

(1982) 12 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No's. 721 to 741, 743 to 748 and 763 to 773
etc. of 1981

Gurcharan Singh and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 21-12-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 31
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 7, 8(1),
8(3)

Citation : AIR 1983 P&H 277 : (1983) 2 ILR (P&H) 264

Hon'ble Judges : S.S. Sandhawalia, C.J;I.S. Tiwana, J

Bench : Division Bench

Judgement

I.S. Tiwana, J.—These 150 Letters Patent Appeals (Nos. 721 to 741, 743 to 748, 763 to 766, 767, 768 to 773, 872, 882, to 891, 914 to 931, 969 to 973, 987 to 989, 1000, 1001, 1038 and 1047 of 1981 filed by the land owner-claimants and 377 to 381, 383, 385 to 391, 393, 397 to 399, 400, 401, 403, to 405, 407 410 to 415, 434 to 436, 438 to 440, 442, 446 to 449, 450, 453, 454, 456 to 458, 461, 463 to 467, 469 to 471, 474, 475, 477, 479 to 489, 491 and 492 of 1982 filed by the Union of India) are directed against the same judgment of the learned single Judge and are thus being disposed of together.

2. An area measuring 1646 Kanals 2 Marlas of land situated in three revenue estates of villages Lande Ke, Dosanjh and Moga Mehla Singh, near Moga, a sub-divisional headquarter was requisitioned by the authorities for a public purpose on December 1, 1965. Later in exercise of its power u/s 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952(for short, the Act) the Central Government acquired this land in pursuance of a notification published on February 4, 1972. The Land Acquisition Collector categorised this land into three blocks not essentially coinciding with the boundaries of the revenue estates for purposes of determining a fair compensation and fixed the rate of compensation primarily on the basis of the agricultural kind and quality of the land falling in

different blocks. As the claimant did not feel satisfied with the adequacy of the compensation granted, they asked him to make a reference to the Arbitrator in terms of Clause (c) of sub-section (I) of Section 8 of the Act. The Arbitrator while maintaining the categorisation of land into above-noted three blocks enhanced the rate of compensation to some extent, Both the sides not feeling satisfied with this enhancement preferred appeals which as already pointed out, have been disposed of by the learned single Judge through a common judgment now under appeal. Vide this judgment, the appeal preferred by the Union of India were allowed to a limited extent that the solatium granted by the Arbitrator at the rate of 15 per cent of the market value was set aside and in all other respects the appeals were dismissed. The appeals of the claimants were allowed by giving a further raise in the rate of compensation. Once again, as already pointed out, both the sides have come up in appeal. While the Union of India makes a grouse of the enhancement ordered by the learned single Judge the land owner-claimants clamour for a further increase in the same.

3. After hearing the learned counsel for the parties at some length in the light of the evidence on record, we find that the determination of the rate of compensation by the learned single Judge is well supported by the evidence and is well justified. Neither of the two sides has been able to point out any violation of any relevant principle which has to be taken care of while determining the market value of the acquired land nor do we find any infirmity in the approach or the appreciation of evidence on record. We thus dismiss the State appeals as of no merit.

4. So far as the appeals of the claimants are concerned, their learned counsel Mr. Majithia, urged that the learned single Judge took a wholly erroneous view in disallowing solatium payable to the appellants. The learned Judge while upholding the order of the Arbitrator granting interest to the appellants at then rate of 6 per cent in the light of the observations made by the Full Bench of this Court in Hari Krishan Khosla (decd.) and Others Vs. The Union of India (UOI) and Another, , disallowed solatium with the following observations :--

"The land owners will not be entitled to have any solatium because the Requisitioning and Acquisition of Immovable Property Act, 1952(Act No. 30 of 1952) has now been placed under the Ninth Schedule of the Constitution of India and to that extent the judgment under appeal is set aside".

Vide this judgment of the Full Bench, Clause (a) of S. 8(3) was found to be violative of Article 14 of the Constitution of India and was struck down. It deserves to be noticed that clause (b) of this sub-section had already been struck down by the Supreme Court in Union of India (UOI) Vs. Kamlabhai Harjiwandas Parekh and Others, .

5. To appreciate the argument, which has been raised on behalf of respondent authorities by Shri Brar their learned counsel. And which appears to have prevailed with the learned single Judge, it is proper to notice the provisions of

sub-section (3) as it existed prior to its substitution vide Act No. 31 of 1968.

"The compensation payable for the acquisition of any property under S. 7 shall be (a) 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 requisitioning and been sold on the date of acquisition, or (b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less".

6. The submission of Mr. Brar is that with the placing of the Act in the Ninth Schedule of the Constitution (entry 89) the Act as such has become immune from any attack, on the basis of the violation of any of the rights of a citizen specified in Part-III of the Constitution. The submission further is that this immunity has to be given effect w. e. f. the inception of the Act in view of the provisions of Art. 31B of the Constitution and any judgment decree or order of any Court or Tribunal to the contrary has been rendered ineffective and has to be ignored. In a nutshell, the argument is that in spite of the Full Bench judgment in Hari Krishan Khosla (dec'd.) and Others Vs. The Union of India (UOI) and Another, striking down clause (a) of S. 8(3) of part of the Act, According to the learned counsel, in the face of this proposition the Act which does not envisage the grant of any solatium to a claimant whose land has been acquired, no solatium can be granted to the appellants in these cases. We, however, find that the conclusion of the learned counsel is not well merited.

7. The short question that calls for determination is as to whether sub-section (3) of the Act as it stands after substitution vide Act No. 31 of 1968 or for that matter any other section of the Act militates against the grant of solatium to the claimants whose Land has been acquired under the Act. It is not disputed before us in the light of State of Haryana Vs. Kailashwati and Others, , that solatium essentially has to be treated as integral part of the compensation payable to a land owner on account of the acquisition of his land. If that is so--as it is--then clause (e) of Section 8(1) of the Act which enjoins on the Arbitrator to "determine the amount of compensation which appears to him to be just" does not to our mind in any way disentitle him or the claimant to the solatium in addition to the market highlighted that Section 8 of the Act method of determining compensation does not talk of "market value" as is the case under the Land Acquisition Act, 1894, To our mind, in case the Arbitrator finds while quantifying the compensation that 15 per cent of the market value be allowed to make it "just compensation", there is no provision or principle which abhors him from doing so. The basic reason or justification for the grant of solatium at the rate of 15 per cent of the market value in terms of the Land Acquisition Act, 1894, is the compulsory nature of acquisition of the property of a land owner. A land owner is equally helpless in matters of acquisition under the Act. Thus in cases under the Act, if the Arbitrator deems it proper and fair in order to award just compensation to the land owner he should add up 15 per cent of the market value styling it as solatium or giving it any other nomenclature, the same cannot

reasonably and plausibly be objected to. His keeping present to his mind the principles laid down in the Land Acquisition Act for the determination of compensation without violating any of the mandates of the Act does not make his award unsustainable. This is more so in view of the weighty observations of the Supreme Court in a recent judgment in *P.C. Goswami Vs. Collector of Darrang*, That too was a case where certain piece of land was first requisitioned and later acquired under the Assam Land (Requisition and Acquisition) Act, 1948. Their Lordships without going into the vires of the Act which question to our mind neither arises in the cases in hand nor can be gone into in view of the placement of the Act in the Ninth Schedule of the Constitution observed as follows (Para 7);--

"There is, however, one contention advanced by Mr. Nandy which, in our opinion, deserves to be accepted. He contends that in the matter of payment of solatium, no discrimination can be made between acquisitions under the Assam Act and those made under the Land Acquisition Act. Section 4(3) of the Assam Act itself says that if a land is acquired under the Act, the State Government shall be empowered, to apply to such land any of the provisions of the Land Acquisition Act, 1894. In a judgment (Judgment dated April 1, 1980 in Civil Appeal No. 848 of 1977) : (reported in AIR 1980 SC 1538) given by this Court very recently, to which Mr. Nandy has drawn our attention, it was held that there is no justification for discriminating between an acquisition under one Act and acquisition under another Act in so far as payment of solatium is concerned. This should be more so in respect so an acquisition to which the State Government is empowered to extent the provisions of the Land Acquisition Act. Mr. Naunit Lal has not been able to controvert this position in view of the judgment to which we have referred above."

8. The fact that in that case the State Government was held entitled or empowered to extend the provisions of the Land Acquisition Act to the acquisitions under the Assam Land (Requisition and Acquisition) Act 1948 does not to our mind make any material difference for the reason that in these cases what the Arbitrator is required to determine is not only the market value of the land acquired but a just compensation in terms of Clause (e) of Section 8(1) of the Act. This clause refers to three things, firstly the amount of compensation which appears to the Arbitrator to be just, secondly the circumstances of each case and thirdly the provisions of sub-sections (2) and (3) of this section. It does not indicate that one or the other of these three conditions is overriding or governs or controls the others. On the contrary, Clause (e) deals with these three concepts in equal terms. The effect of this clause, therefore, is that the Arbitrator himself determines the amount of compensation which to him appears to be just but in making the award he must have referred to the circumstances of each case and to sub-sections (2) and (3). Sub-section (2) deals with the fixation of compensation payable for the requisition of any property. That is not the case here. Subs-ec (3) compensation payable for the acquisition of any property u/s 7 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 requisitioning and been sold on the date of acquisition. It is nobody's case here that the appellant-claimants are asking for any compensation on the basis of any improvement effected on the land in question, or other such factor brought about by the requisitioning authorities. The Arbitrator had admittedly assessed the "just compensation" on the date of acquisition (4-2-1972) taking the condition of the property as it existed at the time of requisition (1-12-1965). In such circumstances, the allowance of solatium of 15 per cent of the market value of the suit land as on February 4, 1972 to make it fair and just compensation payable to the appellants cannot be said to be unjustified or violative of any principle or provision of the Statute. The placing of the Act in the Ninth Schedule of the Constitution does not make any difference to the question of determination of just compensation payable to the appellants.

9. For the reasons recorded above, we allow the appeals preferred by the land owner claimants to the extent that over and above the amount granted to them by the learned single Judge they would also be paid 15 per cent of the that compensation by way of solatium to make that compensation as "just compensation". They are also held entitled to the proportionate costs of these appeals. In all other respects, their claims are declined. The State appeals also fail are dismissed with no order as to costs.

S.S. Sandhawalia, C.J.

10. I agree.

11. Order accordingly.