

CASE NO.:
Appeal (civil) 5101 of 1996

PETITIONER:
Ghaziabad Development Authority

RESPONDENT:
Anoop Singh and Another

DATE OF JUDGMENT: 23/01/2003

BENCH:
K.G. Balakrishnan & P. Venkatarama Reddi

JUDGMENT:
J U D G M E N T
WITH
Civil Appeal NO. 5102 OF 1996

P. Venkatarama Reddi, J.

In these appeals by Special leave preferred against the judgment of the Allahabad High Court in a First Appeal, two questions arise for consideration : (1) whether the respondents land holders could claim and get compensation under the Land Acquisition Act over and above what they claimed in an application seeking reference to Civil Court and (2) whether the respondents are entitled to the statutory benefits under Sections 23 and 28 as amended by the Land Acquisition (Amendment) Act of 1984?

An extent of two bighas and 1 biswa equivalent to 6,201 sq. yards situated in the village of Jatwara Kalan of Ghaziabad District was acquired under the provisions of the Land Acquisition Act, starting with the publication of Notification under Section 4(1) on 18.8.1962. The acquisition was for the purpose of implementation of a scheme for planned development of Ghaziabad Municipal Area taken up by the then Improvement Trust, Ghaziabad the appellant, being its successor. The declaration under Section 6 was made on 27th October, 1964, possession was taken on 22.12.1964 and the award was passed by the Land Acquisition Special Officer on 26.6.1967. The market value was fixed by him as low as Rs. 2 per sq. yard, evaluating it as agricultural land. Being dissatisfied with the same, an application was filed by the claimants seeking reference under Section 18 of the Land Acquisition Act. In that application, compensation was claimed at the rate of Rs. 20 per sq. yard. Though the application is said to be ante dated in collusion with the then Land Acquisition Officer, there is no evidence to that effect. After the case was referred to the court of District Judge at Ghaziabad, the claimants filed a petition for amendment of the application dated 11.7.1967 seeking fixation of market value at Rs.100 per sq. yard instead of Rs. 20. The same was allowed. The Reference Court by its judgment dated 31.5.1984 determined the market value at the rate of Rs. 40 per sq. yard and also awarded solatium at 15 per cent and interest at 6 per cent on the amount of compensation from the date of taking possession till the date of payment. Shortly thereafter, the Land Acquisition (Amendment) Act (Act 68 of 1984) was enacted by the Parliament which, inter alia, amended Section 25, Section 23 and Section 28. By the latter two Sections, the rates of solatium and interest were enhanced and the benefit of additional amount of 12 per cent was also conferred. Section 25 was substituted so as to remove the bar against the award of compensation in excess of what was claimed pursuant to the notice issued under Section 9. Section 25 of the Act came into force from 24.9.1984. The amendment of two provisions viz., Sections 23 and 28

were given limited retrospective effect as mentioned in Section 30 of the amendment Act.

The claimants preferred an appeal in the High Court praying for further enhancement of compensation. The appellant herein also filed appeal questioning the enhancement of compensation by the Civil Court. The High Court by the impugned judgment dated 05.2.1993 allowed the appeal of the claimants partly by enhancing the market value to Rs. 85 per sq. yard, based on the judgment in a comparable case. The High Court directed solatium to be awarded at 30 per cent, and interest at the enhanced rates prescribed by the amended Section 28. The High Court also awarded an additional amount under Section 23 (1-A) at 12 per cent per annum on the market value determined by it commencing from 25th April, 1962 till the date of taking possession of the land. It may be stated that the appellant also filed an appeal questioning enhancement by the Reference Court. The appeal filed by the appellant was consequentially dismissed. It is against this judgment that these two appeals are preferred by the Ghaziabad Development Authority.

For the purpose of resolving the first question, we may refer to Section 25, before and after its amendment. As per the original Section 25, "when the applicant had made a claim to compensation pursuant to any notice given under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11 (Emphasis supplied)". We need not refer to the other two sub-Sections. By Act 68 of 1984, Section 25 was substituted by the new Section 25 which reads as follows:

"The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11."

Construing the new Section 25, this Court in *Krishi Utpadan Mandi Samiti Vs. Kanhaiya Lal*, [(2000) 7 SCC Page 756] observed thus:

"Section 25 before its substitution by Act 68 of 1984, mandated the court not to award compensation exceeding the amount so claimed by the landowners and not to be less than the amount awarded by the Collector. This very clearly limits awarding of compensation within the amount claimed. On the facts of the present case it is not in dispute that the award itself was given on 27-12-1977 and even proceeding pursuant to referring order, was concluded on 28-2-1981, i.e., much prior to the aforesaid amending Act. Thus, on the facts of this case, it is unamended Section 25 to be applicable and not the amended section. In view of this, the peripheral limitation on the court awarding the compensation, would equally apply to the High Court exercising its power as the first appellate court."

It was then emphasized in paragraph 9 that the enhancement by the High Court could only be to the extent the landowners claimed.

As in the above case, in the instant case too, the award was passed by the Land Acquisition Officer and the Reference Court earlier to the effective date of substitution of Section 25. Hence, the limitation on the

power of the Court to award compensation as enjoined by the pre-amended Section would be attracted. However, there is a formidable impediment for the appellant to take shelter under the pre-existing Section 25. On a petition filed by the claimant, the application dated 11.7.1967 wherein compensation was claimed at Rs.20 per square yard was allowed to be amended by an order of the Reference Court passed in the year 1983. It is to be noted that by virtue of Section 53 of the Land Acquisition Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court unless they are inconsistent with anything contained in the Act. In the light of this provision, the High Court rightly held that there is no bar under the Land Acquisition Act to file a petition for amendment of the claim application in regard to the quantum of compensation claimed as there is no provision in the Land Acquisition Act which is inconsistent with the power to allow amendment. The effect of allowing the amendment is to substitute the figure of Rs.20 by Rs.100 per square yard. When once this amendment is recognized and taken note of, it is obvious that the bar under Section 25 does not get attracted. Whether this amendment could have been permitted in the face of the unamended Section 25 has not been put in issue before the High Court in specific terms. Even in the S.L.P. we found, in vain, any ground questioning the order allowing the amendment. No doubt, a party has right to challenge a non appealable order in an appeal against the decree as laid down in Rule 1A of Order 43. But, the fact remains that the legality or propriety of the order permitting amendment was neither specifically challenged before the High Court nor a specific ground taken that it was contrary to Section 25. At this stage, the appellant cannot be permitted to assail the correctness of the order permitting amendment. If that be so, the first contention based on the pre-existing Section 25 has to be necessarily rejected.

The second question is no longer res integra as it is concluded by authoritative pronouncements of this Court. In *Union of India versus Raghubir Singh*, [(1989) 2 SCC 754] the question arose before the Constitution Bench whether the claimants were entitled to solatium at 30% of the market value irrespective of the date on which the acquisition proceedings were initiated or the date on which the award was passed. Interpreting Section 30(2) of the Land Acquisition (Amendment) Act 68 of 1984, the Constitution Bench observed thus:

" In construing Section 30(2), it is just as well to be clear that the award made by the Collector referred to here is the award made by the Collector under Section 11 of the parent Act, and the award made by the Court is the award made by the Principal Civil Court of Original Jurisdiction under Section 23 of the parent Act on a reference made to it by the Collector under Section 19 of the parent Act. There can be no doubt that the benefit of the enhanced solatium is intended by Section 30(2) in respect of an award made by the Collector between April 30, 1982 and September 24, 1984. Likewise the benefit of the enhanced solatium is extended by Section 30(2) to the case of an award made by the Court between April 30, 1982 and September 24, 1984, even though it be upon reference from an award made before April 30, 1982."

It was further clarified

"..to our mind it must necessarily intend that the appeal to the High Court

or the Supreme Court in which the benefit of enhanced solatium is to be given must be confined to an appeal against an award of the Collector or of the Court rendered between April 30, 1982 and September 24, 1984".

The intention behind the Section 30(2) was stressed in the following words:

"Parliament intended that the benefit of the enhanced solatium should be made available, albeit to a limited degree, even in respect of acquisition proceedings taken before that date. It sought to effectuate that intention by enacting Section 30(2) in the Amendment Act."

In the present case, both the award made by the Collector under Section 11 as well as the award passed by the Civil Court on reference fall within the two termini indicated in Section 30(2) as interpreted by the Constitution Bench of this Court. The award of the Collector was on 26.6.1967 and the award made by the Reference Court was on 31.5.1984. Hence, both these dates fall within the time span specified in Section 30(2) and reiterated by this Court. The error committed by the Reference Court in granting solatium and interest at the rates specified in the old Sections 23 and 28 was rightly set right by the High Court by awarding solatium and interest at the enhanced rates. Though, in Raghubir Singh's case (supra), this Court was concerned with the percentage of the solatium payable under Section 23; the same principle would equally apply to the rate of interest payable under Section 28. Both Section 23(2) as well as Section 28 are referred to in the same sub-Section which was construed in Raghubir Singh's case (supra). What applies to solatium is equally applicable to interest. This position has not been disputed before us and cannot be disputed in view of the legal position declared by a three Judge Bench of this Court in 1995 (1) SCC 367.

The next aspect which needs to be considered is whether the benefit under Section 23(1A) could be extended to the claimants. Sub-Section (1A) of Section 23, inserted by Act 68 of 1984 and made effective from 24.9.1984 provides for payment of an amount calculated at the rate of 12% per annum of the market value for the period commencing on and from the date of publication of the notification under Section 4(1) till the date of the award of the Collector or the date of taking possession of the land whichever is earlier. This amount is in addition to the market value of the land acquired. The question of applicability of Section 23(1A) to the pending proceedings came up for consideration before another Constitution Bench in K.S. Paripoornan Vs. State of Kerala & Ors. [(1994) 5 SCC 593]. Agarwal, J. speaking for the majority, observed thus:

" If sub-Section (1-A) of Section 23 is construed in the light of the provisions contained in sub-Section (1) of Section 30 of the amending Act there is no escape from the conclusion that Section 23(1-A), by itself, has no application to proceedings which had commenced prior to the enactment of the amending Act and the applicability of the said provision to pending proceedings is governed exclusively by sub-Section (1) of Section 30 of the amending Act."

In paragraph 75, the legal position was succinctly stated as

follows:

" Merely because sub-Section (1) of Section 30 only refers to award made by the Collector while sub-Section (2) of Section 30 also refers to an award made by the Court as well as the order passed by the High Court or the Supreme Court in appeal against such award does not mean that Section 23(1-A) was intended to have application to all proceedings which were pending before the civil Court on the date of the commencement of the amending Act. The difference in the phraseology in sub-Sections (1) and (2) of Section 30 only indicates the limited nature of the retrospectivity that has been given to provisions contained in Section 23(1-A) under Section 30(1) as compared to that given to the provisions of Sections 23(2) and 28 under Section 30(2). The limited scope of the retrospectivity that has been conferred in respect of Section 23(1-A) under sub-Section (1) of Section 30 does not lend support to the contention that the scope of such retrospectivity should be enlarged by reading such further retrospectivity into the provisions of Section 23(1-A). For the reasons aforementioned we are of the view that in relation to proceedings which were initiated prior to the date of the commencement of the amending Act Section 23(1-A) would be applicable only to those cases which fall within the ambit of clauses (a) and (b) of sub-Section (1) of Section 30 of the amending Act.

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There is, therefore, no scope for extending the ambit of retrospective operation of sub-Section (1-A) of Section 23 beyond the limits specified in Section 30(1) of the amending Act so as to apply it to all proceedings initiated prior to the date of coming into force of the amending Act which were pending before the Civil Court on reference under Section 18 of the principal Act irrespective of the date on which the award was made by the Collector. For the reasons aforementioned we are unable to subscribe to the view taken in Union of India Vs. Zora Singh [(1992) 1 SCC 673] that sub-Section (1-A) of Section 23 would apply to all proceedings pending in the reference Court on the date of commencement of the amending Act irrespective of the date on which award was made by the Collector. In our opinion, the provisions of Section 23(1-A) of the principal Act and Section 30(1) of the amending Act have been correctly construed in Union of India Vs. Filip Tiago [(1990) 1 SCC 277] to mean that the obligation to pay additional amount in

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respect of proceedings initiated before the date of commencement of the amending Act is confined to the matters covered by clauses (a) and (b) of sub-Section (1) of Section 30 of the amending Act and we endorse the said view."

In the light of this ruling, the respondents are not entitled to the benefit of additional amount under Section 23(1-A) as the case does not fall within the ambit of either Clause (a) or Clause (b) of sub-Section (1) of Section 30 of the amending Act. To this extent, the judgment of the High Court which was rendered prior to the decision in Paripoornan's case (supra) cannot be sustained.

In the result, the appeals are allowed to the limited extent of denying the benefit of Section 23(1-A) to the respondents/claimants. In other respects, the appeals stand dismissed with no order as to costs.

New Delhi,