(1981) 09 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1086 of 1980

Bachan Singh APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 08-09-1981

Acts Referred:

Citation : (1982) PLJ 35 : (1984) RRR 250

Hon'ble Judges : J.V.Gupta, J

Advocate : Mr. Ravi Kapur, Advocates., Mr. K.P. Bhandari, Advocates for appearing Parties

Judgement

J.V. Gupta, J.

1. This order will dispose of Civil Writ Petitions Nos. 1086, 1884, 1885 and 2395 of 1980, as common questions of law are involved therein.

2. The immovable properties belonging to the petitioners were requisitioned under Section 23 of the Defence of India Act, 1971 (hereinafter called the Act) and subsequently, the Central Government decided to acquire the said immovable properties in exercise of the powers conferred by sub section (2) to section 30 of the Act. Compensation for the acquisition of the said properties was determined as provided under Section 31 of the Act. Since there is no provision in the Act for the payment of solatium at the rate of 15 per cent and the interest at the rate of six per cent, as provided under the Land Acquisition Act, 1894, no amount was allowed to the petitioners on account of the said two counts. The main grievance of the petitioners in all these writ petitions is that the provisions of section 31 of the Act, in so far as they deny the solatium and the interest on the amount of the compensation determined, are discriminatory and, therefore, violative of the petitioner fundamental right guaranteed under Article 14 of the Constitution. In support of this contention, the main reliance by the learned counsel for the petitioner, has been placed on a Full Bench decision of this Court in Hari Kishan v. The Union of India, AIR 1975 Punjab and Haryana 74. In that case, the provisions of Section 8(3)(a) of the Requisitioning and Acquisition of

Immovable Property Act, 1952 (hereinafter called the Act of 1952) in so far as those provisions denied 15 per cent by way of solatium on the compensation awarded and also denied interest at the rate of 6 per cent while granting those benefits to the owners of land acquired under the Land Acquisition Act, 1894, were held to be violative of the provisions of Article 14 of the Constitution, and it was held therein that the owners of land acquitted under the Act of 1952 were entitled to claim and receive, from the Central Government, solatium at 15 per cent per annum on the amount of compensation allowed to them for their land and also interest at 6 per cent per annum on the amount of compensation. On the other hand, the learned counsel for the respondents submitted that the ratio of the abovesaid Full Bench decision is not applicable to the present cases in view of the specific provisions of the Act. He particularly referred to sections 23 and 37 of the Act, which read,

"23. Requisitioning of immovable property. (1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government, it is necessary or expedient so to do for securing the defence of India, civil defence, public safety, maintenance of public order or efficient conduct of military operations or for maintaining supplies and services essential to the life of the community, that Government may, by order, in writing, requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning :

Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned.

(2) The requisition shall be effected by an order, in writing, addressed to the person deemed by the Central government or the State Government as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under subsection (1), the period of such requisition shall not extend beyond the period for which such property for any of the purposes mentioned in that subsection."

"37. Effect of Act and Rules etc. inconsistent with other enactments. The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act."

According to the learned counsel, the Act of 1971 is a special statute under which immovable property could be requisitioned not for a public purpose as such, but for the limited purposes as enumerated in section 23 thereof. The argument proceeds, that in view of the provisions of section 37, reproduced above, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. It was also pointed out that section 31 of the Act provides for compensation for acquisition of requisitioned property. According to the provisions of that section, compensation payable for the acquisition of any property under section 30 shall be the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of the requisitioning and been sold on the date of the acquisition. According to the learned counsel, under the Land Acquisition Act, 1894, the market value of the property was to be determined at the time of the notification under section 4 of the said Act whereas the market value of the property requisitioned and acquired under the Act is to be determined at the time of the acquisition of the property and not at the time of its requisition. In support of this contention, reliance was placed on Union of India v. Deben Adhicary, AIR 1979 Calcutta 230. Reference was also made to Article 31A of the Constitution of India.

3. After hearing the learned counsel for the parties at a great length, I am of the considered opinion that the ratio of the Full Bench decision of this Court in Hari Krishan''s case (supra) fully applicable to the facts of the present cases. In the above said Full Bench case, the learned counsel for the Union of India laid emphasis on their provisions contained in subsection (3) of Section 7 of the Act of 1952 and argued that the power of acquiring property under the said Act having been directly confined within the limits laid down in section 7(3), the result would be that only such property could be acquired as has already been requisitioned by the Government under the said Act. On that basis, it was also argued that there was a reasonable classification between the owners of the properties requisitioned under the Act of 1952 on the one hand and the owners whose properties had not been requisitioned under that Act and, therefore, the impugned provisions of that Act did not violate Article 14 of the Constitution. R.S. Narula C.J., speaking for the Court, repelled these contentions and observed

"We are unable to find any force in this argument of Mr. Kuldip Singh for three reasons. Firstly, to the list of three things which do not concern the owner of the land in the matter of payment of compensation to him (for his acquired land) mentioned by their lordships of the Supreme Court in Vithal Rao''s case, AIR 1973 Supreme Court 689 (relevant portion already quoted) can safely be added the fourth matter of the property having already been requisitioned or not having been requisitioned. The difference between the requisitioned property and the other property for the purpose of the two being classified separately has no rational relationship with the object of acquiring the property (which is for a public purpose in all the cases), and, therefore, the second condition precedent for satisfying the equality clause contained in Article 14 of the Constitution is in any case not satisfied by the impugned provision. The fact that the owner of the requisitioned property has been receiving compensation (which is equivalent of the market rent) does not make any difference as the owner of a nonrequisitioned property may indeed be getting even a higher rate of rent from a private tenant before his property is acquired. Secondly, the provision for depriving the landowners of solatium and interest in case of acquisition of their property under the Act in contradistinction to owners whose property is acquired under the Land Acquisition Act (who have the right to claim and get solatium and interest) cannot be justified on the basis of the positive terms of section 7(3) of the Act. There is nothing in the Act to suggest that property which has been requisitioned under the Act cannot be acquired under the 1894 Act. The argument of Mr. Kuldip Singh interpreting section 7(3) in that manner is obviously fallacious. The provision merely states that property which is not requisitioned cannot be acquired under the Act. That cannot possibly imply that the reverse of it must also be true, that is, the property which is requisitioned under the Act cannot be acquired under the Land Acquisition Act. There is nothing in the language of any provision contained in the 1952 Act which prohibits or makes illegal the acquisition under the 1894 Act, of any property requisitioned under this Act. The result is that the Act leaves it to the arbitrary and unguided discretion of the Government to acquire the requisitioned land of one owner under the Act by resort to section 7(1) of the Act itself, and the requisitioned land of another exactly similarly situated under the Land Acquisition Act. Thirdly, the cases by Mr. Kuldip Singh (Union of India and Kamalabai Harijivandas Parekh, AIR 1968 SC 377, and Ballabhadas Mathuradas Lekhni v. Municipal Committee, Malkhapur, AIR 1970 SC 1002 are clearly distinguishable from the date the case in hand. Sections 53 and 67 of the Bombay Town Planning Act (26 of 1955) were held by the Supreme Court to be intra vires in the State of Gujarat v. Shantilal Mangaldas, AIR 1969 SC 634, on the ground that there were two distinctly separate provisions, one for acquisition by the State Government and the other in which the statutory vesting of land operated as acquisition for the purpose of town planning by the local authority, and there was no option to the local authority to resort to one or the other of the alternative methods which resulted in acquisition. As already illustrated, that is not so in the present case."

There is virtually no difference in the provisions of Section 8(3)(a) of the Act of 1952 and section 31(1) of the Act. Section 7 of the Act of 1952 is virtually the same as section 30 of the Act. Moreover the argument of learned counsel for the respondents, that under section 23 of the Act, the properties are requisitioned for defence purposes and that is why under section 37 of the Act, it has been provided that the Act will have an overriding effect is also of no consequence, because at the time of the acquisition of the requisitioned property under section 30, there is no question as to the purpose for which it was requisitioned under section 23 of the Act. Acquisition under section 30 is to be made for different considerations whereas the object of the Act is to provide for special measures to ensure public safety and interest, the defence of India and civil defence, and for the trial of certain offences and for matters connected therewith. Thus, the overriding provisions of Section 37 of the Act are also to be interpreted keeping in view the object of the Act. Moreover, providing solatium or interest, as claimed by the petitioners is not in any way inconsistent with the provisions of the Act. In this view of the matter, section 37 of the Act, is not at all helpful to the case of the respondents, for making any distinction between the provisions of the Act of

1952 and the Act.

4. The learned counsel for the petitioners also placed reliance on the State of Kerala v. T.M. Peter, AIR 1980 Supreme Court 1438. Therein, inter alia the vires of section 34 of the Town Planning Act (Travancore Act 4 of 1908) were under consideration on the ground of being discriminatory and thus violative of Article 14 of the Constitution. It was held therein :

"We hold that exclusion of section 25 of the Land Acquisition Act from section 34 of the Act is unconstitutional but it is severable and we sever it. The necessary consequence is that section 34(1) will be read omitting the words "and section 25''. What follows then ? Section 32 obligates the State to act under the Land Acquisition Act but we have struck down that part which excludes section 25 of the Land Acquisition Act and so, the `modification'' no longer covers section 25. It continues to apply to the acquisition of property under the Town Planning Act. Section 34(2) provides for compensation exactly like section 25(1) of the Land Acquisition Act and in the light of what we have just decided, section 25(2) will also apply and `in addition to the market value of the land as above provided, the court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition."

Reference may also be made to the observations made in paragraph 16 in the above said case which are as follows :

"The more serious submission pressed tersely but clearly, backed by a catena of cases, by Shri Vishwanathan merits our consideration. The argument is shortly this. As between two owners of property, the presence of public purpose empowers the State to take the lands of either or both. But the differential nature of the public purpose does not furnish a rational ground to pay more compensation for one owner and less for another and that impertinence vitiates the present measure. The purpose may be slum clearance, flood control or housing for workers, but how does the diversity of purposes warrant payment of differential scales of quantum of compensation where no constitutional immunity as in Article 31A, B or C applies ? Public purpose sanctioned compulsory acquisition, not discriminatory compensation whether you take A''s land for improvement scheme or irrigation scheme, how can you pay more or less, guided by an irrelevance viz., the particular public purpose ? The State must act equally when it takes property unless there is an intelligent and intelligible differentia between two categories of owners having a nexus with the object, namely, the scale of compensation. It is intellectual confusion of constitutional principle to regard classification good for one purpose as obliteration of differences for unrelated aspects. This logic is neatly applied in a series of cases of this Court."

As regards the judgment of Calcutta High Court in Deben Adhicary''s case (supra), it may be stated that in that case the appeal had arisen out of the arbitration proceedings under section 19 of the Defence of India Act, 1939, and the main question involved therein was whether the arbitrator appointed under the said Act was justified in not awarding solatium or not. There is no such dispute in the present case. Here, the challenge is to the vires of section 31 of the Act on the ground that it is discriminatory because no provision has been made therein for the grant of solatium and interest as provided under the Land Acquisition Act, 1894.

5. As a result of the above discussion, these writ petitions are allowed and it is held that Section 31 of the Act is ultra vires Article 14 of the Constitution and that the petitioners are entitled to claim and receive, from the Central Government, solatium at the rate of 15 per cent per annum on account of the compensation allowed to them for their properties which have been acquired by the Government and also interest at six per cent annum on the amount of compensation from the date of possession till the amount was paid. No costs.