
(2016) 03 SC CK 0006

In the Supreme Court Of India

Case No : Civil Appeal Nos. 435-436 of 2013

H.V. Low & Company Private Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Defence of India Rules, 1939 — Rule 75A(1)
Land Acquisition Act, 1894 — Section 23(2)

Citation : (2016) 2 LawHeraldSC 1205 : (2016) 2 RCRCivil 317 : (2016) 2 RecentApexJudgments(RAJ) 172 : (2016) 3 Scale 142 : (2016) 12 SCC 699

Hon'ble Judges : Kurian Joseph;Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : Avijit Bhattacharjee, Mrinl Kanti Mandal, Parijat Sinha, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

Rohinton Fali Nariman, J. - The present appeals arise from an acquisition made under the Defence of India Act, 1939 (hereinafter referred to as 'the Act') read with the Rules thereunder. On 29th April, 1943, 12.84 acres of land along with several buildings, structures and other constructions were requisitioned under Rule 75A(1) of Defence of India Rules, 1939 (hereinafter referred to as 'the Rules') On 2nd June, 1945, the said property under requisition was acquired by the Government of India, at which point of time, a cotton mill under construction comprising of various plots, stood acquired. Thereafter, compensation proceedings under the said Act and Rules were commenced, and an Award dated 6th May, 1947 was made offering an amount of RS. 2,40,113.75p. to the appellant, who accepted the same under protest. On 8th December, 1949, a reference to arbitration was made under the provisions of the said Act. An Award was ultimately passed by the learned Arbitrator awarding a sum of RS. 14,29,366/- in the following terms :

"Point No. 1

Claimant will get rent compensation at the rate of RS. 2000/- per month from June 1943 to July 1946 for 38 months.

Point No. 2

Property acquired as 12.84 acres and this reference is in respect of this area.

Point No. 3

Compensation for land acquired is fixed at the rate of RS. 300/- per Cottah and RS. 20,000/- for the tank excavated.

Point No. 4 and 5

Compensation for the main structure is fixed at RS. 673634.50p. For the incomplete structure at RS. 76261.50P. for other structures viz. B.T. Roofed bungalow pump house reservoir etc. at RS. 40,000/- the boundary wall at RS. 43,000/- for bricks and trees at RS. 15,000/- and RS. 4,950/- respectively for the damage to films at RS. 10,000/- and removal cost of RS. 1,000/- and for miscellaneous items at RS. 30,000/-.

Point No. 6

For the big chimney compensation is allowed at RS. 75,000/- as injurious affection.

Point No. 7 and 8

Claim for injurious affection on other items allowed in part for RS. 50,000/- as per details in the body of the judgment and at 25% for 15.12 acres which comes to RS. 45,350/-.

Point No. 9

Claim for compulsory damage at 15% is disallowed.

Interest allowed at 6% from the date of occupation till payment. The payment already received shall be deduced from the claim allowed.

The total compensation with interest as per finding in the body of the judgment is payable to Jai Kumar Karnani as managing member and Karta of Joint hindu family business, the amount is to be paid by the RS. 673684.50P. For the incomplete structure at RS. 76261.50 p. for other structures viz. B.T. Roofed bungalow Pump house reservoir etc. at RS. 40,000/- the boundary wall at RS. 43,000/- for bricks and trees at RS. 15,000/- and RS. 4,950/- respectively for the damage to films at RS. 10,000/- and removal cost of RS. 1,000/- and for miscellaneous items at RS. 30,000/-."

2. From this Award, a first Appeal was filed which culminated in the impugned judgment dated 29.06.2011. Ultimately, it was held that the claimant was entitled to get a further sum of RS. 28,48,544/- together with interest at the rate of 6% per annum on the aforesaid sum as decreed from the date of taking

possession of the acquired lands from the appellant. The appellant specifically claimed solatium, which was turned down by the impugned judgment relying on the decision of this Court in *Union of India v. Chajju Ram (dead) by Lrs. and Others* reported in (2003) 5 SCC 568.

3. Shri Jayant Bhushan, learned senior counsel appearing for the appellant, has argued before us that the Defence of India Act, and Section 19 in particular, made reference to compensation that was to be paid when property was acquired under the Act read with the Rules. He has drawn our attention to Section 19, and particularly to Section 19(1)(e)(i), which applies Section 23(1) of the Land Acquisition Act, 1894 alone to acquisitions under the Defence of India Act and Rules, which necessarily entailed no payment of solatium, as the said payment is referred to by sub-Section (2) of Section 23 of the Land Acquisition Act, 1894. His argument is that the Defence of India Act read with the Rules is a pre-Constitution measure, and after Article 14 has come into effect with the enactment of the Constitution of India, this Court has in a seven-Judge Bench, namely, in *Nagpur Improvement Trust And Another v. Vithal Rao And Others* reported in (1973) 1 SCC 500 held that in circumstances similar to the fact situation in the present case, it makes no difference under which Act and for which purpose land is acquired, and that discrimination depending upon the said two factors cannot possibly pass muster. He referred to various passages of the 7-Judge Bench judgment before us, and asked us to reconsider Chajju Ram's case which was followed by the High Court, as it was not in consonance with the said judgment.

4. We also heard learned counsel for the respondent, who argued before us that Chajju Ram's case is a binding judgment of five Hon'ble Judges of this Court which ought not to be disturbed.

5. Before going into the correctness or otherwise of Chajju Ram's Judgment, it is necessary to extract the relevant provisions as they existed at the time when the property was acquired.

Section 19 of the Act reads as follows:

"19. (1) Where by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935, there shall be paid compensation the amount of which shall be determined in the manner, and in accordance with principles, hereinafter set-out, that is to say:-

(a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

(b) Where no such agreement can be reached the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the above mentioned Act for appointment as a Judge of a High Court.

(c) The Central Government may, in any particular cases, nominate a person

having expert knowledge as to the nature of the property acquired to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.

(d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.

(e) The arbitrator in making his award shall have regard to-

(i) the provisions of sub-section(1) of section 23 of the Land Acquisition Act, 1894 so far as the same can be made applicable; and

(ii) whether the acquisition is of a permanent or temporary character.

(f) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.

(g) Save as provided in this section and in an rules made thereunder, nothing in any law for the time being in force shall apply to arbitration"s under this section.

(2) The Central Government may make rules for the purpose of carrying into effect the provisions of this section.

(3) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe-

(a) the procedure to be followed in arbitration"s under this section;

(b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal;

(c) the maximum amount of an award against which no appeal shall lie."

6. Section 19 refers only to compensation that is payable. However, Rule 75A of the Rules, which was inserted in the Rules on 15.08.1942, speaks of the necessity of requisitioning and thereafter acquiring the property in the circumstances mentioned therein.

Rule 75A of the Rules reads as follows:

"75A. 1. If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, movable or immovable, 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 used for the purpose of religious worship and no such

property as is referred to in rule 66 or in rule 72 shall be requisitioned under the rule.

2. Where the Central Government or the Provincial Government has requisitioned any property under sub-rule (1), that Government may use or deal with the property in such a manner as may appear to it to be expedient and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official gazette a notice stating that the Central or the Provincial Government, as the case may be, has decided to acquire it in pursuance of this rule.

3. where a notice of acquisition is served on the owner of the property or published in the official gazette under sub-rule (2) then at the beginning of the day on which the notice is so served or published, the property shall vest in Government free from any mortgage, pledge, lien or other similar encumbrance, and the period of the requisition thereof shall end.

4. Whenever in pursuance of sub-rule (1) or sub-rule (2) the Central Government or the Provincial Government requisitions or acquires any moveable property, the owner shall be paid such compensation as that Government may determine :

Provided that where immediately before the requisition, property was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined by the Government as the total compensation payable in respect of the requisition or acquisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the Government in this behalf may decide to be just.

5. The Central Government or the Provincial Government may, with a view to requisitioning any property under sub-rule (1) or determining the compensation payable under sub-rule (4), by order -

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to property as may be so specified :

(b) direct that the owner, occupier or person in possession of the property shall not without the permission of Government dispose of it (or where the property is a building structurally alter it) till the expiry of such period as may be specified in the order.

5(a) Without prejudice to any powers otherwise conferred by these Rules any person authorised in this behalf by the Central Government or the Provincial Government may enter any premises and inspect such premises and any property therein or thereon for the purposes of determining whether, and if so, in what manner, an order under this rule should be made in relation to such premises or property, or with a view to securing compliance with any order under this rule.

6. Any orders made, and any action taken under or in relation to rule 76, 79 or 83 before the 16th May, 1942, shall be deemed to have been made or taken under or in relation to this rule and to be as valid as if this rule had been then in force.

7. If any person contravenes (any order made under this rule) he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both."

7. We were also referred to two other provisions of the Act which were brought into force in December, 1945, namely, Sections 19A and 19B. The said Sections do not apply to the present acquisition inasmuch as the order of acquisition dated 2.6.1945 is prior to when these provisions were brought into force. However, since they have some bearing on the present controversy, they are set out herein:

"19A. Power to acquire requisitioned property:-

1. Without prejudice to any power to acquire conferred by any rule made under this Act, any immovable property which has been requisitioned under any rule so made may, in the manner provided by any such rules for the acquisition of property, be acquired in the circumstances and by the Government hereinafter specified, namely -

(a) Where any works have, during the period of requisition, been constructed on, in or over the property wholly or partly at the expense of any Government, by that Government if it decides that the value of, or the right to use, such works shall, by means of the acquisition of property, be preserved or secured for the purposes of any Government, or

(b) where the cost to any Government of restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive having regard to the value of the property at that time, by that Government, and at the beginning of the day on which notice of such acquisition is served or published under the aforesaid rules, the immovable property shall vest in the acquiring Government free from any mortgage, pledge, lien or similar encumbrance, and the period of the requisition thereof shall end.

2. Any decision or determination of a Government under sub-section (1) shall be final, and shall not be called in question in any court.

3. For the purpose of this section, "works" includes buildings, structures and improvements of the property, of every description."

19B. Release from requisition :-

1. Where any property requisitioned under any rule made under this Act is to be released from such requisition, the Government by which or under whose authority the property was requisitioned or any person generally or specially authorised by it in this behalf may, after such enquiry, if any, as it or he may in

any case consider it necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given.

2. the delivery of possession of the property to the person specified in an order under sub-section (1) shall be a full discharge of the Government from all liabilities in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is given."

8. It will be noticed, from a reading of Section 19(1) of the Act, that Section 23(2) of the Land Acquisition Act, 1894 is expressly made inapplicable to acquisitions effected under the said Act and Rules. The question with which we are confronted is whether Section 23(2) can be brought in by way of Article 14 of the Constitution of India. In the case of Nagpur Improvement Trust and Anr. v. Vithal Rao and Others, a seven-Judge Bench of this Court had to decide on whether solatium, not being payable under the Nagpur Improvement Trust Act, 1936, which was also a pre-Constitution measure, would pass muster under Article 14 of the Constitution of India when the same land could also have been acquired under the Land Acquisition Act, 1894, which contained a specific provision for payment of solatium.

9. After setting out the various provisions of Nagpur Improvement Trust Act and considering, in particular, two judgments of the Constitution Bench of this Court, namely, *P. Vajravelu Mudaliar v. Special Deputy Collector, Madras* and Another reported in (1965) 1 SCR 614 and *Balammal and Ors. Etc. v. State of Madras and Ors. Etc.* reported in (1969) 1 SCR 90, this Court held as follows:

"It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is politician or an advocate. Why is this sort of classification not sustainable? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.

Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the Legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building? Can the Legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different

when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14.

It was said that if this is the true position the State would find it impossible to clear slums, to do various other laudable things. If this argument were to be accepted it would be totally destructive of the protection given by Article 14. It would enable the State to have one law for acquiring lands for hospital, one law for acquiring lands for schools, one law acquiring lands for clearing slums, another for acquiring lands for Government buildings; one for acquiring lands in New Delhi and another for acquiring lands in Old Delhi. It was said that in many cases, the value of the land has increased not because of any effort by the owner but because of the general development of the city in which the land is situated. There is no doubt that this is so, but Article 14 prohibits the expropriation of the unearned increment of one owner while leaving his neighbour untouched. The neighbour could sell his land and reap the unearned increment. If the object of the legislation is to tax unearned increment it should be done throughout the State. The State cannot achieve this object piece meal by compulsory acquisition of land of some owners leaving others alone. If the object is to clear slums it cannot be done at the expense of the owners whose lands are acquired, unless as we have said the owners are directly benefited by the scheme. If the object is to build hospitals it cannot be done at the expense of the owners of the land which is acquired. The hospital, schools etc. must be built at the expense of the whole community.

It will not be denied that a statute cannot tax some owners of land leaving untaxed others equally situated. If the owners of the land cannot be taxed differently how can some owners be indirectly taxed by way of compulsory acquisition? It is urged that if this were the law it will tie the hands of the State in undertaking social reforms. We do not agree. There is nothing in the Constitution which debars the State from bettering the lot of millions of our citizens. For instance there is nothing to bar the State from taxing unearned increment if the object is to deny owners the full benefit of increase of value due to development of a town. It seems to us, as we have already said, that to accede to the contentions of the appellant and the States would be destructive of the protection afforded by Article 14 of the Constitution. The States would only

have to constitute separate acquiring bodies for each city, or Division or indeed to achieve one special public purpose and lay down different principles of compensation." [Paras 28 to 32]

10. However, in a fact situation similar to the present case, a subsequent Constitution Bench was confronted with a similar question, which was raised under the Defence of India Act, 1971. In the case of Chajju Ram (supra), after noticing the seven-Judge Bench Judgment cited herein above and the second Nagpur Improvement Trust case, this Court concluded the issue in favour of the Union of India as follows:

"The question, therefore, which arises would be, as to whether the owners of the lands sought to be acquired under the Act vis-a-vis the Land Acquisition Act are similarly situated.

Here it is not a case where existence of the Acquisition Act enables the State to give one owner different treatment from another equally situated owner on which ground Article 14 was sought to be invoked in First Nagpur Improvement Trust case[(1973) 1 SCC 500]. The purposes for which the provisions of the said Act can be invoked are absolutely different and distinct from which the provision of the Land Acquisition Act can be invoked for acquisition of land. In terms of the provisions of the said Act, the requisition of the land was made. During the period of requisition the owner of the land is to be compensated therefor. Section 30 of the said Act, as referred to hereinbefore, clearly postulates the circumstances which would be attracted for acquisition of the requisitioned land.

The purposes for which the requisitioning and consequent acquisition of land under the said Act can be made, are limited. Such acquisitions, inter alia, can be made only when works have been constructed during the period of requisition or where the costs to any Government of restoring the property to its condition at the time of its requisition would be excessive having regard to the value of the property at the relevant time.

One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. In terms of the provisions of the said Act acquisition of the property would be in relation to the property which has been under requisition during which period the owner of the land would remain out of possession. The Government during the period of requisition would be in possession and full enjoyment of the property.

It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not. The formulation of the criteria for payment of compensation in terms of Section 31 of the Act was clearly made having regard to the said factor, which cannot be said to be arbitrary or unreasonable. Parliament while making the provisions for

payment of compensation must have also taken into consideration the fact that the owner of the property would have received compensation for remaining out of possession during the period when the property was under acquisition.

The learned Attorney-General appears to be correct in his submission that the provision for grant of solatium was inserted in the Land Acquisition Act by Parliament having regard to the fact that the amount of compensation awarded to the owner of the land is to be determined on the basis of the value thereof as on the date of issuance of the notification under Section 4 of the Act. It has been noticed that the process takes a long time. Taking into consideration the deficiencies in the Act, the Land Acquisition Act was further amended in the year 1984. In terms of sub-section (2) of Section 23 of the Land Acquisition Act, therefore, solatium is paid in addition to the amount of market value of the land.

We are, therefore, of the opinion that the classification sought to be made for determination of the amount of compensation for acquisition of the land under the said Act vis-a-vis the Land Acquisition Act is a reasonable and valid one. The said classification is founded on intelligible differentia and has a rational relation with the object sought to be achieved by the legislation in question.

It may be true that in Haji Mohd. Ekramul Haq case [AIR 1959 SC 488] this Court observed while considering the provisions of the Defence of India Act, 1939, that the principles on which the compensation was to be ascertained under Section 19 of the Defence of India Act were the same as those provided in Section 23(1) of the Land Acquisition Act. Even the principles of ascertaining the amount of compensation, as it then stood, did not provide for any payment of solatium. The said decision, however, having regard to the provisions contained in Section 31 of the Act which lays down the criteria for determination of the amount of compensation cannot be said to have any application whatsoever in the instant case." [Paras 24 to 31]

11. It is the contention of Shri Bhushan that though the case of Nagpur Improvement Trust (supra) was referred to in the said judgment, it was not given the necessary precedential value that it deserved. It was also argued before us that each of the reasons given for denying solatium when an acquisition takes place under the Defence of India Act, 1971, are incorrect in law.

12. The findings contained in paragraphs 25 and 26 of Chajju Ram's case first state that the purposes for which the provisions of the Defence of India Act can be invoked are different and distinct from the purposes for which the Land Acquisition Act can be invoked for acquisition of land. Prima facie, this would not be in consonance with what has been stated in the aforementioned paragraphs quoted in the Nagpur Improvement Trust case. Further, the finding goes on to state that acquisitions under the Defence of India Act can only be made under two circumstances, both covered by Section 19A set out herein above. Apart from the fact that the said Section would not be applicable to the acquisition in question as it came into force after the acquisition in the present case, nothing

prevents acquisition of such land also taking place under the Land Acquisition Act. If this is the case, then solatium would be payable under the latter Act but not under the Defence of India Act. This again would prima facie not square with the 7-Judge Bench in the Nagpur Improvement Trust case.

13. Paragraphs 27 and 28 seek to make a distinction between properties which are the subject matter of the Defence of India Act and other properties on the ground that the properties are first requisitioned and therefore two consequences would ensue. First, the owner of the land sought to be acquired would be out of possession as the Government is in possession during the period of requisition. Second, compensation would be paid to the owner of the land during the period of requisition. Prima facie, neither of these factors would differentiate acquisitions under the Defence of India Act from acquisitions made under the Land Acquisition Act. Section 31 of the Defence of India Act, which has been noticed in paragraph 15 of the very judgment in Chajju Ram's case, specifically states that the compensation payable for the acquisition of any property under Section 30 of the said Act 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. Thus, it is clear that acquisition of property requisitioned under the Defence of India Act would only be valued in the same condition as it was on the date on which the owner handed over possession to the Government. The fact that the Government would have to pay compensation for requisition would again not take the matter much further for the simple reason that such compensation is in the nature of rent payable for the period that the property is under requisition. It cannot be denied that in the case of a lease by a private owner to the Government, if the Government seeks to acquire such property, it may do so under the Land Acquisition Act, in which case, notwithstanding that the Government is paying lease rent to the private owner, the property acquired would not only be acquired at the market value, but solatium would also be paid thereon. Prima facie therefore, neither of these two differences would make any real and substantial distinction between acquisitions under the aforesaid two statutes.

14. In para 29 of Chajju Ram's case, the Bench seems to suggest that solatium is paid in addition to the market value of the land because the process of acquisition takes a long time. Prima facie, this would be contrary to the very terms of Section 23(2) of the Land Acquisition Act by which solatium is paid because of the compulsory nature of acquisition. Other provisions of the Land Acquisition Act deal with the process taking a long time - interest is provided, which is conceptually different from solatium.

15. We are therefore of the opinion that the judgment in Chajju Ram's case having been doubted by us on the afore-stated grounds needs to be referred to the Hon'ble Chief Justice for constitution of an appropriate Bench for further hearing in the matter. The papers therefore be placed before the Hon'ble Chief

Justice for this purpose.