

(1989) 01 AHC CK 0057

In the Allahabad High Court

Case No : Writ Petition No's. 7990 of 1983 and 4012 of 1984

Lalji and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-01-1989

Acts Referred:

Defence of India (Requisitioning and Acquisition of Immovable Property) Rules, 1963 — Rule 10(1)
Defence of India Act, 1962 — Section 19(2), 36, 37
Land Acquisition Act, 1894 — Section 23(1), 23(2)

Citation : AIR 1989 All 150 : (1989) AWC 548

Hon'ble Judges : K.C. Agrawal, J

Bench : Single Bench

Advocate : S.R. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

K.C. Agrawal, J.—These petitions under Article 226 of the Constitution seek quashing of the awards dt. 8-3-1983 and 13-12-1983 given by the Arbitrator, Sri K. L. Sharma, appointed u/s 37 of the Defence of India Act, 1962 read with Rule 10(1) of Defence of India Rules, 1963.

2. A reference under Rule 9(1) of the Defence of India (Requisitioning and Acquisition of Immovable Property) Rule, 1963 read with Section 37(2) of the Defence of India Act, 1962 was made by the competent authority for determination of compensation of plot of land, namely, plots Nos. 984 area 1 bigha, 9 biswas, 986 area bigha 1 biswa, 987 area 1 bigha, 1 biswa, 988 area 15 biswas and 989 area 15 biswas totalling an area of 5 bighas 1 biswa land situate in village Gayasuddinpur Pargana and Tehsil Chail district Allahabad.

3. On 13-1-1964 the aforesaid land was requisitioned by the Collector, Allahabad, vide order dt. 13-1-1964, u/s 29 of the Defence of India Act for the P.A.C. Battalion No. 1 for the period of emergency and six months thereafter, on 3-5-1968 the aforesaid land was permanently acquired by the Collector,

Allahabad u/s 36 of the Defence of India Act, 1962 for the construction of P.A.C. Building, Dhooman Ganj, Allahabad.

4. The competent authority awarded compensation to which the petitioners filed an objection on 22-2-1973 claiming compensation at the market rate of Rs. 15,000/- per biswas and interest thereon.

5. On the reference being received by the Arbitrator, the enhanced compensation.

6. Aggrieved by the refusal to award solatium and interest on the compensation, the present writ petitions have been filed.

7. The claim of the petitioners for getting interest is concluded by a decision of this Court in Union of India v. 1st Addl. District Judge, Meerut AIR 1983 All 258. The Court held :

"There is a duty on a debtor to make money available to the person entitled immediately on its accruing and if it is not paid, interest becomes payable on the same. In fact, interest is compensation to the person who has been deprived of the use of money."

8. Consequently, the writ petition, in so far as it makes claim for interest, is liable to succeed So far as the question of payment of solatium is concerned, this Division Bench ruling is against the petitioners. The Bench held :

"The Legislature has not applied the provisions of the Land Acquisition Act for determining the compensation under Defence of India Act. It has made a special provision for determining the same. That being so, the principle generalia specialibus non derogant and generalibus specialia derogant (special things derogate from general things) would apply.

9. Learned counsel for the petitioners, contended, on the basis of the following decisions of this Court that solatium is payable. These decisions are:

1. Sharafat Ali v. State of U.P. 1987 ALJ 321.

2. Smt. Chandravati Devi v. State of U.P. 1986 ALJ 1203 and

3. Another decision of Hon''ble Mr. Justice K. P. Singh holding that solatium is payable on compensation for the land acquired under the Defence of India Act. Shyam Sunder Singh Vs. State of U.P. and Others, .

10. In all these three cases solatium was awarded on the basis of un-reported decision of the Supreme Court in Civil Appeal No. 3058 of 1983 : Goverdhan v. Union of India, decided on Jan. 31, 1983. The observations are as given below :

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"In this appeal, it is urged before us that the High Court should have awarded solatium and should also have awarded interest from the date of the original award to the date of payment. We are satisfied that the appellants are entitled to relief on both counts. The payment of solatium at 15% is obligatory under the

Land Acquisition Act and for the same reason it should be regarded as obligatory under the Defence of India Act. The circumstance that the appellants did not specifically pray for solatium in their petition does not disentitle them to an order directing payment of solatium. As regards the claim of interest we think that it is only right that interest should be awarded to the appellants for the entire period up to the date of payment, the rate of interest being that at which interest has already been awarded by the High Court for the period ending May 8, 1967."

11. The judgment in *Union of India v. 1st Addl. District Judge, Meerut* AIR 1983 All 258 was a Division Bench decision, whereas the three decisions mentioned above are by three learned single Judges. The Division Bench decision was distinguished in *Sharafat Ali v. State* 1987 ALJ 321 by the learned Judge that as the decision of the Supreme Court in *Goverdhan v. Union of India* (supra) had not been brought to the notice of the Division Bench deciding the writ, therefore, the said decision is not binding and what the learned judge found binding was the decision of the Supreme Court in *Goverdhan v. Union of India* (supra). I have extracted the Supreme Court above.

12. In *Sharafat Ali* 1987 ALJ 321 the learned Judge has placed reliance on a decision of the Andhra Pradesh High Court in *Mawahedduddin and Others Vs. The Collector, Hyderabad*, .

13. The question of payment of solatium came up for consideration before another Bench of the Andhra Pradesh High Court reported in *The Competent Authority, Special Deputy Collector, Land Acquisition (Defence), Hyderabad Vs. Thota Penta Reddy and Others*, . Their Lordships deciding this case did not agree with the view taken by their own Court in *Mawahedduddin v. Collector* (supra) and observed :

"We have carefully gone through the judgment and we must say, with great respect to the learned Judges, that none of the decisions or text-books cited do lay down that as a matter of principle the concept of compensation necessarily includes solatium. None of the decisions or text-books say that even though the statute does not provide solatium must be awarded as a matter of rule. The several decisions and texts emphasise only the aspect, that a person who is compulsorily deprived of his property to serve a public purpose must be compensated" for all the loss incurred for the expulsion"..... But there appears to be no warrant to say that just and fair compensation must necessarily (sic) acquisition in the shape of solatium....

14. According to the view taken in this case apart from Sub-section (2) of Section 23 solatium has no existence in law. For this view they placed reliance on a decision of the Supreme Court in *Prakash Amichand Shah Vs. State of Gujarat and Others*, . The Supreme Court held :

"It cannot also be said as a rule that State which has got to supply and maintain large public services at great cost should always pay, in addition to a reasonable compensation, some amount by way of solatium."

15. In view of the above decision of the Supreme Court the Andhra Pradesh in The Competent Authority, Special Deputy Collector, Land Acquisition (Defence), Hyderabad Vs. Thota Penta Reddy and Others, did not feel that the earlier decision given in Mawahedduddin and Others Vs. The Collector, Hyderabad, was required to be referred to a larger Bench on the ground that they were disagreeing with the earlier Bench decision of their Court.

16. Section 19(2)(i) of the Defence of India Act laid down specifically that in making the award, the arbitrator shall have regard to the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act. Sub-section (2) of Section 23 has not been made applicable, with the result that it was not open to the arbitrator to award any solatium on the compensation.

17. In Satinder Singh and Others Vs. Amrao Singh and Others, it was said : --

"It would be legitimate to hold that by the application of Section 23(i) in terms, the provisions of Section 23(2) are by necessary implication excluded."

18. I have already extracted the relevant passage of the Supreme Court judgment in Prakash Amichand Shah Vs. State of Gujarat and Others, wherein it has been held that payment of solatium is not to be made where the Act, under which the land is acquired, does not make a provision for the same in addition to reasonable compensation. Taking this view the Supreme Court referred to a number of decisions given in State of Kerala and Others Vs. T.M. Peter and Others, , Nagpur Improvement Trust's case AIR 1973 SC 689 P.C. Goswami Vs. Collector of Darrang, and ultimately held that the view taken by the Supreme Court in State of Gujarat Vs. Shantilal Mangaldas and Others, was correct. In that case the Supreme Court observed that where the Land Acquisition Act has been applied in its entirety, solatium will not be payable under Sub-section (2) of Section 23. In the present case the acquisition was made under the Defence of India Act. It has already been mentioned above by me that what was applied to determine compensation was Sub-section (1) of Section 23 and not Sub-section (2). To me it appears that according to the view taken in Union of India v. 1st Addl. District Judge, Meerut AIR 1983 All 258 interest is payable, but not solatium.

19. Emphasis was laid by the learned Judge on Sharafat Ali v. State of U. P. 1987 All LJ 321 and Mawahedduddin and Others Vs. The Collector, Hyderabad, . This decision, however, has not been followed by the Andhra Pradesh High Court itself in the decision of Competent Authority. The Andhra Pradesh Court held that it would have referred the matter to a larger Bench doubting the correctness of the view taken in Mawahedduddin's case. But in view of the judgment of the Supreme Court in Prakash Amichand Shah Vs. State of Gujarat and Others, it was not felt necessary to do so. In Prakash Amichand Shah's case the liability of payability of solatium had been considered at great length. That was a decision of a Constitution Bench. In Municipal Corporation of Delhi Vs. Gurnam Kaur, the Supreme Court had an occasion to consider when would a decision given be

binding. It held :

"Precedent-Doctrine of-precedents sub silentio and without arguments are of no moment -- Mere casual expressions carry no weight at all -- not every passing expression of a Judge, however eminent can be treated as an ex cathedra statement, having weight of authority."

20. For what I have said above, I am unable to subscribe to the view taken in Smt. Chandravati Devi v. State of U.P. 1986 ALJ 1203, Sharafat Ali v. State of UP. 1987 ALJ 321 and Shyam Sunder Singh Vs. State of U.P. and Others, that solatium is payable u/s 23(2) of the Act. These three decisions were given by following the judgment given in Goverdhan's case (supra). The Supreme Court decision referred to above by me in this judgment was not cited before the learned single Judge.

21. For the reasons given in the above, the writ petitions are allowed in part. Interest would be payable to the petitioners on compensation at the rate of six per cent, per annum with effect from the date of dispossession from the land till payment. The other relief for payment of solatium is rejected. No order as to costs.