
(1964) 12 CAL CK 0019
In the Calcutta High Court

Balai Lal Pal

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 08-12-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Interest Act, 1978 — Section 1
Land Acquisition Act, 1894 — Section 23, 23(1), 28, 34
Transfer of Property Act, 1882 — Section 54(4)(b), 55(4)(b)

Citation : 70 CWN 363

Hon'ble Judges : T.P. Mukherjee, J;A.C. Sen, J

Bench : Division Bench

Advocate : Amarendra Nath Gupta and Sovendra Madhab Basu, for the Appellant;N.C. Chakrabarti, B.C. Dutt and Sudhindra Kumar Kar, for the Respondent

Final Decision : Allowed

Judgement

T.P. Mukherji, J.—This is an appeal by the claimant u/s 11 of Act of 1952, (Central) against an Award made by the Arbitrator appointed u/s 8(1) (b) of the said Act read with Section 24 thereof and Section 6 of the Requisitioned Land (Continuance of Powers) Act of 1947.

2. Certain Nal lands and an orchard were requisitioned u/s 75A of the Defence of India Rules in November, 1949 for purposes of the Central Government. The requisition continued under Act 17 of 1947 (Central) and the lands concerned were acquired under that Act in March 1949. The same acquisition is deemed to have been made in accordance with the provisions of Act XXX of 1952 and it is the question of compensation for the acquired land that was involved in the proceeding before the Arbitrator and it is the compensation awarded by him that is challenged by the claimant as being too low and arbitrary.

3. The competent authority, that is, the Collector awarded compensation for the Nal, that is arable land at the rate of Rs. 200/- per acre, the Bagan land, that is

the orchard, at the same rate plus the value of the trees standing thereon as timber. A small plot of Viti land was assessed at Rs. 400/- per acre. The claimant did not agreed to accept compensation at the amount offered by the Collector and as a result the matter of assessment of compensation was referred to the Arbitrator. Before the Arbitrator the claimant filed his statement claiming compensation, on the basis of annual yield of Rs. 800/- at the total figure of Rs. 16,000/- and twice that amount as at Rs. 32,000/- for the acquisition.

4. The learned Arbitrator valued the Nal land at the rate of Rs. 200/- per acre. He valued the orchard comprising an area of 10 bighas at Rs. 2,750/- in a lump. A palm tree, obviously standing on the arable land was valued at Rs. 90/-. The total of these amounts that is Rs. 2,896/- was awarded as compensation together with interest from the date of acquisition minus a sum of Rs. 1,924/- that had already been paid to the claimant.

5. The Award passed by the learned Arbitrator has been challenged before us as wholly inadequate and arbitrary. It was contended by Mr. Gupta appearing on behalf of the appellant that the learned Arbitrator having rejected the kabalas Exts. A to E filed on behalf of the State as being insufficient to provide evidence of transaction in comparable units, the only evidence before him was the amount of annual compensation paid by the State Government for the period of requisition. It was argued that such being the case the learned Arbitrator should have assed the valuation at certain years, of the annual yield as evidenced by the compensation paid for the period of requisition and came to his own finding as to the compensation payable for the amount in question on the basis of the market value thereof. It is urged that after having rejected the evidence adduced by both the parties, the Arbitrator has come to a finding of his own which has no foundation in evidence and is no better than his ipse dixit.

6. Mr. Chakraborty appearing on behalf of the State contended that the appellant had produced before the Arbitrator his account books which should have disclosed his annual profit from the lands in question; but these account books were never attempted to be proved. The best evidence thus being withheld and there being no other acceptable evidence on his side the claimant is not entitled to get any relief as claimed.

7. Exts. A to E, kabalas of the years 1942 to 1943, refer to transactions in mouza Dharmabati to which the acquired lands appertain and also to adjoining mouzas. According to the learned Arbitrator there is no evidence as to the quality of the land covered by these documents and the circumstances under which the transactions had taken place. It is on this ground that these documents were rejected by him. So far, as the claimant is concerned the only evidence adduced on his behalf was the oral evidence adduced by him and his witnesses. That evidence was confined to the proof of the annual profit that is stated to have been received by him from the orchard for certain years prior to the requisition thereof. The oral evidence in this regard was sought to be buttressed so far as the record shows by certain account books which however had not been proved

in the case. The failure to prove the account books produced will entail the presumption that if proved these would not have corroborated the substantive evidence that was adduced in the case. That is the only legal consequence in the case that should flow from these account books not having been proved. We are not prepared to agree with Mr. Chakraborty that the withholding of these account books would entail any consequence worse than what Section 114(g) contemplates.

8. As the record stands, the position is that the claimant's evidence regarding the amount of profit received by him from the orchard is unacceptable. The documentary evidence in the shape of kabalas filed on behalf of the State were also not found acceptable by the learned Arbitrator and nothing was placed before us to indicate why the finding of the learned Arbitrator in that regard should not be accepted by us. This leaves us with only Ext. 3 which is a chart showing the amount of compensation paid by the State to the claimant in respect of the requisitioned land for the period of requisition between the years 1943 to 1949. Ext. 3 shows that for the first year a sum of Rs. 469/8/- was paid as compensation for loss of income from the fruit bearing trees that is from the orchard in question. In the next year a sum of Rs. 469/- was paid on the same account. A sum of Rs. 467/- was paid on that account in the third year and in the fourth and fifth years sums of Rs. 469/8/- and Rs. 468/7/- respectively were similarly paid. These payments would thus indicate an average payment of Rs. 468/- per year during these five years as compensation for loss of income from the orchard in question.

9. In the absence of any other evidence which might help us in assessing the market value of the property, certain years of the net profit thereof as paid by the State Government to the claimant may be taken as a sound basis for the purpose of arriving at the market value. The question is that net profit of how many years should constitute the market price in the present case.

10. The evidence shows that the Lichi trees in the orchard were planted in the year 1926, and that they started bearing fruits six years thereafter, that is, in 1932. On the date of requisition these trees had borne fruit for 11 years only and that being the position we can safely assume that they would be good for bearing fruits for another 15 to 20 years. On this basis 15 years' net profit may safely be taken as the market value of the orchard on the date of requisition in the year 1943. The average net profit from the orchard according to Ext. 3 which constitutes an admission of the State Government that has not been proved to be untrue, has been found by us to be Rs. 468/-. 15 times of this amount is Rs. 7,020/- which we assess as the market value of the orchard in the year 1943.

11. u/s 8(3) of the Act XXX of 1952 the claimant would be entitled to get compensation at the market price of the acquired property on the date of acquisition or at twice the market value on the date of requisition whichever is less. As there is no evidence in the case as to the market value of the property in the year of acquisition, we assess twice the market value on the date of

requisition that is Rs. 14,040/- as the fair market price of the orchard in question. Along with the orchard the claimant is entitled to compensation for the Nal land at the rate of Rs. 250/- per acre as awarded by the learned Arbitrator amounting to Rs. 137/8/- and Rs. 9/- as the price of a palm tree. The compensation on these two heads has not been challenged on behalf of the claimant as being inadequate or insufficient. The total compensation due to the claimant thus amounts to Rs. 14,186/8/-. Out of this amount the claimant was admittedly paid Rs. 1,924/- thereby leaving a balance of Rs. 12,262/8/-. The claimant however, has claimed in this appeal a total sum of Rs. 8,000/-, that being the amount to which the claim in this appeal is confined.

12. It appears from the record that over and above a sum of Rs. 1,924/- a sum of Rs. 661/3/- was offered to the claimant by the competent authority. It further appears that a sum of Rs. 387/11/- represents interest on the amount calculated as compensation by the competent authority and this amount is included in the total offer that was made. This sum representing interest cannot carry further interest and the sum of Rs. 661/3/- that was offered and refused cannot also carry further interest. Taking Rs. 8,000/- as the additional sum due to the claimant we deduct therefrom the two amounts of Rs. 661/3/- and Rs. 387/11/- that is a total amount of Rs. 1,048/14/- which will be examined from carrying interest out of the sum found by us to be due to the claimant as additional compensation on account of the acquired lands.

13. The appeal should, therefore, be allowed and the Award passed by the learned Arbitrator should be set aside. The claimant appellant is entitled to get a further sum of Rs. 8,000/- out of which the sum of Rs. 6,951/2/- will carry interest at the rate of 4 per cent per annum from 3.3.1949 up to the date payment is made or the money is deposited in Court.

14. Mr. Chakravarty, who was not present in Court while the judgment was being dictated, has subsequently taken exception to that part in the ordering portion of our judgment which allows interest at the rate of 4 per cent per annum on a sum of Rs. 6,951/2/- from 3.3.1949 up to the date of payment of deposit in Court. His argument is first that no interest can be given under Act XXX of 1952 on the compensation assessed u/s 8(3) of the Act; secondly, that the claim in the appeal being restricted to a sum of Rs. 8,000/- no further amount in the shape of interest thereon would in any case be payable to the claimant and thirdly that even if any interest would be admissible, no interest pendente lite can be given.

15. On the question as to whether any interest on compensation awarded can be given under the provisions of Act XXX of 1952, it may at once be stated that there is no such specific provision therein, but at the same time there is also no such provision in the Act on the strength whereof it can be said that the claimant would be disentitled to interest. So far as the Act is concerned it simply says that the Arbitrator shall make an award determining the amount of compensation which appears to him to be just and then it says how the compensation is to be assessed.

16. In dealing with the broad principle guiding the grant of interest Mr. Chakravarty referred to the case (1) *Sm. Nirupama Devi Lahiri Vs. Anathbandhu Saha and Others*, and attempted to distinguish it from the facts of the present case. In that case it was stated on the authority of (2) *B.N. Railway Company v. Rattanji Ramji*, reported in 65 IA 66 that interest before suit cannot be paid unless there is either an express stipulation to pay interest or unless a promise to pay interest can be implied or unless the case comes within the scope of the Interest Act of 1839. Interest, according to this decision could also be paid in cases where the subject matter could be brought within the jurisdiction of the Court of equity on the principles and conditions in which Courts of equity in England assumed jurisdiction. This decision was sought to be got over on the contention that in the present case the claim is neither covered by the Interest Act nor any promise to pay interest can be said to be implied in the case and the claimant not being entitled to damages in the shape of interest for mere detention of money, no interest can be allowed by the Court on the amount that might be found due.

17. Mr. Chakraborty also referred to the case (3) *The Province of Bengal Vs. Pawn Kissen Law and Co.*, which was a case arising out of an acquisition u/s 19 of the D.I. Act. The Arbitrator under that Act was required for the purpose of assessment of compensation to have regard to Section 23(1) of the Land Acquisition Act of 1894. A question arose in that case as to whether the Arbitrator was competent to grant interest on the compensation assessed by him. The learned Judges in that case referred to *Crips on Compensation*, 17th Edition page 196 where it is stated that ordinary rules as to payment of interest on purchase money would also apply when lands are acquired under statutory power. The learned Judges further referred to Section 54(4)(b) of the Transfer of Property Act which states that in the absence of an agreement to the contrary interest has to be paid on the purchase money from the date on which possession has been delivered in cases where ownership has passed to the purchaser. It was also observed in the judgment that although Sections 28 and 34 of the Land Acquisition Act were not made expressly applicable thereto, there is also no indication of a contrary intention therein and that as such there was no reason why interest on the value of the land acquired under the D.I. Act could not be awarded by the Arbitrator. Mr. Chakraborty argued that even though interest on compensation might be awarded under the D.I. Rules which at least attracted Section 23(1) of the L.A. Act thereto and might thereby attract the principles underlying the other salutary provisions in connection therewith, there is no basis whatsoever for a claim for interest in the case of an acquisition under Act XXX of 1952 where the Arbitrator has to act on quite different principles. We shall consider this argument in due course.

18. The next case referred to is (4) *Province of West Bengal v. B. Properties Limited*, 59 CWN 1131. In that case the question arose whether interest was payable on compensation due for the period of requisition under the Defence of India Act. There Lordships in the case referred to the proviso to the Section 1 of

the Interest Act which states that interest shall be payable in all cases in which it is now payable in law and embodies a principle of equity which arises when money is wrongfully withheld or detained. It was held that "under the law the claimant is entitled to a "just award" from the Arbitrator. That may well mean that the fullest compensation ought to be made for the loss which the claimant might suffer on account of the requisition at the hands of requisitioning authority. Compensation for deprivation or loss of possession or user is payable at least from the date of requisitioning authority takes possession of the requisitioned property." Interest in the case was allowed from the date of the Award because according to the learned Judges until the stage of determination came there was no question of detention of money and no question of payment of interest by way of damages for withholding the payment would arise. It may be noted that the decision in the case proceeded on the general principles of equity and did not take note of the fact that Section 23(1) of the L. A. Act being applicable to the D.I. Rules, the principles embodied in any other provision of that Act would be attracted to the assessment of compensation.

19. Mr. Gupta, on behalf of the appellant, relied in support of his claim for interest on the amount claimed by him on the case (5) Satinder Singh and Others Vs. Amrao Singh and Others, . This was a case of acquisition under the East Punjab Requisition of Immovable Property (Temporary Powers) Act XLVIII of 1948 and one of the questions raised was whether interest was payable on the amount of compensation assessed. Under Act XLVIII of 1948, as u/s 19 of the D.I. Act the Arbitrator in making his Award was required to have regard to the provisions of sub-section (1) Section 23 of the L. A. Act of 1894 so far as the same can be made applicable.

20. Their Lordships held that although Sections 28 and 34 of the L. A. Act of 1894 were not made specially applicable to the acquisition under the East Punjab Act XLVIII of 1948, the principles underlying the provisions of those sections were not necessarily excluded. The judgment refers to considerations of equity involved in the matter and then to the proviso to Section 1 of the Interest Act which expressly saved the power of the Courts to award interest on equitable grounds or under any other provision of the law and held: "We have already seen that the right to receive interest in lieu of possession of immovable property taken away either by private treaty or by compulsory acquisition is generally regarded by judicial decisions as an equitable right and so the proviso to Section 1 of the Interest Act saves the said right." On this finding, interest at the rate of 4 per cent per annum was awarded on the compensation assessed from the date on which possession of the land was taken till the date of payment or deposit of the amount of compensation assessed. The final observation quoted above equates compulsory acquisitions with voluntary sales so far as the vendor's right to receive interest on the unpaid purchase money or the unpaid compensation is concerned, thereby applying the equitable principle embodied in Section 55(4)(b) of the Transfer of Property Act and amply meets Mr. Chakravarty's argument that the claimant is not entitled to damages in the shape of interest for mere

detention of unpaid compensation assessed for lands acquired under Act XXX of 1952, or that there is any difference in the principle involved in the matter between acquisitions under the D.I. Rules and those under Act XXX of 1962 simply because Section 23(1), L.A. Act is made applicable to the former and not to the latter. Mr. Chakravarty referred us to the case (6) Mahabir Prashad Rungta Vs. Durga Datt, , but that was clearly a case arising out of a breach of contract and would as such have so analogy with the case before us.

21. In view of what we have stated above we hold that it is quite within the competence of the Arbitrator to award interest on compensation assessed under Act XXX of 1952.

22. The next argument of Mr. Chakravarty is that the claimant appellant having had valued the appeal at a particular figure Rs. 8,000/- in the present case and thereby restricted his claim to a specified amount, is not entitled to get anything on any account over and above that sum, as he has given up his claim to any further relief. In the present case the claimant had laid a claim for Rs. 32,000/- together with interest before the Arbitrator. He was awarded a sum of Rs. 2,896/8/- together with interest on the unpaid balance in the Award that was passed. He came up on appeal to this Court and valued this appeal at Rs. 8,000/- stating that the said sum was the claim to which this appeal is confined. The question is whether having limited the relief he asks for in this appeal to Rs. 8,000/- he can be awarded any amount over and above that sum by way of interest even if he be found to be entitled thereto.

23. Interest is to be included in a claim where the claim for the interest is based on contract or under the law and not where the Court is required by law to grant it or the Court is left with a discretion in the matter or where interest is payable on considerations of equity. In neither of these latter cases is the interest really a part of the claim, but Order 7, Rule 7, C.P. Code or the principle underlying it will operate to empower the Court to grant relief though not asked for.

24. The claimant in the case has no legal right to get interest on the compensation assessed. His claim is based on consideration of equity and it is entirely within the discretion of the Court to allow or to reject that claim on a consideration of all the facts and circumstances involved in the matter. If the equitable principles involved in the case can be attracted, the Court will grant relief by awarding interest even without the same being specifically asked for in the memorandum of appeal. We find that the fact that the claim in the appeal is restricted to Rs. 8,000/- would not stand in the way of the appellant getting, over and above that sum, a further amount in the shape of interest on a consideration of the equities involved in the matter.

25. The next contention of Mr. Chakravarty is that in any event interest pendente lite cannot be given as Section 34 of the C.P. Code has no application to the proceedings before the Arbitrator and if the Arbitrator could not award interest pendente lite this Court in appeal is not empowered to grant the same. The

question of interest pendente lite in cases such as this was gone into in the case of (5) Satindra Singh (supra). In the judgment their Lordships considered the matter and held that the fact that Section 34, C.P. Code has no application to the proceedings before the Arbitrator would not stand in the way of grant of interest pendente lite in these cases.

26. We have considered the questions raised by Mr. Chakravarty and we find that the order already passed by us would find full support in the case of Satindra Singh (supra) and as such requires no further reconsideration by us. The contentions of Mr. Chakravarty are accordingly rejected.

27. We accordingly pass the follows order:-

Ordered that the appeal be and is hereby allowed with costs and the Award given by the learned Arbitrator be and is hereby set aside. It is further ordered that an additional sum of Rs. 8,000/- be and is hereby awarded to the appellant and that the appellant do get interest on Rs. 6,951/2/- out of the said sum of Rs. 8,000/- at the rate of 4 per cent per annum from 3.3.1949 till the date of payment or of deposit in Court. It is further ordered that the competent authority do pay the additional amount awarded together with interests as aforesaid within three months from date.

A.C. Sen, J.

28. I agree.