

CASE NO.:
Appeal (civil) 723 of 2006

PETITIONER:
Mahesh Lall Seal & Ors.

RESPONDENT:
Union of India & Others

DATE OF JUDGMENT: 01/09/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

KAPADIA, J.

This civil appeal by grant of special leave appeal seeks to challenge judgment and order dated 6.12.04 passed by a Division Bench of the Calcutta High Court allowing F.M.A.T. No.151 of 2004 filed by Union of India (respondents herein) challenging the Award of the Arbitrator dated 25.10.2000.

Before the High Court the main contention advanced by Union of India, on whose behest the property was acquired, was that the claimants had entered into agreement with the Government on 18.7.75 for sale of properties under Section 8(1)(a) of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as "the 1952 Act") at a fixed price of Rs.18,98,000/- and in terms of such agreement the full price was paid upon execution of an agreement in Form K on 26.5.93 and, therefore, there was no question of any dispute being referred to arbitration.

The short question which arises for determination in this civil appeal is: whether the impugned Award of the Arbitrator dated 25.10.2000 was null and void on account of absence of referable dispute to the Arbitrator. The background facts are as follows:

At all material times, appellants (claimants) were the joint owners of Dag Nos.613, 614, 617 and 618 measuring 7.16 acres in area, within Mouza Nainan, P. S. Baranagar, District North 24 Parganas, being portion of premises No.46, B.T. Road, Calcutta (hereinafter referred to as "the acquired property"). The said acquired property was initially requisitioned by Union of India under Defence of India Act and Rules. This was on 22.4.1942. On 3.3.1987 the said property was acquired under the 1952 Act along with other properties when Form J was published. Up to 31.12.74 the rent of the acquired property was assessed by the L.A. Collector at the rate of Rs.410/- per month. However, this rate of rent was subsequently increased to Rs.55,465/- per annum. The claimants were paid rent at the rate of Rs.55,465/- per annum during the period 1.1.75 till 2.3.87 when, as stated above, the property stood acquired. In the meantime, prior to 10.3.87 U.L.C. Act 1976 (for short, "the 1976 Act") came into force. The

claimants filed an application under Section 27(2) of 1976 Act for exemption from vesting excess land and for permission to transfer in favour of Union of India. The State Government did not finalise the solatium. The State Government failed to decide as to which portion of the aforesaid premises was liable for vesting in the State Government under the said 1976 Act. As the requisition of the disputed premises under the 1952 Act was due to expire on 10.3.87, an order of acquisition was made on 3.3.87. On 27.3.87 Union of India informed the land acquisition officer that the acquiring body had decided to place Rs.18,98,000/- for disbursement to the claimants in terms of the agreement dated 18.7.75. Accordingly, the land acquisition officer published an award for Rs.18,98,000/- on 8.6.88. However, the State Government on 6.8.88 appointed an Arbitrator vide notification no.492-Regn. which was later on cancelled on 16.3.90 at the behest of the Central Government.

On 26.5.93 ultimately the claimants received the entire amount of Rs.18,98,000/- under protest. They filed writ petition praying for reference under Section 18(1) of the Land Acquisition Act for enhancement of compensation. On 24.1.96 High Court directed the claimants to approach the collector. Accordingly on 23.2.96 an application was made for reference before the L.A. Collector under Section 18(1) of the L.A. Act.

On 2.4.97 the State Government once again appointed Arbitrator to which Union of India objected. This objection was filed by Union of India on 25.4.97. On 22.12.97 claimants filed their claim petitions before the Arbitrator claiming the compensation in respect of the acquired property at the rate of Rs.3,00,000/- per kattah. On 5.1.98 Union of India filed its written objection before the Arbitrator under which it stated that the fair market value of the acquired lands on 3.3.87 would not exceed Rs.70,000/- per kattah. However, the Union of India moved the High Court under Article 226 of the Constitution on 10.12.98 vide Writ Petition No.2503 of 1998 seeking cancellation of the appointment of Arbitrator. There was no stay, therefore, the Arbitrator proceeded. On 6.12.99 the claimants filed their reply and agreed to receive compensation at the rate of Rs.70,000/- per kattah as suggested by Union of India in its objection dated 5.1.98. By interim order dated 15.12.99 learned Single Judge refused to stay the arbitration proceedings and directed the proceedings to continue subject to the result of the writ petition. On 21.1.2000 an application was moved before the Arbitrator by Union of India, pursuant to the leave granted by the Arbitrator, saying that the concession made on 5.1.98 by learned advocate conceding the rate of Rs.70,000/- per kattah was without obtaining instructions and, therefore, the claimants were not entitled to receive compensation at that rate. Before the Arbitrator, Union of India as well as the L.A. Collector contended that on account of agreement between the parties as far back as on 18.7.75 and in view of the claimants' signing Form K as far back as on 26.5.93, the Arbitrator was not in a position to make the award under Section 8(3) of the 1952 Act beyond the amount agreed upon, namely, Rs.18,98,000/-. This is the main contention all through out by Union of India. By order dated 18.5.2000 the Arbitrator held that the dispute was between the

claimants on one side and Union of India on the other side; that Union of India was represented by the L.A. Collector who had engaged the government pleader to appear in the case and contest the case on behalf of Union of India and accordingly the government pleader filed his written objections against the claim on 5.1.98. The Arbitrator further found that the Vakalatnama filed by the government pleader continued to remain in force. It was never withdrawn. That being the position the Arbitrator came to the conclusion that the application made by Union of India on 21.1.2000 withdrawing its earlier statement of the fair value of Rs.70,000/- per kattah, was not maintainable. By the said order the Arbitrator rejected the objections filed by Union of India on 21.1.2000 and came to the conclusion that the dispute regarding compensation did exist and therefore, the Arbitrator had jurisdiction to try and decide such dispute.

Being aggrieved by the decision of the Arbitrator dated 18.5.2000 Union of India preferred one more writ petition in the High Court bearing No.12072 of 2000. This writ petition was dismissed on 30.8.2000 in limine as misconceived in view of the earlier order of the High Court dated 15.12.99 directing the Arbitrator to proceed with the arbitration.

On 28.9.2000 the writ petition filed by Union of India seeking cancellation of the appointment of Arbitrator was also dismissed by learned Single Judge who took the view that the claimants had received Rs.14,80,000/- out of Rs.18,98,000/- by executing agreement in Form K under Rule 9(5) of the Requisitioning and Acquisition of Immovable Property Rules 1953 under protest; that various proceedings were initiated before the L.A. Collector but determination could not be made under Section 8 of 1952 Act on account of objections raised by Union of India regarding maintainability of arbitration proceedings and that the State Government had the power to appoint an arbitrator under the said 1952 Act. In this connection, learned Single Judge observed that written objections were filed by the claimants protesting against the offer of Rs.18,98,000/- on the same day when Form K was executed. Learned Single Judge further observed that the Form K agreement contained clause (6) which inter alia provided that any dispute or difference arising out of the subject-matter of the agreement shall be referred to an arbitrator, to be appointed by the government, and the decision of the Arbitrator shall be conclusive on all the parties. The provisions of Arbitration Act 1940 were made applicable to such arbitration. Learned Single Judge further found that under the agreement dated 18.7.75 the right, title and interest was never conveyed to the Central Government and on the contrary the premises were acquired on 3.3.87 under the provisions of the 1952 Act after a lapse of about 12 years and, therefore, the consideration of Rs.18,98,000/- had no relevance in the matter of acquisition on 3.3.87. In this connection, learned Single Judge observed that the agreement dated 18.7.75 can by no stretch of imagination constitute a fair amount of compensation payable in respect of acquisition on 3.3.87. Thus, it was held that in view of Section 8(1)(b) read with clause (6) of the agreement in Form K, there existed a dispute as to

the amount of compensation payable for acquisition of the premises on 3.3.87. Thus, there was a referable dispute to the arbitrator. In the circumstances, it was held that the State Government was competent to appoint an arbitrator under Section 8(1)(b) of the 1952 Act. The writ petition was accordingly dismissed.

On 25.10.2000 the Arbitrator announced his award under which he rejected the claim made by the claimants at the rate of Rs.3,00,000/- per kattah. He assessed the market value at the rate of Rs.70,000/- per kattah as on 3.3.87. In his Award it was observed that no witness was examined on either side for the reason that the claimants had accepted the rate of compensation offered by Union of India in their written reply dated 5.1.98. The Arbitrator has further held that the claimants have also filed the report of the Valuer, the sale deed of the adjoining land, the sale instances and accordingly he valued the premises at the rate of Rs.70,000/- per kattah. He also awarded solatium and interest. Accordingly, the amount of Rs.2,65,66,750/- has been awarded as compensation.

Aggrieved by the decision dated 28.9.2000 delivered by learned Single Judge dismissing Writ Petition No.2503 of 1998 regarding maintainability of the arbitration proceedings, Union of India preferred writ appeal APOT No.42 of 2001 filed on 7.1.2001. By decision dated 28.8.2001 the Division Bench dismissed the writ appeal. The main contention advanced by Union of India before the Division Bench was that the claimants had received compensation amounting to Rs.18,98,000/- under the agreement in Form K and, therefore, there did not exist any dispute as to the amount of compensation payable for the same to the owners for which an arbitration was required to be entered into in exercise of the power under Section 8(1)(b) of the 1952 Act. This argument was rejected by the Division Bench holding that there was no material on record to show that the claimants had communicated their acceptance to the offer made by Union of India. On the contrary the Division Bench found that when Form K came to be executed in 26.5.93, the amount of Rs.14,80,000/- was accepted by the claimants under protest. The Division Bench further found that Union of India has never denied receipt of objections from the claimants at the time of receiving compensation. In the circumstances, the Division Bench found that there existed disputes between the claimants and Union of India regarding the quantum of compensation and, therefore, it was not open to Union of India to challenge the notification issued under Section (8)(1)(b) of the 1952 Act appointing the Arbitrator. The Division Bench further found that the agreement dated 18.7.75 for Rs.18,98,000/- was in fact cancelled by the Estates Officer on 15.9.76. The premises in question comprised of 8.90 acres of land. In 1975 the rate was around Rs.5,000/- per kattah. The Division Bench found that the premises are located in a posh area in Barrackpore Trunk Road, Calcutta. The Division Bench agreed with the view expressed by learned Single Judge that Form K contained clause (6) which itself stipulated that any dispute or difference in the matter of determination of compensation shall be decided by arbitration. It was observed that in the present case Union of India made an offer of Rs.18,98,000/- in 1975

under the agreement dated 18.7.75 when the premises were under requisition and by such an agreement no right, title or interest was ever transferred by the claimants to Union of India. Therefore, it was held that the notification under Section 8(1)(b) of the 1952 Act was valid. This was the main aspect to be decided by the Division Bench. However, when the writ appeal APOT No.42 of 2001 came for decision the Award of the Arbitrator had come into existence and, therefore, the Division Bench observed that the question of the validity of the Award, whether by consent or otherwise, was not required to be gone into because the only question before the Division Bench was whether the notification issued under Section 8(1)(b) of the 1952 Act was with or without jurisdiction. The High Court, therefore, did not go into the question of the merits of the Award. The High Court declared that the notification under Section 8(1)(b) of the 1952 Act was valid in law as there existed a dispute as to compensation between the claimants and Union of India.

Aggrieved by the decision dated 28.8.2001, Union of India preferred S.L.P.(C)\005.CC\0052417.

On 18.3.2002 the following order was passed by the Supreme Court in S.L.P.:

"Learned Additional Solicitor General appearing for the petitioners seeks leave of the Court to withdraw this petition to pursue other remedies that may be permissible under the law. The Special Leave Petition is dismissed as withdrawn."

Union of India thereafter preferred an application for review before a Division Bench of the High Court against the judgment delivered on 28.8.2001 by the earlier Division Bench of the High Court. The review application was dismissed on 14.1.2003 with an observation that Union of India was free to challenge the Award in question in accordance with law. It was made clear that in its decision dated 28.8.2001 the earlier Division Bench has not gone into the merits of the Award.

Since the claimants did not receive compensation, on 11.11.2003 the claimants moved the High Court vide Writ Petition No.3001 of 2003 for realization of the compensation as per the Award. They sought execution of the Judgment of the High Court. At that stage Union of India filed an appeal bearing F.M.A.T. No.151 of 2004 under Section 11 of the 1952 Act against the Award of the Arbitrator dated 25.10.2000.

By impugned judgment dated 6.12.2004 the Division Bench allowed the appeal preferred by Union of India. In appeal, Union of India once again contended that the property in question was acquired on the basis of the agreement dated 18.7.75 under which compensation was ultimately received at the rate of Rs.18,98,000/- when Form K executed and, therefore, there was no dispute in existence to be referred to arbitration. It was urged that the impugned Award was passed by the Arbitrator on the basis of the concession made vide objections dated 5.1.98 and without noticing the fact that the said objection was withdrawn by Union of India on 21.1.2000 when fresh objections were filed

saying that the claimants were not entitled to compensation exceeding Rs.18,98,000/-. It was also urged on behalf of Union of India that claimants were not entitled to solatium and interest as awarded by the Arbitrator. On behalf of the claimants it was once again submitted that the agreement dated 18.7.75 offering the price of Rs.18,98,000/- cannot constitute compensation for acquisition which took place after 12 years on 3.3.87 and that reference of such dispute to arbitration cannot be disputed as illegal. It was urged that the balance amount of Rs.14,80,000/- received on 26.5.93 when Form K was signed, have been received under protest and, therefore, the dispute continued to exist. The claimants also placed reliance on the judgment of the Division Bench dated 28.8.2001 in writ appeal APOT No.42 of 2001 in support of their contention that the notification under Section 8(1)(b) of the 1952 Act appointing an arbitrator was legal, valid and in accordance with law.

On the above contentions the Division Bench in the second round of litigation held that there was no res judicata because the findings given by the earlier Division Bench in its decision dated 28.8.2001 were tentative in nature. Accordingly in the second round the Division Bench records a finding, contrary to the decision of the Division Bench in the first round, that at the time of receiving the balance amount of Rs.14,80,000/- and at the time of signing of Form K on 26.5.93 there did not exist any objection from the claimants. In this connection the Division Bench observed that the claimants had received Rs.14,80,000/- on execution of Form K agreement on 26.5.93 but there was no simultaneous objection from the claimants who in fact objected to the amount only after receiving the balance amount of Rs.14,80,000/- and, therefore, according to the Division Bench it cannot be said that the claimants received compensation under protest. One fails to understand how in the second round of litigation the subsequent Division Bench gave contrary view on the same point. Realising this difficulty, the subsequent Division Bench holds that the findings given on the above question by the Division Bench in the earlier round were tentative findings and since they were tentative findings the subsequent Division Bench once again goes into the same question and holds that the claimants received the compensation amounting to Rs. 18,98,000/- without any protest and consequently the arbitration proceedings were without jurisdiction. On the merits of the Award the subsequent Division Bench however holds that on 5.1.98 written objections were filed on behalf of Union of India under which it was conceded that the rate of the fair market value was Rs.70,000/- per kattah and not Rs.3,00,000/- per kattah as contended by the claimants. However, these written objections dated 5.1.98 were subsequently withdrawn on 21.1.200 and, therefore, the Arbitrator erred in fixing compensation at the rate of Rs.70,000/- per kattah. The subsequent Division Bench observed that there was no material on record for assessing valuation, particularly, when no evidence was taken by the Arbitrator. In the circumstances, the subsequent Division Bench has set aside the Award dated 25.10.2000. Hence this civil appeal by the claimants.

The short question which arises for determination is: whether the subsequent Division Bench was right in holding that the findings given by the earlier Division Bench on the maintainability of the arbitration proceedings, were tentative in nature and, therefore, not binding on the subsequent Division Bench.

On behalf of Union of India it was vehemently urged that no interference is called for in the present case. It was contended on behalf of Union of India that this Court had granted liberty to Union of India vide its order dated 18.3.2002 to pursue other remedies permissible under law. It was urged that even the Division Bench of the Calcutta High Court clarified the position vide order dated 14.1.2003 saying that Union of India was free to challenge the Award and, therefore, according to Union of India, it was open to it to raise the same contentions regarding maintainability of arbitration proceedings once again in the appeal filed before the Division Bench against the Award under Section 11 of the 1952 Act. In this connection, it was submitted by Ld. Additional Solicitor General that the findings of the earlier Division bench dated 28.8.2001 were tentative in nature and, therefore, the subsequent Division Bench was right in holding, vide impugned judgment, that the arbitration proceedings were not maintainable as the acquisition had taken place under the agreement dated 18.7.75. Consequently, according to Union of India, the Award has been rightly set aside by the Division Bench vide impugned judgment dated 6.12.2004.

We find merit in this civil appeal. There is a difference between the validity of the notification issued under Section 8(1)(b) of the 1952 Act on one hand and the validity of the Award on merits announced by the Arbitrator on 25.10.2000 on the other. In the earlier round of litigation the question which arose for determination before the High Court was: whether the notification issued under Section 8(1)(b) of the 1952 Act appointing an arbitrator was valid in law. In that litigation there was no question of deciding on merits the validity of the Award dated 25.10.2000. A concurrent finding was recorded by learned Single Judge and by the Division Bench upholding the validity of the notification under Section 8(1)(b) of the 1952 Act. The notification was upheld. By no stretch of imagination one can say that the concurrent findings given were tentative in nature. In this connection, it is important to note that the premises in question were acquired on 3.3.87 which is 12 years after the agreement dated 18.7.75. Under the scheme of the 1952 Act as in the case of Land Acquisition Act fair market value has to be determined as on the date of acquisition. In this case acquisition had taken place on 3.3.87. If the contention of Union of India is to be accepted it would amount to pegging of the price which is not permissible under the law of acquisition. The Division Bench in the earlier round had given a finding that the premises in question are located in a posh area. In the earlier round a concurrent finding was given by the High Court, both by learned Single Judge and by the Division Bench, that the claimants had received compensation under protest. In the circumstances, it cannot be said by the subsequent Division Bench that the earlier findings were tentative. There is one more fact which is required to be noted. Before the Arbitrator the

claimants had asked for enhancement of compensation at the rate of Rs.3,00,000/- per kattah. In reply, on 5.1.98 Union of India stated that the fair rate was Rs.70,000/- per kattah. On 21.1.2000 an affidavit is filed by Union of India before the Arbitrator saying that the advocate had no authority to concede the rate at Rs.70,000/- per kattah. By decision dated 18.5.2000 the objections filed by Union of India dated 21.1.2000 were rejected. The decision of the Arbitrator was challenged in a writ petition C.O.No.12072 of 2000. This writ petition was also dismissed by the High Court on 30.8.2000 and, therefore, it is not open to Union of India now to say that Rs.70,000/- per kattah was not the fair rate. This issue was also, therefore, concluded.

Lastly, the most important point to be noted is that before the Arbitrator the claimants had submitted a valuation report under which the valuer has relied upon sale instances and had calculated the fair market value of the acquired property at Rs.73,900/- per kattah [SEE: Valuation report dated 20.12.96 at page 97 of Volume I filed in the Calcutta High Court in F.M.A.T. No.151 of 2004 \026 Part I). In fact, even the Arbitrator in the impugned Award has referred to the report of the expert valuer and also to the sale instance dated 18.7.86 and, therefore, it cannot be said that the impugned Award is based only on the concession made by Union of India vide its objections dated 5.1.98.

Before concluding we may mention that Shri Bhaskar Gupta, learned senior advocate appearing on behalf of the claimants, has stated that the claimants will not press their claim for solatium. In the circumstances, we are not required to examine the question as to whether the claimants were entitled to solatium under provisions of the 1952 Act. However, we are of the view that the interest awarded by the Arbitrator at the rate of 15% per annum from the date of acquisition till payment is on the higher side and accordingly we direct payment of interest at the rate of 9% per annum instead of 15% per annum.

For the above stated reasons, we find merit in the civil appeal and accordingly we set aside the impugned judgment dated 6.12.2004 delivered by the Division Bench of the Calcutta High Court in F.M.A.T. No.151 of 2004 and accordingly we direct payment of compensation to the claimants at the rate of Rs.70,000/- per kattah in respect of Danga and Bastu land and at the rate of Rs.35,000/- per kattah for the pond land with interest at the rate of 9% per annum from the date of acquisition till payment as ordered by the Arbitrator less amounts paid and received by the claimants till today. We may clarify that in the Award the Arbitrator granted interest on the aggregate amount of land value + solatium for the period of one year from the date of acquisition on the basis that Union of India shall pay the requisite amount within three months from the date of the Award. However, Union of India unnecessarily litigated on unstatable points, as stated above, and in the process interest continued to accrue and, therefore, we direct Union of India to pay compensation that is land value at the two above-mentioned rates of Rs.70,000/- per kattah in respect of Danga and Bastu land and Rs.35,000/- per kattah for the pond land without solatium with interest at the rate of 9% per annum from the date of acquisition till payment, less the amount which has already been paid till date.

Accordingly, the civil appeal is partly allowed with no order as to costs.

JUDIS