

CASE NO.:
Appeal (civil) 5782 of 2002

PETITIONER:
Karnal Improvement Trust

RESPONDENT:
Sumitra Devi (dead) by Lrs. And Ors

DATE OF JUDGMENT: 24/03/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL No. 5782 of 2002
(With C.A.Nos. 5670, 5778, 5779, 5804, 6566/2002)

Dr. ARIJIT PASAYAT J.

1. These appeals have an identical point and are therefore disposed of by this common judgment.

2. Challenge in each case is to the final judgment and order dated 29.1.2002 passed by a Division Bench of the Punjab and Haryana High Court. Writ Petitions filed by the appellant in each case were dismissed. Challenge in the Writ Petitions was to the award of solatium at the rate of 30% of the market value and other amounts permissible under Sections 23(1-A) and 28 of the Land Acquisition Act, 1894 (in short the 'Act'). According to the appellant the benefits were not available to the respondents because of the specific provisions of Section 30(1) of the Land Acquisition (Amendment) Act, 1984 (in short the 'Amendment Act'). The High Court relying on some earlier judgments dismissed the writ petitions.

3. Learned counsel for the appellant submitted that in view of the decision of this Court in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (1990 (1) SCC 277) and Kashiben Bhikabai and Ors. v. Special Land Acquisition Officer and Anr. (2002 (2) SCC 605) no amount was payable as provisions of under Section 23(1-A) are not applicable. Reference is also made to Section 30(1) of the Amendment Act for the purpose which reads as follows:
"30.Transitional provisions. - (1) The provisions of subsection (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) xxx xxx xxx
(3) xxx xxx xxx."

4. It is pointed out that since there was no enhancement of compensation in excess of the award of the Collector, the benefits under Section 28 of the Act are also not applicable. Reliance is placed on The State of Punjab and Anr. v. Jagir Singh etc. (JT 1995 (9) SC 1) .

5. Learned counsel for the respondents on the other hand supported the judgment of the High Court.

6. In Filip Tiago's case (supra) it was inter-alia observed at para 21 as follows:

"Entitlement of additional amount provided under Section 23(1-A) depends upon pendency of acquisition proceedings as on April 30, 1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under Section 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on April 30, 1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30, sub-section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after April 30, 1982 irrespective of the fact whether the Collector has made an award or not before September 24, 1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2)."

7. Similarly, in Kashiben's case (supra) it was observed as follows:

"17. Counsel appearing for the claimants contended that the claimants would be entitled to an additional compensation @ 12% as provided under Section 23(1-A) of the Act. This contention cannot be accepted in view of a Bench decision of this Court in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama which held that additional compensation under Section 23(1-A) of the Act would not be available to a claimant in which the acquisition proceedings commenced and the award was made by the Collector prior to 30-4-1982. If the Collector made the award before 30-4-1982 then the additional amount under Section 23(1-A) cannot be awarded. The pendency of the acquisition proceedings on 30-4-1982 before the Collector was essential for attracting the benefit under Section 23(1-A) of the Act. It was held: (SCC pp. 286-87, para 21)

'21. Entitlement of additional amount provided under Section 23(1-A) depends upon pendency of acquisition proceedings as on 30-4-1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under Section 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on 30-4-1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 subsection (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30-4-1982 irrespective of the fact whether the Collector has made an award or not before 24-9-1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2).'

No judgment taking a contrary view to the above-referred case was cited before us. Accordingly, it is held that the appellants would not be entitled to the additional compensation provided under Section 23(1-A) of the Act."

8. In Jagir's case (supra) it was observed as follows:

"It would thus be seen that the legislative animation is clear that the Civil Court on reference under Section 18, or the High Court or in some States District Judge exercising appellate power under section 54 or civil court under Section 26, as the case may be, awards compensation in excess of the amount awarded by the Collector, then it gets jurisdiction and power to award additional benefits envisaged in sub-section (I-A) of section 23, sub-section (2) of Section 23 and Section 28 of the Act. In other words, enhancement of the compensation in excess of the award of the collector under Section 11 is a condition precedent to exercise the power to award statutory additional amounts envisaged under the aforesaid respective provisions on the excess compensation. If the High Court dismisses the appeal confirming the award of the Collector or that of the civil court, then it has no jurisdiction and power to award additional statutory amount under the respective provisions as amended under the Amendment Act 68 of 1984."

9. From a reading of the orders passed by the Reference Court it is clear that there was no enhancement of the rates as fixed by the Land Acquisition Collector. That being so, benefits under Section 28 of the Act are not available to the respondents. The award was passed on 7.11.1972. The Reference Court decided the case on 18.10.1997. That will not change the position because as noted in Filip Tiago's case (supra) the relevant date is the date of award by the Collector under the Act. The High Court, therefore, is clearly wrong in dismissing the Writ Petition filed by the appellant. The inevitable conclusion is that respondents are not entitled to solatium under Section 23(1-A) of the Act and similarly the benefits under Section 28 of the Act.

10. The appeals are allowed but with no order as to costs.