

# PUNJAB AND HARYANA HIGH COURT

State of Punjab

Vs

Krishan Lal

Civil Misc. No. 1001 of 1986

(H.N. Seth, C.J., S.P. Goyal and M.S. Liberhan, JJ.)

04.05.1987

## JUDGMENT

### **H.N. Seth, C.J.**

1. By this application, the applicant Krishan Lal, whose land had been acquired under the provisions of the Land Acquisition Act, prays that judgment rendered by this Court in *State of Punjab v. Krishan Lal*<sup>1</sup>, on July 22, 1983, be modified and he be given the benefits of Sections 23 (1-A), 23 (2) and 28, as introduced and amended by the Land Acquisition (Amendment) Act, 1984. He accordingly prays for -

(1) 12 per cent per annum enhancement of the amount of compensation from the date of notification under Section 4 of the Act till the date of the award of the Collector or the date of taking possession of the land, whichever was earlier (benefit under Section 23 (1-A) of the Act).

(2) 30 per cent addition to the market value of the land in consideration of compulsory acquisition (as per amended Section 23 (2) of the Act).

(3) 9 per cent interest from the date of taking possession of the land up to a period of one year and thereafter at the rate of 15 per cent per annum for the subsequent period till payment (as per amended Section 28 of the Act).

2. Briefly stated, the facts giving rise to this application are that the land of the petitioner had been acquired under the Land Acquisition Act. After the Collector had made his award, the applicant took the matter up in reference under Section 18 of the Act before the Additional District Judge, Bhatinda, who, vide his order dated February 29, 1980, enhanced the compensation and directed that the same be calculated at the rate of Rs. 17/- per square yard. Aggrieved, the State of Punjab came up in appeal (R.F.A. No. 1752 of 1980) before this Court. The applicant also filed a cross-objection and claimed that the amount of compensation awarded by the Additional District Judge deserved to be enhanced. The learned Single Judge, before whom the appeal and the cross-objection came up for hearing, enhanced the compensation

payable to the applicant vide his judgment dated November 9, 1981, and directed that the same be calculated at the rate of Rs. 20/- per square yard. However, the said judgment of the learned Single Judge was set aside by a Division Bench in L.P.A. 773 of 1982, on July 22, 1983 with the result that the order of the Additional District Judge dated February 29, 1980, awarding compensation to the applicant calculating the same at the rate of Rs. 17/- per square yard, was restored. The parties submitted to the judgment dated July 22, 1983, and the matter rested there.

3. The acquisition of land under the Land Acquisition Act for public purposes became more numerous after independent. It was often found that poor people's land which was the only source of their livelihood because an inescapable necessity for the larger interests of the community and compensation awarded to them under the provisions of the Act was, in the context, not adequate. The Government, therefore, introduced the Bill for making amendments in the Land Acquisition Act, 1984, on April 30, 1982, and eventually enacted the Land Acquisition (Amendment) Act, 1984 (hereinafter referred to as the Act and the Amending Act) which came into force on September 24, 1984. In order to achieve its objective, the Amending Act introduced Sub-Section (1-A) in Section 23 of the Act providing for awarding of extra amount of 12 per cent of the market value of the land per annum for the entire period beginning from the issue of preliminary notification upto the award of the Collector or taking of possession of the land, whichever be earlier. It also amended Sub-section (2) of Section 23 and increased the amount of solatium for compulsory acquisition from 15 per cent to 30 per cent. The amendment made in Section 23 of the Act had the effect of increasing the rate of interest payable on the amount awarded by a Court in excess of that awarded by the Collector from 6 per cent to 9 per cent for the first year and thereafter to 15 per cent per annum for the subsequent years till the payment thereof is made.

4. After the Amending Act came into force on September 24, 1984, the applicant presented the present application on March 17, 1986, and claimed that the judgment of this Court in L.P.A. No. 773 of 1982, dated July 22, 1983 be modified and he be given the benefit of the amended provisions.

5. When the application came up for motion hearing before a Division Bench of this Court, the Bench passed the following order on May 2, 1986:-

"There are conflicting Division Bench decisions in C.M. 3297 of 1985 in *Jagir Singh etc. v. Union of India*<sup>2</sup>, 1986(1) P.L.R. 710, decided on 20.12.1985 and *Ratan v. State of Haryana*<sup>3</sup> decided on 4.4.1986 regarding payment of 12 per cent per annum on the market value of the acquired land from the date of notification under Section 4 of the Land Acquisition Act 1894 (hereinafter referred to as the Act) upto the date of the award or the date of possession, whichever occurs earlier, in terms of Section 23 (1-A) of the Act. In view of the contradictory opinion expressed by the Benches of co-ordinate jurisdiction, the case is referred to a larger Bench for an authoritative decision.

The papers of this case may, therefore, be placed before Hon'ble the Chief Justice for constituting a larger Bench."

This is how the matter has come up before us.

6. Learned Advocate General, Punjab, who appeared on behalf of the State did not dispute that the applicant is entitled to the benefit under the amended Sections 23 (2) and 28 of the Act, namely, to 30 per cent instead of 15 per cent interest from the date of taking possession of the land up to the period of one year and thereafter at the rate of 15 per cent per annum for the subsequent period till the payment had been made to him as laid down in amended Section 28 of the Act. He, however, contested the claim of the applicant with regard to 12 per cent per annum enhancement on the amount of compensation from the date of notification under Section 4 of the Act till the date of the award of the Collector or the date of taking possession land, whichever was earlier, in accordance with the provisions of Sub-section (1-A) of Section 23. In view of the stand taken by the Advocate General, the only question that remains to be considered by us is, whether in a case, like the present one, where an award under the Land Acquisition Act had been made prior to 30th day of April, 1982 and the proceedings in respect of that award were finally concluded between April 30, 1982 and September 24, 1984, the person whose land has been acquired can after the Amending Act came into force, ask for reopening of those proceedings and claim the benefit of Sub-section (1-A) of Section 23.

7. It cannot be doubted that normal rule is that Amending Act, affecting substantive rights, operates prospective operation only to the extent permitted by the Amending Act either expressly or by necessary implication. Sub-section (1-A) of Section 23 will, therefore, be applicable in relation to the acquisition proceedings initiated after September 24, 1984, and as held by the Full Bench of the Karnataka High Court in the case of *Special Land Acquisition Officer, Dandeli v. Soma Gopal Gowda*<sup>4</sup>, it may, having regard to the setting and purpose of Section 23 of the Act also apply to the proceedings for determination of compensation to cases pending on, and concluded after September 24, 1984. It cannot thus be made applicable to proceedings finalised before September 24, 1984, except to the extent the Amending Act, specifically or by necessary implication, permits it. Relevant portion of Section 30 of the Amending Act, which permits limited retrospective operation of Sub-section (1-A) of Section 23, runs thus-

"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 the 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) and (3) .....

8. A perusal of the Section clearly shows that newly inserted sub-Section (1-A) of Section 23 has been given retrospective operation only in following two classes of cases -

1. The cases in which the proceedings were pending on April 30, 1982 and which no

award had been made by the Collector before that date, and

2. the cases in which proceedings for acquisition of land were commenced after April 30, 1982, whether or not the award had been made by the Collector before September 24, 1984.

This provision therefore, applies only to cases falling within two cut off date, namely, April 30, 1982, and September 24, 1984, and in which the Collector made his award after April 30, 1982. It certainly does not apply to a case, like the one before us, in which the award of the Collector had been made prior to April 30, 1982. The wordings of Sub-sections (1) and (2) of Section 30 of the Amending Act clearly negative any implication that the Legislature intended to give any retrospective operation, beyond that specified therein, to Section 23 (1-A) of the Act.

9. We are, therefore, clearly of the opinion that neither Section 23 (1-A) by itself, nor it being read along with Section 30 of the Amending Act, enables the applicant to claim the benefit thereunder.

10. We may now advert to the cases cited at the Bar. In support of his claim, learned counsel for the applicant placed strong reliance on the Full Bench decisions of the Karnataka High Court in the case of *Special Land Acquisition Officer Dandeli v. Soma Gopal Gowda*<sup>5</sup>. It appears that in that case, two questions were referred for opinion to the Full Bench. The first question was as to whether the reference Court making an award after September 24, 1984, had to apply the provision of Sub-section (1-A) of Section 23 and award an amount of 12 per cent of the market value of the land per annum for the entire period beginning from the issue of preliminary notification up to the award of the Deputy Commissioner or taking of possession of the land, whichever was earlier. The second question, also in similar terms, related to the applicability of said Sub-section to matters pending in appeal before the High Court on September 24, 1984. The Full Bench eventually came to the conclusion that in cases where the proceedings for determination of compensation were pending either before the original authority or in a Court of reference or appeal on September 24, 1984, the provisions of Section 23 (1-A) became applicable and that having regard to the setting in which the Sub-section appeared, it could not be said that in such a case it was being given any retrospective operation. There is nothing in this judgment to support the applicant's claim that Sub-section (1-A) of Section 23 would, on its own, apply also to proceedings which had been finally concluded before September 24, 1984. This case also does not lay down that in cases where the award had been made prior to April 30, 1982, and the proceedings were concluded in between April 30, 1982 and September 24, 1984, the benefit of Sub-section (1-A) of Section 23 can be given with the aid of Section 30(1) of the Amending Act.

11. Reliance was also placed on a decision of the Delhi High Court in *Ragbir Singh and others v. Union of India and others*<sup>6</sup>. In that case, the learned Judges observed thus:-

"The critical words in this section are 'also to' used in Sub-section (1). This show that firstly, this provision of additional amount made in Section 23 (1-A) will also apply and shall be deemed to have applied to every proceeding which was pending on 30.4.1982 and in which no award had been made by the Collector before that date. Secondly, this provision will also apply to every proceeding for acquisition of the land which was

commenced after 30.4.1982, whether or not an award has been made by the Collector before 24.9.1984. This provision applied to cases falling within the two cut off dates 30.4.1982 and 24.9.1984. But if a case is decided after 24.9.1984 after the Amending Act has become the law of the land, the Courts are bound to give effect to the provisions of Sub-section (1-A) of Section 23..... ".

According to the observations of the learned Judges in this case, the benefit of the provisions of Section 23 (1-A) cannot be given in cases where the proceedings had finally concluded before September 24, 1984, except to the extent permitted by Section 30(1) of the Amending Act which gives retrospective operation only in two contingencies specified in clauses (a) and (b) thereof. As in the present case the award of the Collector had been made prior to April 30, 1982, it does not fall within the ambit either of clause (a) or that of clause (b) of Section 30(1) of the Amending Act.

12. Coming now to the cases cited in the referring order, we find that in C.M. 3297 of 1985 in L.P.A. 914 of 1984, arising out of - *Jagir Singh v. Union of India*<sup>7</sup>, a Division Bench of this Court modified the judgment dated September 17, 1985, rendered by it in the L.P.A. and gave the benefit of Sub-section (1-A) of Section 23 to the applicant. It appears that in that case, the proceedings for determination of adequacy of compensation were pending on and after September 24, 1984, before the High Court in R.F.A. 122 of 1984 and thereafter in L.P.A. 914 of 1984. The decision of the Bench appears to be in line with the Full Bench decision of the Karnataka High Court in the case of Special Land Acquisition Officer, Dandeli (supra) wherein it had been held that Section 23 (1-A) of the Amending Act applied, on its own, to the proceedings for determination of compensation pending before a Court on or after September 24, 1984, and that in such cases no question of giving the section any retrospective operation arises. This Division Bench decision cannot, in our opinion, be utilized for showing that Section 23 (1-A), without the aid of Section 30(1), also applies to cases like the present one where proceedings had been finally concluded before September 24, 1984 (the date on which Sub-section (1-A) of Section 23 came to be inserted in the main Act).

13. So far as - *Ratna v. State of Haryana*<sup>8</sup> decided on April 4, 1986 is concerned it was a case in which the proceedings which had been concluded in the year 1982, namely, by an order dated July 15, 1982, were sought to be reopened and the applicant claimed that he should be given the benefit of Section 23 (1-A), 23 (2) and 28 of the Act as inserted and amended by the Amending Act. The Court accepted the plea for giving the benefit of the amended Sections 23(2) and 28, but declined the relief claimed under Sub-section (1-A) of Section 23. In doing so, it relied upon and approved the decision of a learned Single Judge of this Court in the case of *Puran v. State of Haryana*<sup>9</sup>, and observed thus-

"Interest under this provision of law is payable by the Collector only in those acquisition proceedings before the Collector which were either pending on the 30th day of April, 1982 and in which proceedings no award had been made by the Collector before that date or such proceedings which have been commenced after that date whether or not an award has been made by the Collector, prior to the commencement of the Act, w.e.f. 24.9.1984..... ".

Clearly, one question that arose before the Division Bench was whether the applicant in that case was entitled to the benefit of Section 23 (1-A) read with Section 30(1) of the Amending Act and it was rightly held that as the case did not fall within the ambit of Section 30(1) (a) of the Amending Act, benefit of Section 23 (1-A) could not be extended to the applicant. There is nothing in this case which runs counter either to what was held in C.M. 3297 of 1985 in L.P.A. 914 of 1984, or to what is being held by us in this case. Accordingly, we do not find any inconsistency between the two Division Bench judgments of this Court mentioned in the referring order.

14. In the result, the application succeeds in part and in view of the concession made by the learned Advocate General, we modify the judgment of this Court in L.P.A. 773 of 1982 dated July 22, 1983, and direct that the applicant shall, over and above the market value of the land as eventually determined by this Court, be entitled to 30 per cent instead of 15 per cent, as solatium for compulsory acquisition under amended section 23 (2) of the Act as also to 9 per cent per annum interest from the date of taking possession of the land to the period of one year and thereafter at the rate of 15 per cent per annum for the subsequent period till the date of payment as per amended Section 28 of the Act. The applicant's claim for 12 per cent per annum enhancement on the amount of compensation from the date of notification under Section 4 of the Act till the date of the award of the Collector under Section 23 (1-A) of the Act is rejected.

Parties to bear their own costs.

Application partly accepted.

Cases Referred.

1L.P.A. No. 773 of 1982  
2L.P.A. 914 of 1984  
3C.M. 3254 of 1985 in L.P.A. 663 of 1982  
4AIR 1986 Kar 179  
5AIR 1986 Kar 179  
6AIR 1985 Del 228  
7R.F.A. 122 of 1984  
8C.M. 3254 of 1985 in L.P.A. 663 of 1982  
91986(1) P.L.R. 453