
(1990) 05 OHC CK 0035
In the Orissa High Court
Case No : First Appeal No. 80 of 1977

Buti Barik	Vs	APPELLANT
State of Orissa		RESPONDENT

Date of Decision : 16-05-1990

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 30
Land Acquisition Act, 1894 — Section 23(1), 23(1A), 23(2), 28, 7
Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisitions) Act, 1948 — Section 3, 7(1)

Citation : (1990) 70 CLT 435

Hon'ble Judges : B.L. Hansaria, C.J.; G.B. Patnaik, J.; A.K. Padhi, J

Bench : Full Bench

Advocate : Sarat Kumar Mohanty, for the Appellant; A.G., for the Respondent

Judgement

B.L. Hansaria, C.J.—A plot of land measuring Ac. 4.00 was acquired under the provisions of the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (hereinafter called, "the State Act"). The notification u/s 3 was issued on 28-3-1958 and the competent authority fixed the compensation payable to the Appellant at a sum of Rs. 835.67. On the matter coming before the arbitrator he fixed the market value of the land at a sum of Rs. 4,470.97 including solatium calculated " 15 per cent. A further sum of Rs. 2,125.98 was granted towards loss of crop. Payment of interest at the rate, of 6 per cent per annum was also ordered. The award is dated 14-3-1977. Not feeling satisfied with the award of the arbitrator the present appeal was preferred in the year 1977.

2. When the appeal came up for hearing before a learned single Judge on 1-8-1989, Mr. S. K. Mohanty, learned Counsel for the Appellant, prayed for enhanced solatium and higher rate of interest made available under the Land Acquisition Act, 1894 (hereinafter called "the Central Act") as, amended by Land Acquisition (Amendment) Acts 1984. In doing so, reliance was placed by the learned Counsel on a Bench decision of this Court rendered in State of Orissa v.

Basudev Kar and Ors. 68 (1989) C.L.T. 187. In paragraph 6 of this judgment, reference was made to the decision of this Court in. First Appeal No. 32/76 (disposed of on 19-8-1976) wherein it was held that by virtue of what has been stated in Section 7(1)(e) of the State Act, the amended provisions of the Land Acquisition Act, 1894 would also apply. Being of this view, the higher rate of solatium and interest contemplated by the amended Section 23(2) and 28 of the Central Act were made available to the Respondents. The learned single Judge, however, felt that on the plain language of Section 7 of the Act, the Central Act is not applicable fully. He also pointed out that Section 7(1)(e) of the State Act provides for application of Section 23(1) of the Central Act for determination of market value. Since the principle relating to applicability of the various provisions of the Central Act as amended in 1984 was involved in the case which was thought to be of far reaching consequences, the learned single Judge desired that the matter should be examined by a larger Bench. It is, because of the above that the matter has been placed, for hearing by this Bench.

3. We have heard Mr. Mohanty for the Appellant and the learned Advocate General for the State. Mr. Mohanty states at the Outset that Section 23(1-A) of the Central Act would have no application to the facts of the present case.

4. As the award of the arbitrator is dated 14-3-1977, Sections 23(2) and 28 of the Central Act, as amended in 1984, have no application to the present case in view of the Constitution Bench decision of the Supreme Court in *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.*, according to which the benefit of enhanced solatium and interest is available only in those appeals decided by the High Court or the Supreme Court which had arisen out of the award passed by the Collector or Court between the date of introduction of the amending Bill in the Parliament (which was 30th April, 1982) and the date of the passing of the amendment in 1984 which came into effect from 24th September, 1984. It may be pointed out that this decision over-ruled *Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, and State of Punjab Vs. Mohinder Singh and Another*, wherein a different view had been expressed regarding the interpretation of Section 30 of the Central Amendment Act, 1984 which has dealt with transitional provisions. It may also be pointed out that the decision rendered in *Raghubir Singh* was not available when the Division Bench of this Court had pronounced judgment in *Basudev Kar* (supra).

5. The present apparently being thus a case in which the benefit of Sections 23(2) and 28 of the General Act as amended cannot be availed of, we are refraining from examining the question referred to by the learned Single Judge as to whether, the various provisions of the Central Act as amended in 1984 would apply while determining compensation payable to a person whose land has been acquired under the State Act.

6. Though we are refraining from answering the question posed by the learned single Judge; we may state that our attention has been invited by the learned

Collector of Puri Vs. Kamala Kanta Das, , in which it was held that even if the acquisition be under the State Act, the claimant would be entitled to solatium on principles of Section 23(2) of the Central Act in view of the compulsory nature of acquisition. Mr. Mohanty in turn draws our attention to State of Orissa v. Banamali 27 (1961) C.L.T. 164 wherein it was held that the arbitrator appointed under the State Act can award interest from the date of dispossession till the date of final payment. We merely note these submissions without expressing any opinion and leave these aspects of the matter to be determined by the learned single Judge.

7. The reference is disposed of with the aforesaid observations.

G.B. Patnaik, J.

I agree.

A.K. Padhi, J.

I agree.

Ordered accordingly.