

(1988) 08 GAU CK 0008
In the Gauhati High Court
Case No : First Appeal No. 60 of 1974

Collector of Darrang

APPELLANT

Vs

Chandra Kanta Sarma

RESPONDENT

Date of Decision : 26-08-1988

Acts Referred:

Land Acquisition Act, 1894 — Section 23(2), 23(2)

Citation : (1988) 2 GLJ 280 : (1989) 1 GLR 256

Hon'ble Judges : J.Sangma, J and T.C.Das, J

Bench : Division Bench

Advocate : B.P.Kataki, P.K.Goswami, P.K.Barua, K.R.Pathak, Advocates
appearing for Parties

Judgement

Das, J.—This appeal is by the Collector of Darrang and it relates to enhancement of compensation in a reference made against the award of the Collector relating to acquisition of land in Land Acquisition Case No. 12/6970. The appeal was heard by Hon'ble Hansaria, J. and by judgment and order dated 25.5.88 dismissed the appeal but referred the matter before a Division Bench to decide as to whether the claimant is liable to pay court fee on solatium if the amount of award is enhanced by the reference Court. In the concluding portion of the judgment learned Single Judge observed :

?.....It is stated from the Bar that there is no decision of this Court on the question whether Court fee is payable on solatium or not. Shri Kataki submits that in view of the fact that the revenue of the State is involved, the learned Advocate General may be heard in the matter. I accept this submission. Let a notice be accordingly issued on the learned Advocate General to appear and assist the Court for answering the aforesaid question. I have also deemed it fit that this question should be decided by a Division Bench of this Court so that there may not be any controversy regarding it in future. Accordingly, while dismissing the appeal and while allowing the land owner to realise the enhanced interest as contemplated by the Land Acquisition (Amendment) Act 1984 it is

stated that the enanced amount of solatium shall not be paid till a decision is arrived at whether the respondent is required to pay any court fee on the solatium .. "

Hence this matter is referred to Division Bench for decision on the aforesaid single point.

2. We have heard Mr. P. K. Goswami, learned Advocate General, Assam as well as Mr. P. K. Barua, learned counsel for the respondent. The learned Single Judge also referred in the judgment about the scope of section 8 of the Court Fees Act 1870. for short "the Act". Section 8 of fie Act provides for fee on memorandum of appeal against order relating to compensation which reads as follows :

?Sec. 8. Fee on Memorandum of appeal against order relating to compensation :The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant?.

on bare perusal of the provision of section 8 of the Act, it appears that the fee computed for the purpose of presentation of the memorandum of appeal against the order relating to compensation, a prescribed fee as per claim of the amount is required to be paid. Now the question would arise whether the court fee is payable on solatium on a later date after the award was passed by the Court to an ascertainable amount of solatium. Therefore, the question that arises for our consideration is as to whether the solatium can be regarded as "compensation" for the land acquired along with the compensation assessed on the basis of market value of the land. As to the requirement to pay the court fee on the amount of solatium, there are ivergent views of different High Courts.

3. Mr. P. K.. Goswami, learned Advocate General, Assam has submitted that solatium forms a part of the amount of compensation because under S. 2 of the Land Acquisition Act, for short "LA Act", the compensation consists of what is provided for in subsection (1) including the additional amount of solatium to be awarded on the market value of the land acquired. Therefore, according to learned Advocate General the court fee is payable on this additional amount of compensation which includes market value of the land in computing the total compensation awarded for acquisition of land. The solatium, according to learned Advocate General is nothing but an additional compensation over and above the market value of the land prescribed under section 23 of the LA Act. If the reference Court makes an award and solatium is allowed as additional compensation, that solatium would also form a part of the total award. Therefore, according to Mr. Goswami the claimant is bound to pay court fee on total amount of compensation which includes the amount of additional compensation as solatium. Mr. P. K. Barua, learned counsel for the respondent has submitted that the solatium is an additional amount on the market value of

the land and that cannot form a part of the compensation in terms of market value of the land as provided under section 23 of the LA Act. It is further submitted by Mr. Barua that it is a statutory obligation on the part of the State or the Collector and the reference Court to pay solatium over and above the amount of compensation payable to the claimant. Therefore, according to Mr. Barua this being an obligation on the State or reference Court to pay solatium under subsection (2) of section 23 of the LA Act alongwith interest at the rate prescribed therein, the court fee is not payable on such solatium.

4. Now, it appears that the compensation and market value are distinct expression as used in Land Acquisition Act and, therefore, solatium cannot be treated to fall within the expression "land." It is a statutory obligation on the part of the Court to award solatium on market value in consideration of compulsory nature of the acquisition. Before we examine the position with reference to the respective stands of the learned counsel of the parties, let us first look into the relevant provisions of Land Acquisition Act relating to the subject matter of the dispute. Section 23 of the LA Act provides what are the materials to be considered in determining the compensation. It enumerates several requirements to be considered by the Court in determining the amount of compensation for the land acquired under the Act. Subsection (2) of section 23 of the LA Act provides the quantum of solatium which runs as follows :

"(2) In addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such marketvalue, in consideration of the compulsory nature of the acquisition."

This additional compensation imports a statutory obligation on the part of the Court to allow such compensation in addition to marketvalue of the land. This amount of 30% solatium was the result of the amendment under the Amended Act 68 of 1984 prior to which the amount was fixed at 15% as additional compensation. Now, therefore, it is to be seen as to whether this additional amount of 30% forms a part of the total amount of compensation. The answer would be "Yes, it is". The additional compensation which is termed as solatium certainly forms the part of the compensation alongwith the market value of the land because under section 23 of the LA Act the compensation is to consist of what is provided for in subsection (1) and (2) of the LA Act which includes the additional amount of 30% on the market value of the land acquired. It is true that the compensation and market value are distinct expressions used in the LA Act. Therefore, solatium does not fall within the meaning of land, to be included with that meaning under section 3 (a) of the Principal Act. Under the provision of section 23 of the LA Act, compensation is to be assessed on the market value of the land. Therefore, of the land like interest payable on such compensation. In "Raja Vyrigherla Narayana Gajapatiraju vs. The Revenue Divisional Officer" as reported in AIR 1939 PC 98, it was laid down that market value is the price which a willing vendor might reasonably expect to obtain from a willing purchaser. Disinclination of the vendor to part with his land and the urgent necessity of the

purchaser to buy must alike be disregarded as both must be treated as persons dealing in the matter at arms length and without compulsion As held by their Lordships of the Supreme Court in "Union of India vs. Ram Mehar" (AIR 1973 SC 305), the market value has acquired a definite connotation by judicial decisions. It was further held :

"It is significant and has been noticed at an earlier stage also that according to the other sections which appear in the Principal Act interest is payable on such amount which is either a part of compensation or is the total compensation payable itself. If market value and compensation were intended by the legislature to have the same meaning it is difficult to comprehend why the word "compensation" in Ss. 28 and 34 and not "market value" was used. The key to the meaning of the word "compensation, is to be found in section 23(1) and that consists (a) of the market value of the land and (b) the sum of 15% on such market value which is stated to be the consideration for the compulsory nature of the acquisition. Market value is therefore only one of the components in the determination of the amount of compensation ?

However, their Lordships did not accept the views of the High Courts to the effect that market value in S. 4(3) of the Amending Act means the same thing as compensation and includes the amount of 15% payable under S. 23(2) on the market value of the land.

5. The expression "compensation" as it appears in section 23 of the LA Act necessarily includes solatium which indeed a consideration for the forceable deprivation of the land. It is a sum paid in consideration of the fact that an unwilling owner is made to part with his land to serve public interest. The provision of sec. 23(1) also speaks of the market value of the land which, however, does not include solatium. Therefore, a separate provisions has been made in subsec. (2) of sec. 23 of the LA Act to the effect that in addition to the market value of the land, the Court shall in every case under the LA Act award a sum of 30% (as amended) on such market value and that to also in consideration of the compulsory nature of the acquisition. In *K. A. Swamy vs. Special Tahsildar, Land Acquisition Officer*, AIR 1970 AP 139 (FB), the Full Bench of Andhra Pradesh High Court held that the solatium on the market value to be added under section 23 (2) of the Land Acquisition Act to the compensation awarded under section 23 (1) thereof is not a part of the award which has to be passed by the Court within the meaning of the said Act. Accordingly, in appeal u/s. 54 of the LA Act, no court fee u/s. 48 of the A.P. Court fee Act need be paid on the solatium. It was further held in *K. A. Sswamy (supra)* that

"An examination of the provisions of the Acquisition Act unfettered by any authority would incline us to the view that while solatium under section 23 (.) may form part of the compensation to be awarded by the Collector under section 11, it does not form part of the award which the Court has to pass under section 26, though it is required under sec. 23 (2) to add 15% on the amount of market value awarded by it, which will be in the nature of a direction to the Collector to

pay the amount just in the same way as he is directed to pay interest. The reason for excluding solatium from the award to be passed by the Court is perhaps due to the solicitude of the Legislature not to overburden the owner whose lands are acquired against his will with payment of court fee thereon?

Therefore, where a citizen is deprived of his property by compulsory nature of acquisition, the owner has to be compensated for the loss for which he suffers by reason of such compulsory acquisition. Therefore, if subsection (2) of section 23 of LA Act is read in its true intendment it appears that section 23 (1) prescribes the assessment of market value and the method which the Collector and Court shall take into consideration for computation of the market value of the land. Subsection (1A) of section 23 prescribes that in addition to the market value of the land, the Court shall in every case award interest on such market value from the date of publication of the notification u/s.4, subsection (1), in respect of such land to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. It appears that subsec. (1A) of sec. 23 of the LA Act prescribes for additional amount to be payable on the market value of the land. An explanation is added to subsec. (1A) of section 23. However, that would not be very much relevant for our consideration to answer this reference.

6. It is urged by learned counsel for the appellant that court fee is necessary to be paid on solatium being part of total compensation. The word "solatium" though not visible in subsec. (2) sec. 23 of the LA Act, is nothing but an additional amount payable over and above the market value of the land. It is therefore obligatory on the Court to pay additional amount of compensation which is termed as solatium in every case of award on the market value of the land. Irrespective of the fact as to whether it is claimed or not this additional amount is paid on the market value in consideration of the compulsory nature of acquisition. The Full Bench decision of Andhra Pradesh High Court in K. A. Swamy (supra) was followed by a recent Division Bench of the same High Court in "Competent Authority, Special Deputy Collector, L. A. (D) vs. T. Penta Keddy" (AIR 1988 AP 208). Though the case was under Requisitioning and Acquisition of Immovable Properties Act, 1952 but the principle that no court fee need be paid on the solatium and interest asked for in the appeal was followed in the aforesaid case in view of the compulsory nature of acquisition and on the construction of subsec. (2) of section 23 of the LA Act. We agree with the aforesaid principle as laid down in KA Swamy (supra).

7. For the reasons set forth above we hold that no court fee is payable on the amount of solatium which is compulsorily payable in addition to the market value of the land for the compulsory nature of acquisition. Accordingly, the reference made to this Division Bench to decide the liability of the claimant to pay court fee on solatium is answered.