant has disentitled himself to avail of the same. Our answer to question (b) referred to the larger Bench is that the grant of enhanced rate of interest prescribed under proviso to Section 28 is within the discretionary powers of the Court. The appeals should now be posted before the concerned Courts for disposal on merits.

Reference answered accordingly.

⁸ AIR 1967 SC 465