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UNION OF INDIA

v.

KOLLUNI RAMAIAH AND ORS.

NOVEMBER 16, 1993

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[M.N. VENKATACHALIAH, CJI, S. MOHAN AND
DR. A.S. ANAND, JJ.]

C

Land Acquisition—Requisitioning and Acquisition of Immovable Property Act, 1952—ss.7, 8.(3)—Acquisition of requisitioned Land—Compensation—Solatium and interest—Held, Award granting solatium @ 15% and interest @ 6% in case of acquisition under Act as bad in law.

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Consitution of India, 1950—Articles 136, 142—Acquisition of land under Requisitioning and Acquisition of Immovable Property Act, 1952—Compensation—Award by Arbitrator enhancing compensation as well as awarding Solatium @ 15% and interest @ 6%—On appeal by land owners, High Court further enhancing compensation retaining solatium and interest as awarded by Arbitrator—Union of India though main affected party, not made a party to proceedings either before Arbitrator or High Court—Special leave petitions by Union of India—Held, must be treated as cross-objections under Order 41, Rule 22 C.P.C. before High Court against award of Arbitrator.

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Certain lands of the respondent-land owners were acquired for defence purposes under the Requisitioning and Acquisition Act, 1952. Since the compensation at the rate of Rs. 10 per sq. yard fixed under s.8(3) of the Act was not acceptable to the respondents, a reference was made to the Arbitrator, who enhanced the compensation to Rs. 15 per sq. yard and also awarded solatium at 15% and interest at 6%.

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On appeal by the land owners, the High Court further enhanced the compensation to Rs. 20 per sq. yard and retained the award of Arbitrator as regards solatium and interest.

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The appellant-Union of India, which was the main party affected by the enhancement of the compensation but was not a party to the proceedings either before the arbitrator or the High Court, filed an application for permission to prefer the appeals by special leave.

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It was contended on behalf of the appellant that, in view of this Court's pronouncement that award of solatium and interest was not permissible in a case of acquisition of property under the Act, this Court could set aside the same; and even otherwise since that part of the award got merged with the judgment of the High Court; this Court could interfere.

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The respondents contended that the award had become final not having been appealed against, and since the finality of the award could not be disturbed in the appeals filed by the land owners in the High Court unless the Union of India had filed a separate appeal questioning the grant of solatium and interest, the application by Union of India for permission to prefer special leave petitions was not maintainable.

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Granting the permission to prefer the special leave petitions and disposing of the appeals, this Court.

HELD : 1. In view of the categorical pronouncement of this Court*, the award granting solatium at the rate of 15% and interest at the rate of 6% in the instant case of acquisition of property under the Requisitioning and Acquisition Act, 1952, is bad in law, and that part of the award is set aside. The enhancement of compensation is not interfered with as conceded by the Union of India. [699-E]

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**Union of India v. Hari Krishan Khosla, (dead) by Lrs. JT (1992) 5 SC 574, relied on.*

2.1. Once there is patent illegality in the award, this Court is not powerless as not to grant any relief to the Union of India which was neither impleaded before the Arbitrator nor before the High Court. It cannot be said that the award of Arbitrator had become final and cannot be reopened because the matter is still kept alive by the Union of India. [698-G]

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2.2. In exercise of the powers under Article 142 of the Constitution the special leave petitions must be treated as Cross-objections under Order 41, Rule 22, C.P.C. before the High Court against the award of the Arbitrator. Normally, in such an event the matter should be remitted to the High Court, but in the circumstances of this case such a course will not only prolong the issue but also would amount to directing the High Court to do the obvious. [699-A-D]

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A 2.3. Though in one sense the principle of merger would apply, but interference on that count would cause immense prejudice to the respondents. They cannot be worse off for having preferred appeals to the High Court. [698-E]

CIVIL APPELLATE JURISDICTION Civil Appeal Nos. 7015-19

B of 1993.

From the Judgment and Order dated 2.3.88 of the Andhra Pradesh High Court in C.M.A. Nos. 137/82, 741/82, 196 and 118/83, 450 of 1982.

C Girish Chandra, Ms. A. Subhashini and C.V.S. Rao for the Appellant.

Vimal Dave and Subba Rao for Respondent No. 1.

The Judgment of the Court was delivered by

MOHAN, J. Delay condoned. Permission to prefer Special Leave

D Petitions granted.

Leave granted.

The fact leading to these appeals are as under :

E An extent of 6.50 acres of land in village Marripalam Taluk and District Visakhapatnam was requisitioned for defence purposes in the year 1942. Subsequently they were acquired under the Requisitioning & Acquisition of Immovable Property Act, 1952 (Central Act 30 of 1952) (hereinafter referred to as the Act) on 11.1.1972 alongwith adjoining land

F of an extent of 68.25 acres. The competent authority fixed compensation at the rate of Rs. 10 per square yard under Section 8(3) read with Rule 9(1) of the Act. Being dissatisfied with the compensation, the owners of the property sought a reference to the Arbitrator. By an award dated 28.3.1981, the Arbitrator (District Judge) awarded compensation at the rate of Rs. 15 per square yard and solatium at 15% and interest at 6% from the date of publication of the Notification. Accordingly, the enhanced amount was deposited in court through Special Petition LA (defence) Visakhapatnam.

H Still not being satisfied with the decision of the Arbitrator, the respondent Kolluni Ramaiah and three sets of land owners went on appeal

to High Court of Andhra Pradesh praying for the enhancement of the rate of compensation fixed by the Arbitrator. The High Court of Andhra Pradesh granted Rs. 20 per Square Yard and retained the award of Arbitrator as regards payment of solatium at 15% and interest at 6% in all these cases. However, it requires to be stated that the appellant, Union of India was not a party to the proceedings either before the Arbitrator or before the High Court. It is urged that since the enhanced compensation and the amount payable as solatium and interest are substantial, Union of India is the main party which has been affected by this enhancement. An application was filed before us for preferring the present petitions for special leave.

Mr. C.V. Subba Rao, learned counsel for Union of India urges that the enhancement of compensation is unwarranted. Even otherwise, as on today, in view of the authoritative pronouncement of this Court in *Union of India v. Hari Krishan Khosla (dead) by Lrs.*, JT (1992) 5 SC 574, the award of solatium and interest is not permissible, in a case of acquisition of property under the Act. Properly speaking, the Union of India ought to have been made a party both before the Arbitrator and the High Court. In fact, when the first respondent (Kolluni Ramaiah) preferred C.M.A. No. 137/1982 before the Andhra Pradesh High Court, it was held that the non-inclusion of Union of India as a party would be sufficient ground to dismiss the case. On these grounds it is prayed that not only the permission to prefer the Special Leave Petitions be granted but also the award be set aside.

To a pointed question as to how this Court could reach the award of Arbitrator by which alone solatium and interest were granted and they were merely retained by the High Court, it was submitted that where the award of solatium and interest is illegal in view of the judgment of this Court, it would be unjust and can be set aside. Even otherwise, that part of the award gets merged with the judgment of the High Court and, therefore, this court could always interfere. However, it is fairly conceded that Union of India would be satisfied if without interfering with the actual compensation, the part of the award relating to solatium and interest is only set aside.

The learned counsel for the respondents would submit that the award of Arbitrator become final not having been appealed against. It is under

A that award, solatium and interest were granted. The finality of the award cannot be disturbed in an appeal filed by the owners in the High Court, unless and until Union of India had filed a separate appeal complaining of the grant of solatium and interest. The respondents (owners of land) cannot be worse off for having appealed to the High Court. Merely because of the subsequent decisions the this Court holding that the grant of solatium and interest were impermissible to an acquisition under the Act that will not permit the Union of India to reopen the proceedings. Therefore, the application to prefer Special Leave Petitions will have to be dismissed.

C We have given our careful consideration to the above arguments. In view of the categorical pronouncement of this Court in *Union of India's* case (supra), the award granting solatium at the rate of 15% and interest at the rate of 6% under the case of acquisition is clearly bad in law.

D From the narration of facts, it is clear that the Arbitrator had awarded compensation at the rate of Rs. 15 per square yard together with solatium at the rate of 15% and interest at the rate of 6%. In an appeal by the land owners, the amount of compensation was alone enhanced to Rs. 20 per square yard and that part of the award relating to solatium and interest was affirmed. No doubt, in one sense, the principle of Merger would apply. But that will cause immense prejudice to the respondents (land owner) if we are to interfere on the basis of that principle. They cannot be worse off for having preferred appeals to the High Court. If the present special leave petitions are directed against the ultimate judgment of the High Court in which the award had merged, what would happen if the respondents were to withdraw the appeals before the High Court now?

F And that is what the respondents want to do with the leave of this Court.

G It is not correct on the part of the respondents to contend that the award of the Arbitrator had become final and it cannot be reopened now because the matter is still kept alive by the Union of India. No doubt, there is a delay of 157 days which we are prepared to condone in the interests of justice. Once, there is patent illegality in the award, as pointed above, is this Court powerless as not to grant any relief to the Union of India which was neither impleaded before the Arbitrator nor before the High Court?

H Exercising our powers under Article 142 of the Constitution, we think

that these Special Leave petitions must be treated as cross-objections before the High Court against the award of the Arbitrator. Under Order 41 Rule 22 of the Code of Civil Procedure, cross-objections could be filed by a party who might have appealed from the decree of the court below but has not done so. No appeal was preferred by the Union of India since it was not a party before the Arbitrator. If these special leave petitions are to be treated as cross-objections, in the appeal before the Andhra Pradesh High Court, normally, we should remit the matter to the High Court. In such an event, the enhancement of compensation from Rs. 15 to Rs. 20 per square yard and the award of solatium and interest will have to be redetermined. Of course, solatium and interest will go, in any event. Then remains only the actual quantum of compensation. Inasmuch as, Mr. C.V. Subba Rao, learned counsel for the Union of India fairly concedes that the award of Rs. 20 per square yard by the High Court may not be interfered with, we think it is unnecessary to remit the matter to the High Court. In our view, such a course will not only prolong the issue but also would amount to directing the High Court to do the obvious.

In the result, we treat these Special Leave Petitions as cross-objections under Order 41 Rule 22 of the Code of Civil Procedure against the award of the Arbitrator for the limited purposes of setting aside that part of the award relating to solatium at the rate of 15% and interest at the rate of 6%. We make it clear that the enhancement of compensation from Rs. 15 per square yard as awarded by the Arbitrator to Rs. 20 per square yard by the High Court, is not interfered with. The Civil Appeals are ordered accordingly. There shall be no order as to costs.

R.P.

SLP. Granted &
Disposed of.