

CASE NO.:
Appeal (civil) 967-970 of 1990

PETITIONER:
Union of India

RESPONDENT:
Chajju Ram (Dead) by Lrs. And Ors.

DATE OF JUDGMENT: 16/04/2003

BENCH:
CJI., R.C. Lahoti, B.N. Agrawal, S.B. Sinha, AR Lakshmanan.

JUDGMENT:

J U D G M E N T

S.B. SINHA, :

The core question, involved in this batch of appeals which arise from the judgment and order dated 13.09.1982 passed by the High Court of Punjab and Haryana, relates to the constitutional validity of the Defence of India Act, 1971 (The Act) on the premise that absence of any provision for payment of solatium and interest therein for acquisition of land is hit by Article 14 of the Constitution of India.

The respondents were owners of several tracts of lands situated in or around the town of Bhatinda in the State of Punjab. For the purpose of establishing a military cantonment, the said lands were requisitioned by the District Magistrate, Bhatinda in terms of the provisions of the Act in the year 1971.

On or about 15.1.1975, proceedings were initiated for compulsory acquisition of the said lands in terms of Section 30 of the Act. The competent authority determined the amount of compensation payable for such acquisition on 28.7.1975. However, the respondents being dissatisfied with the amount of compensation offered to them asked the competent authority to refer the matter to an arbitrator in terms of Section 31 of the said Act. Allegedly, such reference was not made.

Questioning the validity of the Act on the ground that their claim of interest at the rate of 6% and solatium at the rate of 15% had not been granted, writ petitions came to be filed. The High Court by reason of the impugned judgment held that Section 31 of the Act is ultra vires Article 14 of the Constitution of India, as a result whereof the respondents became entitled to claim and recover from the Central Government solatium at the rate of 15% on the amount of compensation as also the interest thereupon at the rate of 6% per annum. Several matters came up before this Court wherein acquisitions have been made under the provisions of various Improvement Trust Acts and other Acts. A question arose as to whether the provisions of the Land Acquisition Act as regards solatium and interest are to be read into the other Acquisition Acts or not. A question also arose in some appeals as to whether the provisions of Section 28A of the Land Acquisition Act are to be read into the Act. A further question arose as to whether in the event, it be held that the provisions of Land Acquisition Act regarding payment of solatium and interest cannot be read into the said Act, the same would be declared ultra vires Article 14 of the Constitution of India.

A Constitution Bench of this Court by an order dated 12.12.2001 while referring back the matters to 3-Judge Bench as regards the first group

and the second group of cases thought it expedient to direct that these matters wherein the question as to whether the said Act violates Article 14 of the Constitution of India for the reason that it makes no provisions for solatium and interest should remain before it awaiting decisions on the first and second group of cases.

The first group of cases wherein the question as to whether the provisions regarding solatium and interest contained in the Land Acquisition Act are to be read into the provisions of various Improvement Acts arose for consideration has since been answered in the affirmative by a 3-Judge Bench of this Court in Nagpur Improvement Trust etc. vs. Vasantrao and Others etc. [(2002) 7 SCC 657] (Second Nagpur Improvement Trust).

The second group of cases relating to the question as to whether the provisions of the Land Acquisition Act are to be read into the Defence of India Act were considered in Dayal Singh and Others vs. Union of India and Others [(2003) 2 SCC 593] wherein this Court held that the provisions of Section 28A of the Land Acquisition Act cannot be read into the said Act.

The question as regards the constitutionality of the Act on the touch-stone of Article 14 of the Constitution of India is required to be considered by us in the aforementioned backdrop.

Mr. Soli J. Sorabjee, the learned Attorney General appearing on behalf of the appellant submitted that the question is squarely covered by two decisions of this Court in Union of India vs. Hari Krishan Khosla (Dead) by L.Rs. [(1993) Supp.2 SCC 149] and Union of India and Others vs. Dhanwanti Devi and Others [(1996) 6 SCC 44]. The learned Attorney General would contend that the respective schemes for acquisition of the said Act and the Land Acquisition Act are absolutely distinct and different. Mr. Sorabjee would urge that the provision for grant of solatium and interest in the Land Acquisition Act, 1894 was inserted as great delay used to be caused in payment of the amount of compensation determined on the basis of valuation of land from an anterior date, namely the date of publication of notification under Section 4 thereof.

Mr. O.P. Sharma, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would submit that the classification so far as acquisition of land under the Land Acquisition Act vis--vis the Act cannot be said to be rational so far as the matter relating to payment of compensation is concerned, inasmuch as the owner of the land is not at all concerned as regard the purpose of acquisition. He would, therefore, submit that non-payment of solatium and interest where acquisition is made under the Act would clearly be discriminatory and, thus, violative of Article 14 of the Constitution of India. The learned counsel would contend that even for the purpose of computing the amount of compensation, when acquisition is made under the said Act, the criteria therefor would also be as per the provisions of the Land Acquisition Act. Strong reliance in this behalf has been placed by the learned counsel on Haji Mohammad Ekramul Haq vs. The State of West Bengal [AIR 1959 SC 488] and Nagpur Improvement Trust and Another vs. Vithal Rao and Others [(1973) 1 SCC 500] (First Nagpur Improvement Trust).

Mr. Sharma urged that having regard to the decision of this Court in the second Nagpur Improvement Trust case (supra), there is absolutely no reason as to why the provisions of the Land Acquisition Act for the purpose of payment of compensation should not be read into the Act.

Mr. Sharma would also submit that the decisions of this Court in Hari Krishan Khosla (supra) and Dhanwanti Devi (supra) do not lay down the law correctly and, thus, are required to be overruled.

Mr. Rajiv Garg and other counsel appearing on behalf of the respondents in connected appeals, inter alia, would submit that even if the constitutionality of the said Act is upheld by this Court; equity demands that

the amounts paid to the respondents by way of solatium and interest about twenty years back should not directed to be refunded.

The said Act was enacted to provide for special measure to ensure the public safety and interest, the defence of India and civil defence and the trial of certain offences and for matters connected therewith. Chapter V of the said Act provides for requisitioning and acquisition of immovable property. Section 23 of the Act which begins with a non obstante clause enables the Central Government or the State Government, as the case may be, to requisition any immovable property and make such further orders, if in their opinion it is expedient so to do, inter alia, for securing the defence of India and other purposes engrafted therein. Section 24 of the said Act entitles the owner of the property to receive compensation on requisitioning of the property; the determination whereof is required to be made upon taking into consideration the factors enumerated therein. In the event any person interested in the lands is aggrieved by the amount of compensation so determined, he may make an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator who is empowered to determine the same. Section 29 provides for release from requisition. Section 30 of the said Act provides for acquisition of requisitioned property which reads thus :

"30. Acquisition of requisitioned property. (1)

Any immovable property which has been requisitioned under Section 23 may, in the manner hereinafter provided, be acquired in the circumstances and by the Government specified below, namely :-

(a) where any works have, during the period of requisition, been constructed on, in or over the property wholly or partly at the expense of any Government, the property may be acquired by that Government if it decides that the value of or the right to use, such works shall, by means of the acquisition of the property, be preserved or secured for the purposes of any Government, or

(b) where the cost to any Government of restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive having regard to the value of the property at that time, the property may be acquired by that Government.

(2) When any Government as aforesaid decides to acquire any immovable property, it shall serve on the owner thereof or where the owner is not readily traceable or the ownership is in dispute, by publishing in the Official Gazette, a notice stating that the Government has decided to acquire it in pursuance of this section.

(3) Where a notice of acquisition is served on the owner of the property or is published in the Official Gazette, under sub-section (2), then, at the beginning of the day on which the notice is so served or published, the property shall vest in the Government free from any mortgage, pledge, lien or other similar encumbrances and the period of requisition thereof shall come to an end.

(4) Any decision or determination of a Government under sub-section (1) shall be final,

and shall not be called in question in any court.

(5) For the purposes of this section, "works" includes every description of buildings, structures and improvements of the property."

Section 31 provides for compensation for acquisition of requisitioned property. The compensation payable for the acquisition of any property under Section 30 shall be the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition.

The said Act is a self-contained code. It lays down the procedure as well as machinery for determining the amount of compensation. It is not in dispute that the provisions for payment of compensation under the Land Acquisition Act would not ipso facto apply to the acquisition made under the said Act. The provisions of the two Acts do not also provide for the same scheme for acquisition.

In Hari Krishan Khosla (supra), a Bench of 3-Judges of this Court while considering the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 clearly held that the provisions for grant of solatium and interest under the Land Acquisition Act cannot be read into the provisions of the said Act. Having regard to the provision of Section 8(3) of the 1952 Act, this Court opined that the provisions thereof should be aimed at for giving the owner just compensation on the acquisition of his land whereas under the Land Acquisition Act, lands can be acquired in terms of the doctrine of Eminent Domain so long there exists an underlying purpose therefor and in that view of the matter the factors for determination of compensation thereunder need not be similar.

In Dhanwanti Devi's case (supra), a Bench of this Court agreeing with Hari Krishnan Khosla (supra), stated the law thus :

"The question, therefore, emerges whether it is necessary for the State legislature to expressly specify that interest or solatium shall not be payable for the lands or property acquired under Section 7(1) of the Act. Sub silentio is eloquent. It would further be seen that Section 8 of the Central Act equally does not provide for payment of solatium and interest. The Act was passed in the year 1968 while the Central Act was passed in 1952. It would, therefore, be reasonable to conclude that the State legislature was cognizant of the express provisions for payment of interest and solatium available in the Acquisition Act. The Act omitted similar provisions for payment of interest and solatium as part or component of compensation, obviously to fall in line with the Central Act."

In First Nagpur Improvement Trust (supra) the question which arose therein was as to whether the State Government being the acquiring authority for the acquisition of lands, be it under the Improvement Trust Act or the Kanpur Urban Development Act, or the Land Acquisition Act, any discrimination can be made as regards formulation of different principles of compensation and such classification would be violative of Article 14 of the Constitution of India. It was held :

"It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated

the owner who is discriminated against, can claim the protection of Article 14."

(Emphasis Supplied)

Sikri, C.J., speaking for the Bench, however, observed that the State can make a reasonable classification for the purpose of legislation. The learned Chief Justice held that that the classification in order to be reasonable must satisfy two tests : (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. However, he hastened to add that the object therefor itself must be lawful and cannot be discriminatory.

This Court in the second Nagpur Improvement Trust (supra) came to the conclusion that all the statutes providing for acquisition of land lay down a common scheme and pattern as the state legislation relate to the town planning and development and in terms of which the provisions of the Land Acquisition Act were made applicable with certain modifications, the provisions relating to solatium and interest contained therein shall be read into the State Acts.

In the second Nagpur Trust's case (supra), having regard to the scheme of acquisition sought to be achieved, it was held :

"It may be noticed that in U.P. Avas Evam Vikas Prashad vs. Jainul Islam, this Court highlighted the fact that though under the Land Acquisition Act as amended in its application to the State of U.P. there was no provision for grant of solatium, by the U.P. Act such solatium was provided for. The intention of the legislature was apparent that it wanted to confer the benefit of solatium by modifying Section 23(2), which benefit was not available under the provisions of the Land Acquisition Act as it was applicable in the State of U.P. at the time of enactment of the U.P. Act. So far as the Punjab Act and the Nagpur Act are concerned, the schedules do not modify the provisions of Section 23(2) of the Land Acquisition Act which provides for payment of solatium. However, a proviso was added to the effect that sub-section (2) shall not apply to any land acquired under the State Acts in question. The added proviso is identical in both the State Acts. This clearly implies that where acquisition was made under the provisions of the Land Acquisition Act, as modified, the legislature did not intend to deprive the claimants of solatium as provided under the Land Acquisition Act. But solatium was not payable in cases of acquisition under the State Acts. There are provisions in both the State Acts which permit the State to acquire lands for the purposes of the scheme without resorting to the provisions of the Land Acquisition Act such as acquisition by purchase, lease, exchange, or otherwise, or acquisitions contemplated under deferred street scheme, development scheme and expansion scheme. In respect of such acquisitions solatium is not payable. Such cases are similar to the acquisitions under Section 53 of the Bombay Town Planning Act which was considered by this Court in Prakash Amichand Shah vs. State of Gujarat. In these circumstances with a view to save the law from the vice of the arbitrary and hostile discrimination, the

provisions must be construed to mean, in the absence of anything to the contrary, that the provisions of the Land Acquisition Act as amended by the 1984 Act relating to determination and payment of compensation would apply to acquisition of land for the purposes of the State Acts. It must, therefore, be held that while incorporating the provisions of the Land Acquisition Act in the State Acts, the intention of the legislature was that amendments in the Land Acquisition Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the State Acts. Consequently, the claimants are entitled to the benefits conferred by Section 23(1-A), if applicable, and Sections 23(2) and 28 of the Land Acquisition Act as amended by the 1984 Act for acquisition of land for the purposes of the State Acts under Section 59 of both the Nagpur and Punjab Acts."

(Emphasis Supplied)

It is now well-settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well-settled that a little difference in facts or additional facts may lead to a different conclusion.

The question, therefore, which arises would be, as to whether the owners of the lands sought to be acquired under the Act vis-a-vis Land Acquisition Act are similarly situated?

Here it is not a case where existence of the Acquisition Act enables the State to give one owner different treatment from another equally situated owner on which ground Article 14 was sought to be invoked in the first Nagpur Improvement Trust's case (supra). The purposes for which the provisions of the said Act can be invoked are absolutely different and distinct from which the provision of Land Acquisition Act can be invoked for acquisition of land. In terms of the provisions of the said Act, the requisition of the land was made. During the period of requisition the owner of the land is to be compensated therefor. Section 30 of the said Act, as referred to hereinbefore, clearly postulates the circumstances which would be attracted for acquisition of the requisitioned land.

The purposes for which the requisitioning and consequent acquisition of land under the said Act can be made, are limited. Such acquisitions, inter alia, can be made only when works have been constructed during the period of requisition or where the costs to any Government of restoring the property to its condition at the time of its requisition would be excessive having regard to the value of the property at the relevant time.

One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. In terms of the provisions of the said Act acquisition of the property would be in relation to the property which has been under requisition during which period the owner of the land would remain out of possession. The Government during the period of requisition would be in possession and full enjoyment of the property.

It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not. The formulation of the criteria for payment of compensation in terms of Section 31 of the Act was clearly made having regard to the said factor, which cannot be said to be arbitrary or unreasonable. The Parliament while

making the provisions for payment of compensation must have also taken into consideration the fact that the owner of the property would have received compensation for remaining out of possession during the period when the property was under acquisition.

The learned Attorney General appears to be correct in his submission that the provision for grant of solatium was inserted in the Land Acquisition Act by the Parliament having regard to the fact that the amount of compensation awarded to the owner of the land is to be determined on the basis of the value thereof as on the date of issuance of the notification under Section 4 of the Act. It has been noticed that the process takes a long time. Taking into consideration the deficiencies in the Act, the Land Acquisition Act was further amended in the year 1984. In terms of sub-section (2) of Section 23 of the Land Acquisition Act, therefore, solatium is paid in addition to the amount of market value of the land.

We are, therefore, of the opinion that the classification sought to be made for determination of the amount of compensation for acquisition of the land under the said Act vis--vis the Land Acquisition Act is a reasonable and valid one. The said classification is founded on intelligible differentia and has a rational relation with the object sought to be achieved by the legislation in question.

It may be true that in Haji Mohammad Ekramul Haq's case (supra), this Court observed while considering the provisions of the Defence of India Act, 1939, that the principles on which the compensation was to be ascertained under Section 19 of the Defence of India Act were the same as those provided in Section 23(1) of the Land Acquisition Act. Even the principles of ascertaining the amount of compensation, as it then stood, did not provide for any payment of solatium. The said decision, however, having regard to the provisions contained in Section 31 of the Act which lays down the criteria for determination of the amount of compensation cannot be said to have any application whatsoever in the instant case.

In Dayal Singh's case (supra) this court held :

"The right to get the amount of compensation re-determined must expressly be provided by the statute. Such a right being a substantive one cannot be sought to be found out by implication nor can the same be read therewith.

The appellants, thus, cannot invoke a right by reading the same into a statute although admittedly there exists none."

We do not agree with the submission of Mr. Sharma that Hari Krishan Khosla (supra) and Dhanwanti Devi (supra) have wrongly been decided.

We are, therefore, of the opinion that the impugned judgments cannot be sustained and are, therefore, liable to be set aside. The question, however, which remains for consideration is as to whether the amount of solatium and interest which the appellant has paid to the respondents should be directed to be refunded. We think not. Even in Hari Krishan Khosla (supra) this Court noticed :

"This is the case in which for 16 years no arbitrator was appointed. We think it is just and proper to apply the principle laid down in Harbans Singh Shanni Devi vs. Union of India [C.A. Nos. 470 and 471 of 1985 disposed of by this Court on February 11, 1985]. The Court held as under :-

"Having regard to the peculiar facts and

circumstances of the present case and particularly in view of the fact that the appointment of the arbitrator was not made by the Union of India for a period of 16 years, we think this is a fit case in which solatium at the rate of 30 per cent of the amount of compensation and interest at the rate of 9 per cent per annum should be awarded to the appellants. We are making this order having regard to the fact that the law has in the meanwhile been amended with a view to providing solatium at the rate of 30 per cent and interest at the rate of 9 per cent per annum.""

In these cases also, it is said that the arbitrators have not yet been appointed despite the demand made in this behalf by the respondents. The amount of solatium at the rate of 15% per annum and the interest thereupon had been paid in early eighties when the Punjab and Haryana High Court declared the said Act ultra vires Article 14 of the Constitution of India.

In the peculiar fact situation obtaining in these cases and inasmuch as the amounts sought to be recovered are small which were paid to the respondents decades back, we are of the opinion that interest of justice shall be met if the appellants are directed not to recover the amount of compensation from the respondents pursuant to or in furtherance of this judgment. However, we hasten to add that this direction shall be not treated as a precedent.

These appeals are allowed with the aforementioned observations and directions. No costs.