

PETITIONER:
JAIPUR DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:
MAHAVIR HOUSING CO-OP. SOCIETY, JAIPUR ETC

DATE OF JUDGMENT: 18/09/1996

BENCH:
K. RAMASWAMY, FAIZAN UDDIN, G.B.PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NO. 12653 OF 1996
(Arising out of SLP (C) No.14811 of 1994)
O R D E R

Leave granted.

Notification under Section 4(1) of the Rajasthan Land Acquisition Act, 1953 was published on August 21, 1969 acquiring a large extent of 484 bighas 11 biswas of land for Jaipur Urban Development Scheme by different notifications. An extent of 4 acres 5 biswas (9845 sq.yds.) relates to the acquisition in appeal arising out of SLP (C) No.14811/94. In respect of the appeal arising out of SLP (C) No.6519/94, an extent of 10 bighas 7 biswas was acquired. The Land Acquisition Officer determined the compensation by his award Dated July 16, 1981 and October 12, 1981 respectively determining the Compensation at the rate of Rs. 5,000/- per bigha to the respondent - Jai Ambe Co-op. Housing Society and Rs.7,500/- per bigha to the respondent - Mahavir Housing Co-op. Society. On reference, the civil Judge enhanced the compensation at the rate of Rs.40,000/- per bigha. As regards the award of the Civil Judge, an appeal was filed against the respondent - Jai Ambe Co-op. Society Ltd. The learned single Judge in appeal No.142/92 has confirmed the same by judgment dated May 2, 1994. As regards the award in favour of Mahavir Housing Co-operative Society, no appeal was filed. But in execution an objection has been raised regarding additional amount awarded under Section 23(1-A) which was negatived. On revision, the High Court in Revision No.1059/93 dated December 20, 1993 confirmed the same. Thus, these appeals by special leave.

When the matter relating to Mahavir Housing Co operative Society initially came up, notice was confined in respect of section 23(1-A) but later when it was brought to our notice of the fraud and collusion between the officers entrusted with the prosecution on behalf of the appellant and the claimants, we have indicated to the counsel that we would go into the question of determination of the compensation. Thus these cases are heard together. It is seen that from the evidence adduced before the reference Court in respect of jai ambe Co-operative Housing Society except one

claimant Mr. Garg no documentary evidence has been adduced in support of the claimant for enhancement. Two awards under Section 26 came to be filed in which one award relating to the Mahavir Housing Co-operative society and another award relating to the same notification but an amount of Rs. 24,000/- per bighas was awarded. As regards the claim in Mahavir housing co-operative Society is concerned, they relied upon a judgment of the High Court in which the High Court has granted some lands at the rate of Rs. 12/- per sq. yd. which related to the acquisition of 1994 and also a certificate issued by Tehsildar relating to some other village, which worked out at the rate of Rs. 44,000/- per acre and the sale deeds in support thereof. One curious fact in both the cases that cannot be lost sight of is that the claimants have purchased these properties after the notification under Section 4(1) was published and a reference came to be made at their instance to the civil court. Though an opportunity was given to the appellant, for well over 11 years, no counter affidavit has been filed. As a result, they were set ex-parte. Yet another curious aspect that we cannot lose sight of is that the reference Judge has merely with parrot-like consideration swallowed what the witnesses had stated that the market value is Rs. 50/- per sq. yd. without subjecting to any scrutiny as per the tests laid down by this Court. It is also to be noted that the same aspect was repeated by the learned Judge of the High Court in to any scrutiny as per the tests laid down by this Court. It is also to be noted that the same aspect was repeated by the learned judge of the High Court in Jai Ambe Co-operative Housing Society's case.

The question, therefore, is what would be the reasonable compensation to which the claimants are capable to get? In view of the settled legal position that the claimants being the subsequent purchasers cannot have a higher right than that the original owner himself had. They cannot set up any title to the property on the basis of sale deeds and consideration but may be entitled to the compensation obviously getting into the shoes of the claimant. We need not go into the question of correctness whether or not the reference is valid in this case, though open to doubt since that question was not raised at any stage much less in this Court. We proceed on the premise that the reference under Section 18 was valid.

As stated earlier, the entire process has gone on in collusion. When we have issued notice to the appellants as to what steps they have taken against the officers who are responsible even for not filing the appeals or not contesting the matter, an affidavit has been filed in which it was stated that disciplinary action against the Land Acquisition Officer was taken and even the counsel who appeared for the Jaipur Development Authority was in collusion and steps were taken by laying a complaint before the Bar Counsel for professional misconduct. We need not further dwell up on that fact but suffice it to state that the acquisition proceedings have proceeded in collusion and, therefore, they were not reflected the correct market value as is available in this case. As seen in Jai Ambe Co-operative Housing Society's case. even their own sale deeds under which they have purchased from one Bhagwan Singh, who was said to be the original owner, were not even filed. Under these circumstances. We thought over the matter as to what would be the appropriate course to be adopted in this case. We are of the view that instead of relegating the matter again, we can ourselves decide the matter ON the

basis of the evidence on record. Accordingly, we have considered the case on merits.

It is seen that the Land Acquisition Officer has awarded compensation at the rate of Rs.7,500/- per bigha to the lands purchased by Mahavir Co-operative Housing Society and Rs.5,000/- per bigha to the lands purchased by Jai Ambe Co-operative Housing Society Ltd. Having regard to the facts and circumstances, we are of the considered view that two times more than what was granted by the Land Acquisition Officer would be the just compensation in the given circumstances of the case. Accordingly, we determine the compensation to Jai Ambe Co-operative Housing Society Ltd. at the rate of Rs 15 000/- per bigha and to the lands of Mahavir Housing per Co-operative Society Rs.22,000/- per bigha.

As regards the State of Rajasthan the Land Acquisition (Amendment) Act, 68 of 1984 was extended w.e.f. April 30 94. But the State Legislature had amended the Act by Amendment Act 28 of 1987 w.e.f. August 1, 1987. In *Umed Industries & Land Development Co. & Ors. v. State of Rajasthan & Ors.* [(1995) 2 SCC 563], a Bench of two Judges had held that the Central Amendment Act 68 of 1984 would apply from August 1, 1987 to the acquisition in State of Rajasthan. It is seen that in Mahavir Housing Co-operative Society's case, possession was delivered on May 24, 1984 after the stay was vacated by the civil Court since the civil Court granted stay of dispossession on October 23, 1983. Therefore, the respondent-Society is not entitled to the interest prior to May 25, 1984. Therefore, the decree as regards payment of interest from the date of the notification till May 24, 1984 is clearly illegal. It is seen that since the award, if the reference Court is dated-- June 15, 1990 claimants will be entitled to interest from 25, 1984 at the rate of 6% per annum till August 1, 1987 and thereafter 15% per annum on the enhanced compensation till date of deposit in the Court. As regards the solatium is concerned, they are entitled to 30% solatium on the enhanced compensation. As regards the additional amount under Section 23 A) is concerned, the claimants are not entitled to the additional amount since the awards name to be passed by the reference Court on October 12, 1981 and July 16, 1981 in Mahavir Housing Co-operative Society and Jai Ambe Co-operative Housing Society Ltd. respectively.

In *Prem Nath Kapur and Anr. v. National Fertilizers Corpn. of India Ltd. and Ors.* [(1996) 2 SCC 711], considered the entire case law by a bench of three Judges in paragraph 17 had held that the power to grant additional amount under section 23(1-A) and enhanced interest under the proviso to Section 28 and solatium at 30 per cent was due to amendments brought under Act 68 of 1984. Prior thereto the court has no power or jurisdiction to grant them. Therefore, the additional amount, the excess rate of interest or solatium at 30 per cent granted were without jurisdiction are a nullity. The courts cannot correct the award or the decree in exercise of the power under Sections 151 and 152 C.P.C. This Court has relied upon the Constitution Bench decision in *Union of India v. Raghubir Singh* [(1986) 3 SCR 3161]. This Court has reiterated the same principle in another recent judgment in *Baj Shakriben v. spl. L.A.O.* [1996 (4) SCALE 636]. Therefore, objection would be raised in execution under section 47. The award of the additional amount was one of without jurisdiction and so a nullity.

It is contended for the respondent in Mahavir Housing Co-operative Society's case, that since the award was allowed to become final including grant of additional amount

under Section 23(1-A), it is not open to the review at a later date since it is not one of initial lack of jurisdiction but an illegality has been committed in awarding the additional amount. In support thereof, learned counsel relied upon a judgment of this Court in State of Punjab & Ors. vs. Mohinder Singh Randhawa & Anr. [1993 supp.(1) SCC 49, paragraph 3] It is true that in a case where the proceedings were properly conducted and the order was allowed to become final, the matter may be construed to be an order of illegality. When it is one of jurisdiction, this Court has repeatedly, in plethora of precedents, had held that the courts have no jurisdiction to award additional amount under Section 23(1-A) since the Collector had already passed the award under Section 11 and the benefit of additional amount would be confined to the period between the date of the notification under Section 4(1) and the award under Section 11 when the proceedings were pending before him. In this case, since we have already recorded the finding that the award became final due to collusion by the officers and the claimants, the principle of illegality in the award does not apply since fraud unravels the entire procedure and makes the award a nullity.

The appeals are accordingly allowed as indicated above, but in the circumstances, without costs. As regards structures awarded by the reference Court, they stand upheld.