

PETITIONER:
URBAN IMPROVEMENT TRUST, JODHPUR

Vs.

RESPONDENT:
GOKUL NARAIN & ANR.

DATE OF JUDGMENT: 10/04/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIAK (J)

CITATION:
1996 AIR 1819 1996 SCC (4) 178
JT 1996 (4) 446 1996 SCALE (3)721

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. Ramaswamy, J.
Leave granted.

This appeal by special leave arises from the judgment dated May 27, 1994 made in Civil Revision No.553 of 1993 by a learned single Judge of the Rajasthan High Court at Jodhpur. The admitted facts are that under Section 52 of the Rajasthan Urban Improvement Act, 1959 [for short, the 'Act'] the land of Gokul Narain, the first respondent, along with otherlands, for construction of over-bridge, was acquired and possession thereof was taken on June 22, 1965. The Additional Collector made his award on June 30, 1976 awarding a sum of Rs.70,699.82 as compensation which included value of the building also. On appeal, the District Judge by order dated January 27, 1978 enhanced the compensation to Rs.2/- per square foot. The appellant as well as the respondents carried the matter in revision to the High Court. By order dated March 18, 1983 the High Court remanded the matter to the District Judge, with certain directions, for fresh disposal thereof. The District Judge by order dated November 19, 1985 enhanced the compensation to Rs.11.50 per square foot and on further revision and remand by the High Court by order dated December 18, 1989 also applied the provisions of the land Acquisition Act, 1894 [Central LA Act] as amended by Act 68 of 1984 and awarded solatium, interest and additional amount under Sections 23 [2], 28 and 23 1-A] of the Central LA Act. In the meanwhile, the appellant had paid the compensation amount on March 7, 1977 in a sum of Rs.1,18,760/- and a further sum of Rs.44,195.60 on May 11, 1982. The respondent claimed adjustment of the said amounts towards interest and filed the execution for the balance amount. The High Court by order dated August 4, 1988 dismissed the revision of the respondent claiming adjustment of the amounts paid towards interest and his entitlement to claim the balance amount

observing that the respondent is not entitled to benefit under Act 68 of 1984. The respondent filed the execution for recovery of the balance amount. The appellant filed objections under Section 47 of the Code of Civil Procedure, 1908 [CPC] claiming that the cost of the acquired land worked out @ Rs.11.50 per square foot to Rs.1,19,026.22 and the cost of the building was Rs.3,423.00. Interest payable @ 6% for period from June 22, 1965 upto July 3, 1977, the date of deposit, worked out to Rs.85,981.16. The total compensation payable and interest worked out to Rs.2,08,432.36. The balance excess amount as on that date including interest was Rs.89,672.38. Interest on the balance principal compensation @ 6% from that date upto May 11, 1982 worked out to Rs.90,819.12. Balance compensation amount as on May 11, 1982 and interest thereon was Rs.90,819.12. Balance compensation amount as on May 11, 1982 and interest thereon was Rs.46,623.62. The amount paid in compliance of the order of the High Court dated December 12, 1987 was Rs.1,23,000/-. Therefore, the excess amount paid to the respondent was Rs.76,376.38. Interest calculated @ 6% on the said excess amount for period from the date of the deposit till date of objections, viz., January 16, 1991 to which the appellant claims to be entitled is Rs.14,231.46. Thus the appellant claims that he is entitled to receive from the respondents a total refund of Rs.90,607.84 plus interest thereon @ 6% from January 18, 1991 till date of decision. The District Judge by the impugned order dated April 25, 1984 had dismissed the objections. On revision, the High Court by the impugned order dismissed the claim. Thus this appeal by special leave.

The Act was amended by Rajasthan Amendment Act 29 of 1987 which came into force w.e.f August 1, 1987. By reason thereof, the Central Amendment Act 68 of 1984 became applicable to acquisition under the Act from August 1, 1987. Section 60A of the Act, as inserted by the Amendment Act 29 of 1987, made transitory provision applicable to the pending matters. Pending the special leave petition, the first respondent died on February 17, 1995. A notice was issued on January 2, 1995. When the notice was not served, the appellant was permitted to take out dasti service by order dated by order dated February 5, 1996 and when the notice was taken, the appellant was informed that the respondent had died. Consequently, application for substitution under Order 22 Rule 4, CPC was filed on February 12, 1996. The legal representatives received the notice as per the orders of this Court dated March 18, 1996. We have heard learned counsel on both sides.

It is stated in the written arguments of the counsel or the respondents that the District Judge by order dated May 27, 1995 brought the legal representatives of the first respondent on record. When application came to be filed in the District Court on May 5, 1995 to the knowledge of the counsel or the appellant, it was ordered on May 27, 1995. The application for substitution is barred by limitation. The special leave petition had abated and, therefore, appeal is not maintainable. We find no force in the contention. Under Order 22, Rule 10A, CPC, whenever a pleader appearing for a party to the suit comes to the knowledge of the death of the party, he has to inform about it and the court thereupon gives notice of such death to the other party and for this purpose the contract between the pleader and the deceased party is deemed to subsist. It would, therefore, be clear that though the legal representatives have been brought on record in the executing Court on May 27, 1995 pending proceedings in this Court, since the counsel for the

appellant did not have had the information, on coming to know of the death after dasti service was taken out, immediately application under Order 22, Rule 4, CPC came to be filed within 30 days of the date of the knowledge. Accordingly, there is no abatement of the appeal. The State is not expected to keep watch over the survival of the respondent and lapse of counsel to intimate to the counsel appearing in this Court cannot be construed to be knowledge of death. Even if it is assumed that abatement was caused, since application was filed under Order 22, Rule 4, CPC within 30 days from the date of the knowledge there is no delay in making the application to bring the legal representatives on record in this Appeal. There is, hence, no abatement by reason of the death of the respondent. The application to bring the legal representatives is accordingly ordered.

It is contended by Shri Badridas Sharma, learned counsel for the appellant that the Amendment Act 68 of 1984 was extended for the acquisition of the land under the Act w.e.f. August 1, 1987. Under the Act, there is no provision for payment of solatium, interest and additional amount either under the State Land Acquisition Act, 1953 or the Central LA Act. The Act grants interest @ 6%. The District Judge, therefore, was wrong in applying the provisions of the Central LA Act as amended by Act 68 of 1984. The District Judge, inherently lacked jurisdiction to apply the provisions of Amendment Act 68 of 1984. The order dated December 18, 1989 is a nullity to award solatium, interest and additional amount under Sections 23 [2], 28 and 23 [1-A] of the Central LA Act as amended by Act 68 of 1984. Nullity of the decree can be raised even in execution. The objection, therefore, was accordingly raised. The respondent is not entitled to claim these additional benefits except the principal amount @ Rs. 11.50 per square foot and interest @ 6%. The District Judge as well as the High Court, are, therefore, wrong in law in dismissing the objections.

Shri Arvind Kumar, learned counsel for the respondents contended that the order awarding additional benefits under Sections 23 [2], 28 and 23 [1-A] of the Central LA Act as amended by Act 68 of 1984 was allowed to become final. The Court, though wrongly, applied the Amendment Act, it did not lack inherent jurisdiction. Therefore, having allowed the decree to become final, it would not be open to the respondent to contend that the decree is a nullity. It is further contended that Section 47, CPC contemplates correcting the errors in execution, discharge or satisfaction of the decree. The modification sought by way of objections amounts to review of the decree which has become final. Therefore, it does not come within the ambit of Section 47, CPC. The question, therefore, is: whether the District Judge and the High court were right in concluding that the appellant was not entitled to raise the objections to the execution of the decree? The admitted position is that the Act does not provide for payment of solatium and additional amount. It empowers the Court to award interest @ 6% on the amount awarded from the date of taking possession. The appellant having allowed the enhanced compensation at Rs. 11.50 per square foot, though on wrong principle, to become final, it is bound by it. The only objection raised by the appellant is as to the executability of the decree of additional benefits under Central Amendment Act 68 of 1984. The respondent is entitled only to the principal amount and interest @ 6% per annum from the date of taking possession, viz., June 22, 1965. The amounts claimed and paid have already been specified and hence need no reiteration. It is

settled law by catena of decisions of this Court that determination of the compensation under Section 23 [1] of the Central LA Act is towards market value of the land prevailing as on the date of the publication of the Section 4 [1] notification in the Gazette. Equally, so under Section 52 of the Act.

In Prem Nath Kapur & Anr. v. National Fertilizers Corporation of India Ltd. & Ors. [(1996) 2 SCC 71] a three-Judge Bench of this Court had considered the scope of power to award additional benefits under Sections 23 [2], 28 and 23 [1-A] of the Central LA Act and of the jurisdiction of the court to decide as to when they are to be awarded; on what items interest and solatium is claimable and upto what date. Equally, of the power to adjust the amount towards interest was considered. The facts in that case were that the notification under Section 4 [1] was published on February 5, 1973. On October 5, 1975, the Collector made his award. On October 5, 1975, the Collector made his award. On January 24, 1980 the reference Court enhanced the compensation. The High Court dismissed the revision on May 23, 1983. When an application was made later, the High Court awarded damages for severance and on further application it awarded solatium, interest and additional amount under the Amended Central LA Act. In execution, the respondent raised the objection as to the executability of the decree of the enhanced solatium, interest and additional amount. The executing Court overruled the objections. The High Court allowed the revision. The appellant had computed the total liability deducting the amount paid toward interest and additional amount payable including interest on solatium, solatium and interest on additional amount under section 23 (1-A) and interest till the date of satisfaction under Order 21, Rule 1 CPC and laid execution for the balance amount with interest. The appellant had raised objections which were rejected by the executing Court. In the revision, the High Court set aside the order and directed to compute the principal amount, adjust the amounts deposited towards principal amount and to proceed with the execution of the balance amount. When the special leave petition was filed, another Bench of this Court suo motu issued notice as to why the additional benefits ordered under Sections 23 [2], 28 and 23 [1-A] as well as damages for severance and additional benefits thereon should not be set aside. When the matter came up on reference before a three Judge Bench, this had held that payment of solatium under Section 23 (2) and additional amount under Section 3 (1-A) are "in addition to" the compensation determined under Section 23 [1]. Payment of interest under Section 28 is on the excess amount or part thereof awarded on reference under Section 26 or on appeal under Section 54. The award of each component is independent, after determination of market value under Section 23 (1). The Court gets jurisdiction to award additional benefits under Sections 23 [2], 28 and 23 [1-A] only when the Court enhances the compensation and is not independent of the power under section 23 (1). It was held that the claimants were not entitled to solatium under Section 23[2], interest under Section 28 and additional amount under Section 23(1-A). The liability to pay interest subsists till date of deposit of the amount into Court. There is no liability to pay interest on solatium; or solatium and interest on additional amount under Section 23 (1-A) which cannot be calculated and claimed in execution. The claimant cannot adjust the amount deposited and received towards principal amount as against interest. The doctrine of Section 60 of the Contract Act is inapplicable to the

execution of the award under the Act. Therefore, the claimant cannot appropriate the amounts paid for compensation towards interest.

In Union of India vs. Raghubir Singh [(1989) 2 SCC 754], Constitution Bench of this Court had held that the claimant is not entitled to the benefit of the Amendment Act 68 of 1984 in the pending appeals to pay enhanced solatium and interest covered by transitory Section 30 of the Amendment Act 68 of 1984. It would be applicable only when the proceedings are pending either before the reference Court or the Land Acquisition Officer. In K.S. Paripoornan [II] v. State of Kerala [1995] 1 SCC 367 another Constitution Bench per majority had held that the claimant is not entitled to additional amount when the award was made or possession take before the Amendment Act was introduced. Since both the events had occurred prior to the introduction of Amendment Act 68 of 1984, the claimant was not entitled to additional amount. That ratio is being allowed in catena of decisions of this Court subsequently including Prem Nath Kapur's case [supra].

In State of Punjab & Anr. vs. Jagir Singh & Ors. [1995] supp. 4 SCC 626] the Additional District Judge had enhanced the compensation on March 2, 1978. When the state had gone in appeal, while dismissing the state appeal the High Court granted benefits of the enhanced solatium, interest and additional amount under Section 23 [2], 28 and 23 [1-A]. Objections were raised in education. When it was rejected, this Court had held that the High Court had no power to award the statutory benefits. It was, therefore, held that the award of the High Court of the additional benefits was without jurisdiction. This ratio is an authority for proposition that though the High Court has power under Section 54 to entertain appeal, it lacks jurisdiction to award independently additional benefits under the Amendment Act, when it confirms the award of the reference Court. In state of Punjab vs. Avtar Singh & Ors. [(1995) 1 SCC 383] after the disposal of the appeal by the High Court on November 11, 1982, an application came to be made under sections 151 and 152 CPC after the Amendment Act 68 of 1984 came into force. Upon that the High Court on July 22, 1986, had granted the benefits under Act 68 of 1984. On appeal, this Court had held that the High Court had no power to award the additional benefits. The same view was reiterated in state of Punjab & Anr. vs. Babu Singh & ors. [(1995) supp. 2 SCC 406, major Pakhar Singh Atwal & ors. vs. state of Punjab & ors. [1995 supp (2) SCC 401], Union of India vs. Rangila ram (Dead) by LRS. [(1995) 5 SCC 585], Gurdial Singh & Anr. vs. state of Punjab [(1995) 3 SCC 333] and Improvement Trust. Patiala vs. Land Acquisition Tribunal & Ors. [(1995) 3 SCC 724].

In Union of India & Ors. vs. Pratap Kaur (smt.) (Dead) through LRs. & Anr. [(1995) 3 SCC 263], the facts were that the High Court had disposed of the appeals under Section 54 of the Central LA Act which became final. Thereafter, miscellaneous applications were filed before the Additional District Judge to redetermine the compensation. He enhanced the compensation on redetermination applying the principle of belting. When the order came to be questioned, the High Court dismissed the revision. On appeal, this Court had held that District Court had no jurisdiction under Section 13-A of the Central LA Act as it was neither a clerical error nor an arithmetical mistake. The order was held to be without jurisdiction. The Court gets jurisdiction only on a valid reference made under Section 18. This case is an authority for the proposition that Court has on inherent or

independent power to determine compensation except on a reference under Section 18 and so District Judge has no inherent jurisdiction or authority to award compensation under the guise of correcting the award or decree under section 13A.

In State of Maharashtra vs. Maharau Srawan Hatkar [(1995) 3 SCC 316], after the decree of the enhanced compensation became final, on an application filed, the Civil Judge awarded the additional benefits under the Amendment Act 68 of 1984 and the High Court dismissed the appeal. This Court had held that the Civil Court had no jurisdiction to amend the decree awarding additional benefits under Amendment Act 68 of 1984. In other words, the award of additional benefits was held without jurisdiction and authority of law. In Ishwarlal Premchand Shah & Ors. etc. etc. v. State of Gujarat & Ors. [C.A. @ SLP 19039/94 etc.] decided on March 15, 1996 a contention was raised that though the parties had entered into an agreement under Section 11 [2] of the Central LA Act, they are entitled to the additional benefits under Sections 23(2), 28 and 23 (1-A) since those components are part of the compensation under the guise of correcting the award or decree under section 13A.

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In umed Industries and Land Development Co. & Ors. vs. State of Rajasthan & ors. [(1995) 2 SCC 563], the question arose: whether the Amendment Act 68 of 1984 would be available to the lands acquired under the Act, and Rajasthan Land Acquisition Act, 1953? It was held that by operation of Section 60A of Rajasthan Amendment Act 29 of 1987, the Central Amendment Act would be applicable only with effect from August 1, 1987. Since the proceedings were pending for determination of the compensation, it was held that solatium and interest under the Amendment Act would be applicable, but the claim for additional amount under Section 23 (1-A) was rejected.

It would, thus, be settled law that payment of

additional amounts independent of the compensation determined for the value of the land. They are not part of the component of the compensation for value of the acquired land. They are in addition to and independent of the component of the compensation under Section 23 (1) of Central LA. Act or Section 52 of the Act. The payment of solatium, interest and additional amount under Section 23 [2], 28 and 23 [1-A] is in addition to the payment of the compensation in terms of the provisions of the Act under which the property came to be acquired. Admittedly, the Act does not provide for payment of solatium and additional benefits except interest @ 6% per annum from the date of taking possession. The Amendment Act 68 of 1984 would be applicable. The Amendment Act 68 of 1984 would be applicable prospectively from August 1, 1987 to the land acquired thereafter, Act 68 of 1984 would be applicable under section 60A to the pending cases as on August 1, 1987 to determine compensation.

It would be seen that under the Central Amendment Act payment of additional amount under Section 23 [1-A] and of solatium under Section 23 [2] cannot be applied to the award made prior to coming into force of the Rajasthan Amendment Act 29 of 1987. Section 60A provides that notwithstanding anything contained in sub-section [11 of Section 52 of the Act, where any matter relating to acquisition of land is pending on the date of the commencement of the Amendment Ordinance, viz., August 1, 1987 such matters being conducted or action taken, shall be subject to the provisions of the Central LA Act. The District Judge was, therefore, not right in applying the Amendment Act on December 18, 1989 awarding enhanced solatium and interest and additional amount.

The question then is: whether the objections can be raised in execution? This controversy is no longer res integra. In *Sushil Kumar Mehta vs. Gobind Ram Bohra (Dead)* through his Lrs. [(1990) 1 SCC 193] a three-Judge Bench of this Court was to consider whether the nullity of a decree can be raised in execution. Under the Haryana Urban [Control of Rent and Eviction) Act, 1973 the building was governed by the provisions of the said Act. The Civil Court granted decree of eviction. When objection was raised in execution the executing Court rejected the same. On appeal, this Court had held that a decree passed by a Court jurisdiction over the subject matter or on any other ground which goes to the root of its exercise of jurisdiction or inherent jurisdiction, is a nullity. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is any defect in its exercise of jurisdiction it does not go to the root of its authority. Such a defect like territorial jurisdiction could be waived by the party which could be corrected only by way of an appeal or revision. In that case it was held that since the decree was a nullity the validity was upheld in execution.

In *Jaipur Development Authority vs. Radhey Shyam & Ors.* [(1994) 4 SCC 370] this Court had upheld the same objection raised under Section 47, CPC when the decree awarding allotment of land in addition to compensation was held to be a nullity. That objection was allowed to be raised in execution and was upheld. *Hiralal Moolchand Doshi vs. Barotraman Lal Ranchhoddas* [1993] 2 SCC 458] relied on by the respondents is of no avail. In that case though nullity

of a decree on the basis of a compromise for eviction of a tenant governed by the provisions of the Rent Act was pressed for acceptance, this Court had held that the party cannot be permitted to lead fresh evidence as to the existence of that ground for eviction. On the facts in that case, it was held that the tenant impliedly admitted existence of statutory ground for eviction. Therefore, the decree was held to be not a nullity. As regards the nullity or lack of inherent jurisdiction, this Court observed that the decree can be said to be a nullity if it is passed by a court having no inherent jurisdiction. Erroneous decree cannot be said to be a nullity; nor can a decree based on an error be a nullity. Nullity has to be understood in the sense that it is ultra vires the power of the Court passing the decree and not merely avoidable decree. As stated earlier, if the decree strikes at the jurisdiction of the court or the court lacks jurisdiction it strikes at the very root of the authority to pass the order or the decree. As seen, the Amendment Act 68 of 1984 has no application to the lands acquired under the Act. It was amended only w.e.f. August 1, 1987 and it was made applicable only to the pending proceedings. It would, therefore, be clear that the order awarding additional benefits is clearly without jurisdiction and thereby it is a nullity. Its nullity can be assailed at any stage including at the execution or in a collateral proceedings since it strikes at the very jurisdiction and authority of the court.

Under these circumstances, the District Judge and the High Court are not right and their finding that the appellant is not entitled to raise objection in the execution, is wrong in law. It should be considered in execution only under section 47 CPC and not by a separate suit. The orders of the District Judge and the High Court stand set aside. The executing Court is directed to recompute the liability of the appellant to pay the compensation and interest @ 6% from the date of taking possession i.e., June 22, 1965 and order execution accordingly. In case it finds that the appellant is entitled to restitution the same would be ordered under Section 144, CPC as prayed for. The District Judge is directed to correct the decree accordingly and recompute the liability to pay compensation in the light of the law declared above and pass appropriate orders according to law.

The appeal is allowed accordingly. In the circumstances, parties are directed to bear their own costs.