

CASE NO.:
Appeal (civil) 6063-6064 of 2000

PETITIONER:
SPECIAL DEPUTY COLLECTOR (LAND ACQUISITION), GENERAL, HYDERABAD

RESPONDENT:
B. CHANDRA REDDY & ORS

DATE OF JUDGMENT: 16/04/2007

BENCH:
C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
C.K. THAKKER, J.

Present appeals are filed against the judgment and order passed by the Division Bench of the High Court of Andhra Pradesh on April 12, 1999 in Writ Appeal M.P. No. 1001 of 1995 and W.A.S.R. No. 38345 of 1995 by which it confirmed the order passed by the learned Single Judge on January 27, 1995 in Writ Petition No.12016 of 1993 directing the appellant herein to comply with the award passed by an Arbitrator appointed under the Requisitioning and Acquisition of Immovable Property Act of 1952 (hereinafter referred to as "the Act").

The facts giving rise to the present appeals are that the respondents-claimants were the owners of the land bearing Survey No 83 admeasuring 12 acres and 5 gunthas and Survey No. 86/2 admeasuring 12 acres and 30 guntas, situated at Devarayamzal Village, Medchal Mandal, Rangareddy District of Andhra Pradesh. The land was initially requisitioned for defence purpose, i.e. for the purpose of extension of rifle range of Hakimpet Airfield, EMC Centre, Secunderabad. The Competent Authority thereafter initiated proceedings for acquisition of land and by an award dated February 6, 1978, offered compensation to the respondents-land-owners at the rate of Rs. 4000/- per acre. The respondents-land-owners did not accept the amount of compensation as offered by the Competent Authority under the Act and the case was referred to an Arbitrator under the Act. Arbitration Case No. 1 of 1988 was registered. The parties were granted an opportunity to adduce evidence and finally by an award dated November 13, 1991, the learned Arbitrator awarded an amount of Rs. 9000/- per acre to the land-owners. Over and above the amount of compensation, the Arbitrator also awarded solatium @ 30% per annum and interest @ 6% per annum. The amount was not paid by the appellant to the claimants. The claimants, in the circumstances, were constrained to approach the High Court by filing Writ Petition No. 12016 of 1993 for issuing appropriate directions to the authorities to pay the amount awarded by the Arbitrator. By an order dated January 27, 1995, a Single Judge of the High Court issued necessary directions as prayed by the claimants and ordered the authorities to pay the amount within sixty days. Writ Appeal filed by the appellant before the Division Bench of the High Court was dismissed on the ground of delay as also on merits. The said decision has been challenged by the appellant in

this Court.

On February 14, 2000, when the matter was placed for admission - hearing, a two-Judge Bench issued notice limited to solatium and interest and the following order was passed\027

"Issue notice on SLP restricted to solatium and interest. Notice will also issue on application for condonation of delay. Ld. counsel is permitted to file a copy of grounds of appeal in the CMA which is pending in the High Court. There is no stay in respect of the other amount covered by the award."

On October 9, 2000, leave was granted. The matter was placed for final hearing before us on January 23, 2007. We heard the matter for some time and passed the following order\027

We have heard learned counsel for the parties for some time. It was stated by learned counsel for the appellant that aggrieved by the Award passed by the Arbitrator under Section 8 of the Requisitioning & Acquisition of Immovable Property Act, 1952 (hereinafter referred to as 'the act'), the appellant has preferred an appeal under Section 11 of the said Act and it is pending in the High Court of Andhra Pradesh at Hyderabad. He prays for some time so as to enable him to produce a copy of the Memorandum of Appeal as well as the latest status of the said appeal. Two weeks' time is granted for the purpose.

List the appeals thereafter."

As per our direction, the Registry placed the matter on Board on February 13, 2007. We observed on that day that on January 23, 2007, when the matter was called out for final hearing, a statement was made that an appeal was filed against the award passed by the Arbitrator and was pending for final hearing. The matter was, therefore, adjourned to enable the parties to produce a copy of Memorandum of Appeal and latest status of the appeal. But it was stated at the date of hearing, i.e. on February 13, 2007 that on inquiry by the learned counsel for the appellant, he was informed that no such appeal had been filed by the appellant. The appeal was instituted by other claimants. Accordingly, we had proceeded with the matter and heard the learned counsel for the parties.

The only point which is pressed before us by the learned counsel for the appellant is that the Arbitrator had committed an error of law and of jurisdiction in granting solatium and interest. According to him, solatium and interest can only be granted under the Land Acquisition Act, 1894 and not under the Act under which acquisition has been made by the appellant. The Arbitrator has no power to grant solatium and interest and the award is, therefore, vulnerable. Neither the Arbitrator could have ordered payment of solatium and interest to the claimants nor the High Court could have issued the direction to pay such amount. The said direction, hence, deserves to be set aside by allowing the appeals.

Though in the appeals filed before this Court, a ground was taken that the High Court could not have passed an order asking the appellant to pay to the

claimants the amount awarded by the Arbitrator in view of the fact that the appellant had challenged the award passed by the Arbitrator under the Act and the appeal was pending, as stated earlier, at the time of hearing of appeals, it was admitted that the award passed by the Arbitrator was never challenged by the Land Acquisition Officer and it had attained finality. The question, therefore, is confined to legality or otherwise of the order of Arbitrator granting solatium and interest under the Act.

The learned counsel for the respondents-claimants supported the award as also directions by the High Court asserting the award to be legal, valid and in consonance with law and calling for 'no interference'. It was alternatively argued that even if this Court is of the view that the award passed by the Arbitrator was not strictly in accordance with law, it may not exercise discretionary and equitable jurisdiction under Article 136 of the Constitution considering the fact that the award was passed in 1991, it was never challenged by the Land Acquisition Officer and it had attained finality. It was, therefore, incumbent upon the Land Acquisition Officer to comply with the directions in the award and to pay the amount which was not done. Even though the claimants succeeded, they were constrained to approach the High Court and in 1995, a Single Judge directed the appellant to comply with the Award. Even Letters Patent Appeal was dismissed. This is, therefore, not a fit case to grant any relief in favour of the appellant.

The learned counsel for the parties invited our attention to the relevant provisions of the Act. Section 3 enables the Competent Authority to requisition immovable property in certain cases. Section 4 empowers the Authority to take possession of requisitioned property. Section 5 deals with rights over requisitioned property. Section 6 relates to release of property from requisitioning. Section 7 authorises the Government to acquire the requisitioned property. Section 8 lays down principles and fixes method of determining compensation. Section 9 deals with payment of compensation. Sections 10 and 11 provide for appeals in certain cases.

Reliance was also placed by both the sides on several decisions of this Court. It was submitted by the learned counsel for the appellant that the question is no longer res integra so far as payment of solatium and interest under the Act of 1952 is concerned and it has been held that the provisions of Land Acquisition Act cannot be invoked while deciding the cases under the present Act and Arbitrator has no power, authority or jurisdiction to grant solatium and interest.

On behalf of claimants, on the other hand, it was urged that under the provisions of the Act of 1952, solatium and interest had been awarded in several cases and those orders had been upheld by this Court. One of the grounds which weighed with this Court in upholding such award was equity in favour of claimants. We may deal with some of the decisions in this regard.

In *Satinder Singh vs. Umrao Singh & Anr.*, AIR 1961 SC 908, this Court was considering the case of acquisition of land under the East Punjab Requisition of Immovable Property (Temporary Powers) Act, 1948. The question before the Court was whether the claimants would be entitled to interest on the amount of compensation. It was argued on behalf of the claimants

that the amount of compensation awarded must carry a reasonable rate of interest from the date of acquisition when the claimants lost possession of the property. The argument was, however, negated by the High Court mainly on the ground that the Act of 1948 made no provision for payment of interest. Omission to make such provision amounted in law to an intention not to award interest on compensation amount determined under the Act.

The Court then considered the question on principle and stated;

What then is the contention raised by the claimants? They contend that their immovable property has been acquired by the State and the State has taken possession of it. Thus they have been deprived of the right to receive the income from the property and there is a time lag between the taking of the possession by the State and the payment of compensation by it to the claimants. During this period they have been deprived of the income of the property and they have not been able to receive interest from the amount of compensation. Stated broadly the act of taking possession of immovable property generally implies an agreement to pay interest on the value of the property and it is on this principle that a claim for interest is made against the State. This question has been considered on several occasions and the general principle on which the contention is raised by the claimants has been upheld. (emphasis supplied)

The Court there referred to *Swift & Co. v. Board of Trade*, 1925 A.C. 520, (HL) wherein the House of Lords held that in a contract for sale and purchase of land it is the practice of the Court of Chancery to require the purchaser to pay interest on his purchase money from the date when he took, or might safely have taken, possession of the land.

The Court also noted that the principle had been recognized since more than a century and referred to another English decision in *Birch v. Joy*, (1852) 3 H.L.C. 565. In *Birch*, Viscount Cave, L.C. observed that this practice rests upon the view that the act of taking possession is an implied agreement to pay interest. The Court also referred to a decision of the Judicial Committee of the Privy Council in *Inglewood Pulp & Paper Co. Ltd. v. New Brunswick Electric Power Commission*, 1928 AC 492 : AIR 1928 PC 287 wherein it was held that upon the expropriation of land under statutory power (whether for private gain or for public good), the owner is entitled to interest upon the principal sum awarded from the date when possession was taken, unless the statute clearly shows an intention to the contrary.

The Court, therefore, concluded that the claim for interest proceeds on the assumption that when the owner of immovable property loses possession of property, he can claim interest in lieu of right to retain possession.

Dealing with the contention of difference between two Acts, namely, the East Punjab Requisition of Immovable Property (Temporary Powers) Act, 1948 and the Land Acquisition Act, 1894, the Court observed; The question which we have to consider is whether the application of this rule is

intended to be excluded by the Act of 1948, and as we have already observed, the mere fact that s. 5(3) of the Act makes s. 23(1) of the Land Acquisition Act of 1894 applicable we cannot reasonably infer that the Act intends to exclude the application of this general rule in the matter of the payment of interest.

A similar issue came up for consideration before a Constitution Bench of this Court in National Insurance Co. Ltd., Calcutta v. Life Insurance Corporation of India, AIR 1963 SC 1171. There, the Court was considering the question whether the Corporation under the Life Insurance Corporation Act, 1956 was or was not required to pay compensation with interest to the insurer. The Court noted that neither the Act nor the Rules contained any express provision for grant of interest. Relying on English cases referred to earlier, however, the Court held that the insurer would be entitled to claim interest once it is proved that he was illegally deprived of the amount to which he was legally entitled and there was delay on the part of the Corporation in making payment of such amount.

Strong reliance was placed by the learned counsel for the claimants on a decision of seven-Judge Bench in Nagpur Improvement Trust & Anr. v. Vithal Rao & Ors., (1973) 1 SCC 500. That was a case in which constitutional validity of certain provisions of the Nagpur Improvement Trust Act, 1963 was under challenge. The contention of the claimants was that difference in rate of payment of compensation under the Improvement Trust Act and the Land Acquisition Act was arbitrary, discriminatory and violative of equality clause under Article 14 of the Constitution. The High Court declared the provisions unconstitutional and ultra vires infringing Article 14 of the Constitution. This Court considered the relevant provisions as also the factum of acquisition of property and posed a question whether such classification could be said to be 'reasonable classification' in law.

This Court then stated;

It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is a politician or an advocate. Why is this sort of classification not sustainable? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type or another type.

The Court proceeded to state;

Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the legislature lay down different principles of, compensation for lands acquired say for a hospital or a school or a Government building? Can the legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value? All three objects are public purposes and as far as the owner is concerned

it does not matter to him whether it is one public purpose or other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other. In the opinion of the Court, it was immaterial whether acquisition is under one Act or another and held that if the two Acts could enable the State to give one owner a different treatment from another equally situated, the owner who is discriminated against can claim the protection of Article 14. It was, therefore, held that the High Court was right in declaring such 'so-called' classification unreasonable and violative of Article 14. The learned counsel for the appellant, however, invited our attention to a three-Judge Bench decision in *Union of India v. Hari Krishan Khosla (dead) by Lrs.*, 1993 Supp (2) SCC 149. According to the learned counsel, the Court in *Hari Krishan Khosla* considered the scheme of both the Acts, referred to earlier decisions including *Nagpur Improvement Trust*, and held that the scheme of Requisitioning Acts and Acquisition Acts is totally different, distinct and independent and the principles applicable to Acquisition Laws cannot ipso facto be applied to Requisitioning Laws. The Court observed that if the Requisitioning Laws do not provide for payment of solatium or interest, such provision would not be hit by Article 14 of the Constitution. The claimant, therefore, would not be entitled to the benefit of solatium or interest, on the analogy of Acquisition Laws. The counsel also referred to subsequent cases. In some of the decisions, grant of solatium and interest under the Act in question has been upheld whereas in other cases, the claim had been negatived. In view of above decisions, we would have considered the larger question posed before us. In our opinion, however, it is not necessary to enter into such question in view of the fact that to us, the alternative submission made by the learned counsel for the claimants deserves acceptance. Admittedly, the offer of amount as compensation by the Competent Authority under the Act had not been accepted by the claimants and they opted for appointment of Arbitrator under the Act. An Arbitrator was appointed as early as on February 8, 1988 and Arbitration Case No. 1 of 1988 was registered. Award was made by the Arbitrator on November 13, 1991. Even though it was asserted by the

appellant at one stage before this Court that the award was not final and an appeal was filed against it, subsequently it was admitted that no such appeal had been filed and the award had attained finality. On the contrary, record revealed that on the basis of the award in which solatium and interest was granted by the Arbitrator, other land-owners had also claimed the similar benefit of solatium and interest which was allowed. In our view, therefore, the claimants are right in submitting that once an award was passed, validity of which was never under challenge, a public authority ought to have acted in accordance with directions issued in the award and should have made the payment. The authorities, however, virtually ignored the award though it was never challenged by taking appropriate action in accordance with law. The claimants were constrained to approach the High Court for the award being executed and payment made. When the requisite directions were issued by the learned Single Judge, the order was challenged by filing intra-Court appeal. There was delay in filing appeal. The Division Bench was not satisfied as to 'sufficient cause' for condonation of delay. Even on merits, the Court felt that it was not a fit case to interfere with the award passed by the Arbitrator in 1991 and accordingly, the Letters Patent Appeal was dismissed on both the grounds, i.e. on the ground of delay as well as on merits.

We are of the considered view that the case in hand is not one which calls for exercise of discretionary power under Article 136 of the Constitution in favour of the appellant. In some cases, this Court had refused to interfere with the orders passed by the High Courts. Thus, in *Prabhu Dayal & Ors. v. Union of India*, 1995 Supp (4) SCC 22, it was contended on behalf of the Union of India that the claimants were not entitled in law to solatium. But the court held that for about 22 years, no arbitrator was appointed by the Union to determine market value of the land acquired by the Government and hence, the claimants were entitled to solatium on the ground of equity. The Court followed an earlier decision in *Harbans Singh v. Union of India*, 1995 Supp (4) SCC 223 wherein on similar ground, such relief was granted. Even in *Hari Krishan Khosla*, equitable aspect was considered by this Court. [See also *Girdhari & Ors. v Union of India & Ors*; (2005) 11 SCC 291.

For the foregoing reasons, in our considered opinion, this is not a fit case to exercise discretionary jurisdiction under Article 136 of the Constitution. The appeals deserve to be dismissed and are accordingly dismissed with costs.