

PETITIONER:
MIR FAZEELATH HUSSAIN & ORS.

Vs.

RESPONDENT:
SPECIAL DEPUTY COLLECTOR, LAND ACQUISITION, HYDERABAD

DATE OF JUDGMENT 23/03/1995

BENCH:
HANSARIA B.L. (J)
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HANSARIA B.L. (J)
KULDIP SINGH (J)
SAHAI, R.M. (J)

CITATION:
1995 AIR 1424 1995 SCC (3) 208
JT 1995 (3) 410 1995 SCALE (2) 424

ACT:

HEADNOTE:

JUDGMENT:

HANSARIA, J.:

1. A land acquisition proceeding which was initiated by issuing notification under Section 4(1) of the Land Acquisition Act, 1984 (hereinafter referred to as 'the Act') on 25.4.1963 has brought the appellants to this Court as they have felt dissatisfied with the fixation of a market value by the Andhra Pradesh High Court, which granted compensation on belt wise basis. The appeal came up for hearing before a two Judge bench and by judgments dated May 15, 1992 the appeal came to be allowed in part as indicated in the judgments. The two learned Judges, however, differed on the question as to whether the appellants are entitled to interest as enhanced by Section 18 of the Land Acquisition (Amendment) Act, 1984 (for short, 'the Amendment Act'). Kasliwal, J. took the view that despite what has been held by the Constitution Bench in the Case of Union of India v. Raghubir Singh, 1989 (2) SCC 754 enhanced rate of interest as visualised in the Amendment Act would be available to the appellants on a harmonious reading of the provisions, if the intention of the legislature in enhancing the rate of interest is kept in view. Punchhi, J., however, was of the opinion that awarding of enhanced rate on the face of what was held in Raghubir Singh's case would militate against the ratio of that case and would do violence to the statute. The learned Judges, therefore, while allowing the appeal in part and setting aside the judgment of the High Court to the extent indicated in the judgments, requested the Hon'ble Chief Justice to constitute a larger bench to resolve the disagreement with regard to the rate of interest as, though the controversy is short, the same is likely to affect large number of cases. Hence, this appeal has come up for hearing by this bench.

2. The provisions of the Act which are relevant for our purpose are Sections 11, 23, 25, 26 and 28, which may be

noted the threshold :

"11. Enquiry and award by Collector.-

(1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land at the date of the publication of the notification under Section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

413

(i) the true area of the land

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the appointment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims, he has information, whether or not they have respectively appeared before him :

x x x x x x

x x x x x x

23. Matters to be considered in determining compensation.

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration -

first:-- the market-value of the land at the date of the publication of the notification under Section 4, sub-section (1) ;

secondly:-- the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

thirdly:-- the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by person of severing such land from his other land;

fourthly:-- the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner or his earnings;

fifthly:-- If in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly:-- the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

(1 -A) In addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and

from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of taking possession of the land, whichever is earlier.

Explanation. In computing the period referred to in this sub-section any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or

414

injunction by the order of any court shall be excluded.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature on the acquisition.

25. Amount the compensation by Court not to be lower than the amount awarded by the Collector.- The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11.

26. Form of awards.- (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of subsection (1) of Section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same subsection, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, clause (2), and Section 2, clause (9), respectively, of the Code of Civil Procedure, 1908. (5 of 19-8).

28. Collector may be directed to pay interest on excess compensation. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court:

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date of which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.

3. We may also note Section 18 of the Amendment Act which brought out amendment in Section 28 of the principal Act, which reads as below:

"18. Amendment of Section 28. In Section 28 of the Principal Act, -

(a) for the words "six per centum", the words "nine per centum" shall be substituted;

(b) the following proviso shall be inserted at the end, namely:-

"Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid

into Court before the date of such expiry."

4. The aforesaid shows that the rate of interest was increased from 6 per centum to 9 which would become 15 after expiry of the period mentioned in the proviso to the Amendment Act. The question for determination is whether advantage of the increased in rate of interest would be available to the appellants. To decide this we

415

have to keep in mind the following dates:

- (1) Date of Collector's award 10.6.1968,
- (ii) Date of taking over of possession 24.6.1968
- (iii) Date of Reference Court's award 30.8.1972;
- (iv) Date of the decision of the High Court: 24.6.1974 ;and
- (v) Date, of this Court's aforesaid Judgments : 15.5.1992.

5. The answer to the controversy lies mainly in finding out as to whether the appellants' case is covered by Section

30 (2) of the Amendment Act which reads as below:

"30(2) The provisions of subsection (2) of Section 23 and Section 28 of the principal Act, as amended by clause (b) of Section 15 and Section 18 of this Act respectively shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the people] and before the commencement of this Act."

(Emphasis supplied)

6. As to what is the reach and extent of the aforesaid section came to be examined by the Constitution Bench in Raghubir Singh's case. Para 32 of that judgment is relevant for our purpose, according to which the expression "any such award" in the section referred to awards made by the Collector or Court between April 30 1982 and September 24, 1984 (which is the date of commencement of the Amendment Act); or the appeals against such awards decided by the High Court and the Supreme Court, whether the decisions are rendered before September 24, 1984 or after that date. In the present case the award of the Collector as well as of the Court being before April 30, 1982, on the ratio of Raghubir Singh's case benefit of amended section 28 is not available to the appellants. However, it deserves to be noted that Raghubir Singh's case dealt with the question of payment of solatium as enhanced by the Amendment Act. The real point for consideration, therefore, is whether what was stated by Raghubir Singh's Bench regarding solatium would apply to interest as well; and this is the point of difference between the two learned Judges who heard the appeal earlier. May we state that the view taken by the Raghubir Singh's Bench has been endorsed by the Constitution Bench in K.S. Paripooran v. State of Kerala, JT 1994 (6) SC 182 (see para 58, 59, 102, 106 and 107).

7. Shri Madhav Reddy, learned Sr. Advocate appearing for the appellants, has submitted that as appellants are not claiming enhanced interest retrospectively but from the date of coming into force of the amending Act (September 24, 1984) what was stated in Raghubir Singh's case has no application. We find no force in this submission inasmuch as enhanced interest as contemplated by section 18 of the Amending Act de hors what has been stated in sub-section (2) of Section 30. This is for

416

the reason that the Amending Act has made available the enhanced rate only to those cases mentioned in sub-section (2) of Section 30. The Court has no power to enlarge the scope of this sub-section. That would be either "violence to the statute" as put by Punchhi, J., or an act of legislation by us, which as a court we cannot undertake.

8. Let it, therefore, be seen whether, despite what was stated in Raghubir Singh's case qua solatium, enhanced interest can be claimed by the appellants. This aspect is being examined by us because interest is not a part of the award and section 30(2) of the Amendment Act deals with awards. That interest does not form of award would appear from a combined reading of Sections 11, 23 and 26 of the Act. Section 111 which enjoins the Collector to make an award, requires him to specify: (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land and (iii) the apportionment of the said compensation. Section 23 deals with the matters to be considered in determining the compensation. Sub-section (1) requires six aspects to be taken note of which are subject matters of six clauses of that sub-section. Sub-section (2) of Section 23 has provided for payment colloquially known as solatium. Section 26, which is on the subject of form of awards, states that every award specify the amount awarded under clause first of subsection (1) of Section 23, and also the amounts, if any, awarded under each of the other clauses of the same sub-section. Sub-section (2) of this section states that every such award shall be deemed to be a decree.

9. The aforesaid clearly shows that the interest visualised by section 28 of the Act is not a part of the compensation, and so, not a part of award. This has also been the view expressed by a two-Judge bench of this Court, to which one of us (Kuldip Singh, J) was a party, in Shree Vijay Cotton & Oils Mills Ltd. v. State of Gujarat, 1991 (1) SCC 262. (See para 15). A combined reading of aforesaid sections would show that solatium too is not a part of the award inasmuch as sub-section (1) of Section 26 specifically states that the award shall specify the amount awarded under each of the clauses of sub-section (1) of Section 23, whereas solatium is dealt by sub-section (2) of Section 23.

10. The aforesaid being the position, we have to hold that what was stated in Raghubir Singh's case qua solatium shall apply to interest also. Enhanced interest is not demanded by a harmonious reading of relevant provisions, as opined by Kasliwal, J., because the "Intention of the legislature" about which the learned Judge spoke, really shows the contrary, according to us, as the increase was sought to be confined (for reasons which need no examination) to the awards made between the dates noted above, whereas the present award is anterior to the starting point. We are, therefore, in agreement with the view taken by Punchhi, J. and state that the appellants are not entitled to enhanced rate of interest as contemplated by section 18 of the Amendment Act.

11. It has also been submitted by Shri Madhava Reddy that higher rate of interest may be ordered to do equity between the parties. We are unable to concede, as, had present been a case of non-awarding of any interest, we would have done so, because, interest in such cases may be-

417

come payable on equity, for it is meant to make good the loss suffered by a person due to delayed payment. This view has been reiterated recently by this Court in Kalimpong Land & Building Ltd. v. State of West Bengal, JT 1994 (6) SC 102,

in which payment of interest was ordered, even when acquisition was under Requisitioning and Acquisition of Immovable Property Act, 1-952, which statute has made specific provision, unlike the Act at hand, for payment of interest. But equity has no role when the question relates to rate of interest. Whether the rate of interest should be 6% or 9% is not a matter which would require invocation of Court's equitable jurisdiction. The same has to be governed by statutory provision. Had the rate of interest been too low, we could have perhaps on equity granted some relief But 6% has been the rate for a very long period insofar as the Act is concerned as the enhancement came only in 1984 whereas the Act is of 1894. So, we are not satisfied if equity demands granting of relief in question.

12. This is our answer to the point referred to this bench. The appeal may now be placed for final disposal before an appropriate bench.

418