(1996) 01 AHC CK 0124

In the Allahabad High Court

Case No : C.M.W.P. No. 4929 of 1984

Kallu APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 03-01-1996

Acts Referred:

Constitution of India, 1950 — Article 14
Defence of India Act, 1962 — Section 29, 36, 37, 43
Land Acquisition Act, 1894 — Section 23, 23(2), 28

Citation : (1997) RD 664

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : A.K. Srivastava and Satish Chandra, for the Appellant;

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The land measuring about 1 Bigha and 10 Biswas owned and possessed by the Petitioner situate In village Gayasuddinpuri, tehsil Chail, district Allahabad was requisitioned under the provision of Section 29 of the Defence of India Act. 1962 (hereinafter called the Act). For the said purpose, the competent authority under the Act issued a notification on 14.1.1963. Consequently, on 3.5.68 the said prescribed authority acquired the aforesaid land permanently under the provision of Section 36 of the said Act. The award in arbitration reference No. 8 of 1981 was made by the Respondent No. 3 vide his order dated 13.12.1983.

2. Being aggrieved and dissatisfied, the instant writ petition has been filed mainly on the ground that the arbitrator has manifestly erred in not awarding solatium at the rate of 15 per cent on the amount of compensation and interest at the rate of 6 per cent per annum. The main ground of challenge is quoted here as under:

The only ground on which this claim was rejected was that Sections 37 and 43 of the Defence of India Act are complete and inclusive in themselves, the claimant cannot be granted either interest or solatium as claimed under Sections 28 and

23(2) of the Land Acquisition Act, 1894 which is not applicable to the acquisition proceedings under Sections 29 and 36 of the Act of 1962, which is totally erroneous.

3. In the case of Narain Das Jain v. Agra Nagar Mahapalika 1991 (14) SCC 212, the Apex Court after referring to the catena of decisions, has held that the solatium and Interest must be paid in all cases even if the land acquired under any other statute which has no specific provisions for solatium. The Court has observed as under:

Solatium, as the word goes, is ''money comfort'', quantified by the statute, and given as a conciliatory measure for the compulsory acquisition of the land of the citizen by a welfare State such as ours. The concern for such a citizen was voiced by the Law Commission of India in its Report submitted in 1957 on the Need for Reform in the Land Acquisition by observing as follows:

We are not also in favour of omitting Section 23(2) so as to exclude solatium of 15 per cent for the compulsory nature of the acquisition. It is not enough for a person to get the market value of the land as compensation in order to place himself in a position similar to that which he could have occupied had there been no acquisition, he may have to spend a considerable further amount for putting himself in the same position as before...As pointed out by Fitzgerald the community has no right to enrich itself by deliberately taking away the property of any of its members in such circumstances without providing adequate compensation for it. This principle has been in force in India ever since the Act of 1870. The Select Committee which examined the Bill of 1893 did not think it necessary to omit the provision but on the other hand transferred it to Section 23.

The importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.

4. While considering the issue of interest, the Supreme Court in the same judgment has relied upon the two earlier judgments of the Supreme Court, i.e., Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, and Dr. Shamlal Narula v. Commissioner of Income Tax (1964) 7 SCR 660 and held that the statutory interest must be paid for the delayed payment of compensation amount and in no event, it can be described as compensation for owner''s right to retain

possession.

5. In the case of Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others, , it has been held by the Supreme Court that interest is ordinarily claimed from a person who has withheld the payment of any amount payable by him. It is always calculated at the prescribed rate on the basis of actual amount withheld and the extent of delay in making the payment of the same as such interest is compensatory in character.

6. In the case of Gowardhan and Ors. v. Union of India and Ors. (Civil Appeal No. 3058 of 1983) decided on 31.1.1983, the Supreme Court has observed asunder:

The payment of solatium at 15 per cent is obligatory under the Land Acquisition Act and for the same reason should be regarded as obligatory under the Defence of India Act....As regards the claim of interest, we think that it is only right that interest should be awarded to the applicant for the entire period up to the date of payment.

7. In the case of Om Prakash and Another Vs. State of U.P. and Others, , the Supreme Court had taken the view that if there are two modes of acquisition of land, the one which is more beneficial to the land owners should be opted otherwise it would be discriminated. While deciding that case, the Supreme Court had relief upon its earlier Judgment in the case of Nagar Improvement Trust and Anr. v. Vithal Rao and Ors. AIR 1973 SC 689, in which a seven Judges Bench has held as under:

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 would unable the State to give one owner different treatment from another equally situated owner is discriminated against, can claim the protection of Article 14.

8. In the case of Prakash Amichand Shah Vs. State of Gujarat and Others, , the Supreme Court has observed that the denial of solatium of 15 per cent of the market value of the land in addition to the compensation payable for the lands taken by local authority does not make the Act discriminatory as it is nowhere provided that wherever the land is taken away by the Government under the Separate Statute, compensation should be paid under the Land Acquisition Act, 1894 only and if there is any difference between compensation payable under the Land Acquisition Act and the compensation payable under the Statute concerned, the acquisition under the Statute would be discriminatory and it is not necessary to pay solatium on the amount of compensation in such case. The judgment in the aforesaid case was reconsidered by the Apex Court in the case of Narain Das Jain (supra) and the Apex Court had taken a different view.

9. In the case of Balammal and Others Vs. State of Madras and Others, , the Supreme Court had taken the view that acquiring a land under the Statute which provides for less amount of compensation or the Statute which deprives of the owners of the statutory right to solatium at the rate of 15 per cent of the market

value of the land is Invalid and owners of the land are entitled to the statutory solatium u/s 23(2) of the Land Acquisition Act in consideration of compulsory acquisition of their land.

10. In the case of Union of India (UOI) Vs. Hari Krishan Khosla (Dead) by Lrs., , the Apex Court considered all the cases referred to above and held that where the Act under which the land had been requisitioned and subsequently acquired is included in the Ninth Schedule to the Constitution, the owner of the same cannot claim the solatium or interest putting such owner at the par of the person whose land had been acquired under the provisions of Land Acquisition Act as the validity of the earlier Act cannot be challenged as it had been included in the Ninth Schedule to the Constitution of India.

11. Thus from the cases above referred to the law became clear that if the statute under which the land is acquired does not provide for solatium or Interest and the said statute had not been included in the Ninth Schedule to the Constitution of India, the owner can claim the parity along with a person whose land Is acquired under the Land Acquisition Act, otherwise not.

12. In the instant case, the land had been requisitioned and subsequently had been acquired under the provisions of Defence of India Act, 1962 which has not been included in the Ninth Schedule to the Constitution of India and thus the law laid down by the Supreme Court in the case of Narain Das Jain (supra) is squarely applicable In the Instant case.

13. In view of the above, the writ petition succeeds and is allowed. The Respondent No. 3, the Arbitrator is directed to award 15 per cent solatium and 6 per cent interest on compensation as claimed by the Petitioner. The Arbitrator shall re-calculate the same within a period of three months from the date of receipt of a certified copy of this order and the amount so assessed shall be paid to the Petitioner within a period of two months thereafter.