

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3137 OF 2010

DEFENCE ESTATE OFFICER

.. APPELLANT

VERSUS

SYED ABDUL SALEEM AND OTHERS

.. RESPONDENTS

J U D G M E N T

VIKRAMAJIT SEN, J.

1 The Appellant has by the pulpit of this Civil Appeal assailed the Judgment and final Order dated 13.3.2007 passed by the Hon'ble High Court of Judicature, Andhra Pradesh (Hyderabad) in CMA No. 1986 of 2003, rendered in the matter of Syed Abdul Saleem v. The Government of Andhra Pradesh, wherein the appeal preferred by the Respondents herein was allowed by the High Court, which enhanced the rate of compensation

from Rs.6/- per sq. yard awarded by the Learned Arbitrator, to Rs.12/- per sq. yard along with the award of 30% solatium and interest at 9% from the date of possession, i.e., 28.07.1970. The subject lands, situated at Village Ibrahimbagh District, Hyderabad, were acquired for setting up of an Artillery Centre at Golconda. The Ministry of Defence, Government of India, accorded its sanction dated 1.12.1969 for the acquisition of land admeasuring 1181.70 acres, at an estimated total cost approximating Rs.35,45,100/-. The lands of the Respondents, admeasuring 2 acres 28 guntas in Revenue Sy. No. 94, and 1 acre 27 guntas in Revenue Sy.No. 95, totaling 4 acres and 15 guntas, were acquired under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 by the Central Government. The Form 'J' Notification was published on 22.07.1971. The Competent Authority, viz., the Collector, Hyderabad, offered Rs.39,930/- as compensation in respect of 4 acres 15 guntas, by fixing the rate at Rs.2/- per sq. yard. Further, the Collector also granted interest at 4% p.a. from the date of publication of 'J' Notice to the date of payment; an amount of Rs.45,295.90 was deposited by SDC, LA (Defence) in the Court, vide letter dated 03.02.1975.

2 Dissatisfied with the said compensation, the Respondents thereafter requested for the appointment of a Statutory Arbitrator. The Government

appointed the Arbitrator on 21.10.1980, with a direction to him to dispose of the matter within four months. As the sole Arbitrator was unable to dispose of the matter within the prescribed period, the Government once again appointed an Arbitrator on 11.11.1999 to complete the exercise. The Arbitrator enhanced the compensation from Rs.2/- per sq. yard to Rs.6/- per sq. yard along with solatium of 30% and interest at 9% p.a. from the date of taking possession of the acquired land, i.e., 28.07.1970, up till the date of payment. The Arbitrator recorded in his Award that after the failure of the first Arbitrator to dispose of the matter within a period of four months, the Government took 19 years to appoint another Arbitrator. The Arbitrator observed: “it is no doubt true that the matter was stayed by the Hon’ble High Court for some years on account of proceedings initiated by the claimants 1 and 2 herein. But, even after the above aspect is taken into consideration, it is very clear that the Government is not diligent in prosecuting the matter”. The fact of undue delay in the institution of arbitral proceedings having been determined, the Arbitrator applied the principle enunciated in *Union of India v. Hari Krishan Khosla* (1993) Supp. 2 SCC 149, whereto we shall advert shortly, and awarded the aforesaid payment of solatium and interest.

3 Dissatisfied with the Award, the Respondents filed an appeal before the High Court; Cross Objections were preferred by the Appellant. The

High Court allowed the Respondents' Appeal while dismissing the Cross Objections of the Appellant and enhanced the compensation from Rs.6/- per sq. yard to Rs.12/- per sq. yard and upheld the Arbitrator's Award granting solatium of 30% and interest at 9%. The High Court also placed reliance on this Court's judgment in **Hari Krishna Khosla**.

4 The questions of law raised by the Appellant before us are threefold: Firstly, whether the Court was justified in granting solatium and interest without considering the fact that there is no provision for awarding these under the Requisitioning and Acquisition of Immovable Property Act, 1952; secondly, whether the Court was right in ignoring the fact that the Constitutional validity of non-inclusion of the provision for the payment of solatium and interest in the Act has been upheld by this Court in the case of **Hari Krishna Khosla** and finally, whether the Court was right in enhancing the compensation from Rs.6/- per sq. yard to Rs.12/- per sq. yard without fully appreciating the Cross Objections and evidence proffered by the Appellant?

5 Per contra, the Respondents submit that **Hari Krishna Khosla**, and its succeeding judgments, all indicate that there is a settled alcove of equity in the jurisprudence pertaining to land requisition. This Court has recognized

the hardships suffered by affected/dispossessed parties in requisition proceedings, in cases of extensive delay in the disbursal of compensation, or, as in this case, delay in the initiation and eventuation of proceedings under the statute, and has equitably extended the twin ameliorators of solatium and interest on compensation, albeit their not being available under the requisition Statute.

6 The submissions of both parties hereto having been adumbrated, we find that the Appeal is without merit. The Appellant presents as exceptionable the High Court's enhancement of compensation. But the chiefly objectionable aspect to the impugned judgment and order is, in the submission of the Appellant, the High Court's extra-legal Award of solatium and interest on the principal statutory compensation awardable under the Requisitioning and Acquisition of Immovable Property Act, 1952. This Court has previously, in **Hari Krishan Khosla**, conducted a thorough analysis of the features of the aforementioned Act apropos the Land Acquisition Act, 1894, and providing cogent rationales therefore, in our humble opinion rightly labelled as "odious" any attempt to make a black-letter comparison of the two enactments. Whilst upholding the Constitutionality of the Requisitioning Act absent the provisions therein of the award of solatium and interest, the Court nevertheless, relying upon a

previous pronouncement in *Harbans Singh Shanni Devi v. Union of India* [disposed of by this Court on 11.02.1985 in Civil Appeal Nos. 470 & 471 of 1985], found it just and proper to uphold award of both solatium (at 30%) and 9 % interest along with the principal statutory compensation, where appointment of the Statutory Arbitrator had been delayed by 16 years. “Equity is a mitigant to the harshness of common law” is a well-known Common Law maxim. Several Benches of this Court, from **Hari Krishan Khosla** in 1993; the Constitution Bench in *Union of India v. Chajju Ram* (2003) 5 SCC 568, in the context of the Defence of India Act, 1971; *Union of India v. Parmal Singh* (2009) 1 SCC 618 and thereafter in *Dilawar Singh v. Union of India* (2010) 14 SCC 357, have consistently applied mutatis mutandis the equity resting in this maxim to mitigate the harshness of this requisition statute, thereby providing for payment of interest and solatium to affected/ dispossessed parties in cases of extensive protraction, where the statute ex facie provides for neither of these ameliorators. The precedential position being unquestionably clear, we find that the facts before us, displaying dilation by the Appellant of 19 years in reappointment of the statutory Arbitrator, command and not merely commend the application of the precedent. We, therefore, sustain the Judgment of the High Court, and

Appellant shall pay costs to the Respondents.

.....J
[VIKRAMAJIT SEN]

.....J.
[VIKRAMAJIT SEN]

.....J.
[SHIVA KIRTI SINGH]

