**(2004) 05 P&H CK 0079**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular First Appeal No. 1614 of 1990

Jai Singh and others APPELLANT

Vs

Union of India and others RESPONDENT

**Date of Decision :** 05-05-2004

**Acts Referred:**

**Citation :** (2004) 3 RCR(Civil) 677

**Hon'ble Judges :** Satish Kumar Mittal, J

**Advocate :** Mr. M.L. Sarin, Sr. Advocate with Mr. Jaspal Singh, Advocate.Mr. S.K. Sharma, Standing Counsel., Advocates for appearing Parties

## Judgement

Satish Kumar Mittal, J.—This judgment shall dispose of Regular First Appeals No. 1614 of 1990, filed by the claimantsland owners, and 1462 of 1990, filed by the Union of India and others against the award dated 17.3.1990 passed by Additional District Judge, Gurdaspur.

2. Vide notification dated 29.6.1977 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act''), which was published in Punjab Govt. Gazette on 8.7.1977, a big chunk of land situated in Village Jharoli, Tehsil Pathankot, District Gurdaspur, was acquired for a public purpose, namely for defence purpose. With regard to the acquired land, an award was passed on 1.8.1979 by the Land Acquisition Collector. However, in the said award no compensation was determined for the fruit bearing trees standing on the acquired land, as assessment in that regard was not done by the Horticulture Department of Punjab. When the issue regarding non determination of compensation for fruit bearing trees was raised in the Punjab Vidhan Sabha, then a supplementary award with regard to the fruit bearing trees was made by the Special Land Acquisition Collector on 16.3.1988. In the said supplementary award, the Special Land Acquisition Collector determined the market value of the fruit bearing trees on the basis of the report of the Horticulture Expert published in the year 1966. The said valuation of the trees was made on the basis of the rate prevailing in the year 1966, however, the acquisition in question took place

 

in the year 1977. It is pertinent to mention here that the Special Land Acquisition Collector awarded solatium at the rate of 30% on the compensation assessed by him as well as the additional amount at the rate of 12%.

3. Feeling dissatisfied against the aforesaid supplementary award, the claimantsland owners sought reference under Section 18 of the Act for enhancement of the market value of the fruit bearing trees as assessed by the Special Land Acquisition Collector. The Reference Court, vide its award dated 17.3.1990, enhanced the market value of the fruit bearing trees by 133% over the value assessed by the Special Land Acquisition Collector. The said increase was given on the basis of difference in the whole sale price index between the year 1966 and 1977. However, the reference Court awarded solatium to the claimantsland owners at the rate of 15% and interest at the rate of 6% per annum from the date of taking possession till the date of payment. The benefit of additional amount at the rate of 12% under Section 23(1A) of the Act was also not awarded. The claimantsland owners also raised an additional point before the Reference Court to the effect that there is a factual mistake in the assessment report (Ex. R1) in which value of 20 kalmi mango trees has been wrongly assessed at Rs. 505/, which is the value of one fruit bearing tree as the assessor has forgotten to multiply this figure with 20. But this contention of the claimantsland owners was rejected on the ground that the land owners have failed to point out any clerical error in assessment report.

4. Against the aforesaid award, the claimantsland owners have filed RFA No. 1614 of 1990 and the Union of India and others have filed RFA No. 1462 of 1990.

5. Learned counsel for the claimantsland owners made two submissions. Firstly, learned counsel for the claimantsland owners, while referring to the assessment report, Ex. R1, has submitted that the mistake in the calculation of the amount of 20 kalmi mango trees is apparent. He submitted that there is no dispute that on their acquired land 20 kalmi mango trees were standing at the time of acquisition of their land. It is also not disputed that value of one such tree was assessed as Rs. 505/, but the assessor, by mistake, forgot to multiply this figure of 505 by 20. Thus, the claimantsland owners have been granted less compensation. Secondly, he submitted that since the supplementary award was made on 16.3.1988, therefore, the Reference Court has illegally declined the benefit of solatium at the rate of 30%, additional amount at the rate of 12% and interest at the rate of 9% per annum for the first year and 15% per annum for the subsequent years, as provided under Sections 23(2), 23(1A) and 28, respectively, of the Act. He further submitted that in view of the transitional provision contained in Section 30(1) of the Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984) (hereinafter referred to as the `Amended Act'') and in view of the law laid down by the Hon''ble Supreme Court in Union of India v. Raghubir Singh, 1989(1) RRR 552 (SC) : 1989(2) SC 754 and K.S. Paripoornam (II) v. State of Kerala and others, 1995(1) RRR 40 (SC) : 1995(1) SCC 367, the claimantsland owners are entitled for all the statutory benefits under the

 

provisions of the Amended Act.

6. On the other hand, learned counsel for the Union of India and others submitted that the claimantsland owners are not entitled for the additional amount under Section 23(1A) of the Act as the main award in this case was passed on 1.8.1979 and merely because the supplementary award was passed in the year 1988, they cannot be granted the benefit of additional amount. He further submitted that the increase of 133% made by the Reference Court on the market value of the fruit bearing trees, assessed by the Special Land Acquisition Collector, is totally arbitrary.

7. I have heard the arguments of learned counsel for the parties and have perused the record of the case.

8. As far as the question of increase of 133% made by the Reference Court over the market value of the fruit bearing trees standing on the acquired land assessed by the Special Land Acquisition Collector is concerned, this Court in RFAs No. 3041 and 3042 of 1989 (Union of India and another v. Vakil Singh and another) decided on November 19, 2003 and RFAs No. 427 and 428 of 1989 (Union of India and others v. Sadhu Singh), decided on December 3, 2003, has already affirmed the similar award of giving 133% increase on account of difference of the whole sale price index between the year 1966 and 1977. Learned counsel for the Union of India has also conceded that this aspect of the matter is covered by the aforesaid judgment of this Court.

9. Now, the question which arises for determination is whether the claimants land owners are entitled for the benefits of enhanced solatium at the rate of 30%, additional amount at the rate of 12% and interest at the rate of 9% per annum for the first year and 15% per annum for the subsequent years. Undisputedly, the supplementary award by the Special Land Acquisition Collector in this case was made on 16.3.1988 and the impugned award was passed by the Reference Court on 17.3.1990. Counsel for the Union of India could not dispute the claim of land owners about awarding of solatium at the rate of 30% and interest at the rates of 9% per annum for the first year and 15% per annum for the subsequent years under Sections 23(2) and 28 of the Act. He only submitted that the claimantsland owners are not entitled for additional amount at the rate of 12% under Section 23(1A) of the Act. I do not find any force in this contention of the learned counsel for the Union of India. The transitional provision of the Amended Act provides as under :

"30. Transitional provision (1) The provisions of subsection (1 A) of Section 23 of the principal Act, as inserted by Clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,

(a) every proceeding for the acquisition of land under the principal Act pending on the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People], in which no award has been made by the Collector before that date;

 

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act.

(2) The provisions of subsection (2) of Sections 23 and 28 of the principal Act, as amended by Clause (b) of Sections 15 and 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act later than 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act."

10. The aforesaid provision has been interpreted by the Hon''ble Apex Court in Union of India v. Raghubir Singh and K.S. Paripoornam (II) v. State of Kerala and others (supra).

11. In view of the aforesaid provision and the decisions, in my opinion, the claimantsland owners are entitled for the benefit of solatium at the rate of 30%, additional amount at the rate of 12% and interest at the rate of 9% per annum for the first year and 15% for the subsequent years under Sections 23(2), 23(1A) and 28, respectively, of the Act on the amount of compensation assessed for the fruit bearing trees standing on the acquired land. These benefits cannot be denied to the claimantsland owners on the amount of compensation assessed for the fruit bearing trees standing on the acquired land on the ground that the award qua the acquired land was made on 1.8.1979. This date of the award, vide which the market value of acquired land was assessed, is not relevant at all, because the claimantsland owners are not claiming the benefit of the amended Act on the compensation assessed for the land. They are claiming these benefits only on the amount of compensation assessed for the fruit bearing trees, for which supplementary award by the Special Land Acquisition Collector was made on 16.3.1988. Even otherwise, the Special Land Acquisition Collector, in the supplementary award, has awarded solatium at the rate of 30% and additional amount at the rate of 12%, but the Reference Court, without giving any reason, has wrongly held that the claimantsland owners are entitled for solatium and interest at the rate of 15% and 6% respectively. Thus, the claimantsland owners are entitled for all the statutory benefits of the amended provisions of the Act.

12. Regarding the first contention about mistake in calculation of the amount for 20 fruit bearing trees, I have perused the assessment report, Ex. R1. I find that the mistake is apparent. As per this report, 20 kalmi mango trees were standing on killa No. 122. However, the value of those 20 trees has been assessed as only Rs. 505/, whereas in the same report in Killa No. 121, 11 kalmi mango trees have been shown to be standing, the value of which has been shown as Rs. 5,555/. From this, it is clear that the mistake is apparent and the observation made by the learned Reference Court that the claimantsland owners could not point out any clerical error is factually incorrect. Thus, the market value of 20

 

kalmi mango trees is assessed as Rs. 10,100/ (505 x 20). After deducting the amount of Rs. 505/, the enhancement of Rs. 9,595/ is made. On this amount, the claimantsland owners are also entitled for 133% increase, as per the award made by the Reference Court and the said increase comes to Rs. 12,761.35. Therefore, the total increase in this regard comes to Rs. 22,365.35. The claimantsland owners are, thus, entitled for this increase in the market value of the fruit bearing trees standing on their acquired land over and above the assessment made by the Reference Court.

13. In view of the aforesaid discussion, RFA No. 1614 of 1990, filed by the claimantsland owners, is allowed to the extent that compensation for the fruit bearing trees is enhanced by Rs. 22,365.35 over and above the assessment made by the Reference Court. The Claimantsland owners shall also be entitled for the solatium at the rate of 30% under Section 23(2), additional amount at the rate of 12% on the amount of compensation assessed for the fruit bearing trees standing on their acquired land under Section 23(1A) and interest at the rate of 9% per annum for one year from the date on which the possession of the acquired land along with fruit bearing trees was taken and 15% per annum for the subsequent years till the amount is deposited in the Court under Section 28 of the Amended Act. The RFA No. 1462 of 1990, filed by the Union of India and others, is dismissed.

14. No order as to costs.