(1986) 01 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal (LA) No. 128 of 1985

Land Acquisition Collector, H.P., P.W.D., Solan and Another APPELLANT

Vs

Jeet Ram RESPONDENT

Date of Decision : 10-01-1986

Acts Referred:
Land Acquisition Act, 1894 — Section 16, 28, 34

Citation : AIR 1987 HP 71 : (1987) ShimLC 125

Hon'ble Judges : P.D. Desai, C.J

Bench : Single Bench

Advocate : P.N. Nag, General, for the Appellant; Devinder Gupta, for the Respondent

Final Decision : Partly Allowed

Judgement

P.D. Desai, C.J.—The appeal arises out of an award made by the learned District Judge, Solan and Sirmaur Districts, in a Land Reference case instituted u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). The notification u/s 4 of the Act was issued on February 16, 1982. The Land Acquisition Collector made an award on June 1, 1983 and offered compensation for the acquired land at the rate of Rs. 15,000/- per bigha. Solatium at the rate of fifteen per cent was also awarded together with interest at the rate of six per cent per annum from Nov. 1,1966 to May 31, 1983. The learned District Judge awarded enhanced compensation at the rate of Rs. 20,000/- per bigha. In addition, he enhanced the solatium to thirty per eent and awarded interest at the rate of fifteen per cent per annum "on the entire market value of the acquired land", that is, on the amount of compensation awarded by the Land Acquisition Collector as well as on the excess amount of compensation awarded by the . Court, from June 1, 1959, till the date of deposit or payment of compensation. The amounts of solatium and interest already allowed and paid by the Land Acquisition Collector were, however, directed to be adjusted against the excess sum becoming due and payable under the award of the Court. Hence the present appeal at the instance of the Land Acquisition Collector and the State.

2. It is not in dispute that the possession of the acquired land was taken from the respondent-claimant by the State of Punjab long before the proceedings for acquisition were initiated. The learned District Judge has found that the possession was taken on June 1, 1958. On that basis, he awarded interest, as aforesaid, on the entire amount of compensation from June 1, 1959 in purported exercise of the powers conferred by Section 28 of the Act as amended by the Land Acquisition (Amendment) Act, 1984 (hereinafter referred to as the "the Amendment Act"). The Land Acquisition Collector, on the other hand, had awarded interest, as aforesaid, on the amount of compensation offered by him, at the rate of six per cent per annum from November 1, 1966 to May 31, 1983. The starting point for the award of interest accordingly is the day on which the area in which the acquired land is situated became a part of Himachal Pradesh and the terminal point is a day prior to the declaration of the award. The liability in respect of the payment of compensation having passed on to the State of Himachal Pradesh as the successor State on and from November 1, 1966, the Land Acquisition Collector held that the State of Hirnaehal Pradesh could be made liable to pay interest only on and from that day.

3. In the present appeal, the sub-stantial question which has been raised for consideration on behalf of the appellants is whether interest on the amount of compensation could have been ordered to be paid from the expiry of one year from the date on which possession of the acquired land was actually taken over by the State of Punjab. The Sub-mission, in this connection, was that in law the liability to pay interest arises only on and from the day the Collector becomes entitled to take possession u/s 16 of the Act and not earlier and that, therefore, the interest could not have been awarded for the period prior to June 1, 1983. The Sub-sidiary question which arises for consideration is whether interest could have been ordered to be paid by the Court at the rate of fifteen per cent per annum on the entire amount of compensation even taking into consideration the provisions of Section 28 as amended by the Amendment Act.

4. For the purposes of appreciating the points which arise for determination, the material dates may be recapitulated :

(1)

June 1,1958

Actual possession taken over by the State of Punjab.

(2)

November 1, 1966

The area in which the acquired land is situate became pan of the State of Himachal Pradesh.

(3)

February 16, 1982.

Notification u/s 4 of the Act issued.

(4)

June 1, 1983.

Award of the Land Acquisition Collector allowing, inter alia, interest at the rate of six per cent per annum on the compensation amount from Nov. 1, 1966 to May 31, 1983.

(5)

January 17, 1985.

Award of the Court allowing, inter alia, interest at the rate of fifteen per cent per annum on the entire amount of compensation from June 1, 1959 till the dale of deposit of payment.

5. It will be convenient first to refer to the relevant provisions of the Act. Section 11 enjoins upon the Collector the duty to hold an inquiry into the matters therein prescribed and to make an award determining, inter alia, the compensation which, in his opinion, should be allowed for the land. Section 16 empowers the Collector to take possession of the land when the award has been made u/s 11 and, thereupon, the land would vest absolutely in the Government free from all encumbrances. Section 31, inter alia, requires the Collector to tender payment of the compensation awarded by him to the persons entitled thereto according to the award or deposit the amount of compensation in the Court to which a reference u/s 18 would be Sub-mitted.

6. Section 34 enjoins upon the Collector the duty to pay interest on the amount of compensation awarded by him, if such compensation is not paid or deposited on or before taking possession of the acquired land, from the time of so taking possession until it shall have been so paid or deposited. The Section, as originally enacted, had provided for the payment of interest at the rate of "six percentum" per annum. However, by Section 5 of the Land Acquisition (Punjab Amendment) Act, 1953 (2 of 1954) (hereinafter referred to as "the Punjab Act"), which received the assent of the President on Jan. 1, 1954 and came into force on and with effect from Jan. 9, 1954, the word "four" was Sub-stituted for the word "six". The Section as amended accordingly, was made applicable to the Union Territory of Himachal Pradesh on and from March 3, 1962, vide GSR 257 dated Feb. 21, 1962, (hereinafter referred to as "the GSR"). However by Section 9 of the Land Acquisition (Himachal Pradesh Amendment) Act, 1979 (Act No. 4 of 1980) (hereinafter referred to as "the Himachal Pradesh Act"), which received the assent of the Presiden t on April 14, 1980 and came into force on and with effect from April 25, 1980, the Punjab Act, as in force in the areas comprised in Himachal Pradesh immediately before November 1, 1966 and the territories added to Himachal Pradesh u/s 5 of the Punjab Re-organisation Act, 1966, was

repealed. Consequently the status quo ante qua the rate of interest was restored and, accordingly interest at the rate of six per cent per annum became payable on the amount of compensation awarded by the Collector u/s 34 on and from April 25 1980. By Section 20 of the Amendment Act, which came into force on and from Sept. 24, 1984, certain amendments were again carried out in Section 34. By Clause (a) of Section 20, the words "six per centum" occurring in Section 34 have been Sub-stituted by the words "nine per centum". Furthermore, by Clause (b) of Section 20, a proviso is appended to Section 34 which provides for the enhancement of the rate of interest of fifteen per cent per annum in case the compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken and such enhanced interest is payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. Clause (a) of Sub-section (3) of Section 30 of the Amendment Act, inter alia, provides that amendments accordingly inserted in Section 34 shall apply, and shall be deemed to have applied, also to, and in relation to, every case in which possession of any land acquired under the Act had been taken before April 30, 1982 and in which the amount of compensation for such acquisition had not been paid or deposited until such date, that is, April 30, 1982. However, the retrospective effect to the amendments accordingly inserted in Section 34 has been given "with effect on and from that date", that is to say, on and from April 30, 1982 and, accordingly, the liability to pay interest at the rate of nine and/or fifteen per cent per annum,'' as the case may be, arises in such cases only on and from April 30, 1982.

7. Section 18 provides for reference to the Court. Section 28 provides that if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess from the date on which he took possession of the land to the date of payment of such excess into the Court. The Section, as originally enacted, had provided for the payment of interest at the rate of "six per centum" per annum. However, as in Section 34, so also in this Section, the word "four"'' was Sub-stituted for the word "six" on and from Jan. 9, 1954, by Section 4 of the Punjab Act and the amendment made accordingly was made applicable also to the Union Territory of Himachal Pradesh on and from March 3, 1962 by the GSR. The Himachal Pradesh Act, as earlier pointed out, repealed the Punjab Act and,'' consequently, the status quo ante in regard to the rate of interest was restored also qua Section 28, and, therefore, interest at the rate of six per cent per annum became payable on the excess amount of compensation awarded by the Court u/s 28 on and from April 25, 1980. Section 18 of the Amendment Act, however, has introduced certain amendments in Section 28. By Clause (a) of Section 18, the words "six per centum" occurring in Section 28 have been substituted by the words "nine per centum". Besides, by Clause (b) of Section 20, a proviso has been inserted at the end of Section 28 which provides that the

award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the Court before the date of such expiry. Sub-section (2) of Section 30 of the Amendment Act provides, inter alia, that the amendments accordingly inserted in Section 28 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 Act after April 30,1982, and before the commencement of the Amendment Act.

8. The legislative history traced hereinabove indicates the vicissitudes through which Sections 28 and 34 have passed over a period of time. The amendments introduced in those Sections by the Punjab Act, the extension to and adoption by the Union Territory of Himachal Pradesh of such amendments and the repeal of the Punjab Act by the Himachal Pradesh Act may not have a direct bearing on the decision of the present case. They are, however, referred to hereinabove in order to give a complete picture of the legislative history.

9. Now, the Sub-mission that the liability to pay interest arises only on and from the date the Collector becomes entitled to take possession u/s 16 of the Act and not earlier cannot be accepted.

10. In the Revenue Divisional Officer Guntur v. Vasireddy Rama Bhanu Bhupal, AIR 1970 Andh Pra 262 (FB), a similar argument was considered and rejected. The proceedings for the acquisition of land therein involved were started by the publication of a notification u/s 4 of the Act on April 12, 1956 at the instance of the Guntur Municipality. The Land Acquisition Collector gave his award on March 31, 1958. Much prior to the initiation of the acquisition proceeding, however, the Municipality appeared to have taken possession of the land on Nov. 30, 1950. The Land Acquisition Collector, besides offering compensation for the value of the land, awarded fifteen per cent solatium and interest at the rate of six per cent per annum on the compensation amount from Nov. 30, 1950, that is when the land was taken possession of by the Municipality, till March 31, 1958, that is, the date of the award. On a reference to the District Court, the compensation was enhanced and solatium and interest at the rate of six per cent per annum were awarded on the enhanced compensation from Nov. 30, 1950, til! the date of payment. On appeal to the High Court, the Sub-mission was that u/s 28 of the Act interest could be awarded on the enhanced amount of compensation only from the date when the Collector took possession of the land to the date of payment of such excess into the Court, and that taking of possession under the section could only mean taking of possession in pursuance of or under the Act, that is, when the possession of the land is taken by the Government immediately after the Collector makes an award, and that it is only from the date of taking of such possession that interest becomes payable under the Section. The argument

was rejected in the following words : --

"........We do not see any force in this Sub-mission. Section 28 of the Act states that the Collector shall pay interest from the date on which he took possession of the land. It does not say that, that the Collector should pay interest only from the date on which he takes possession under the Act. On a plain reading of the section it appears to us that the interest is payable from the date when the Collector takes possession, whether he takes possession under any of the provisions of the Act or by private negotiations or otherwise in anticipation of valid proceedings under the Act for the acquisition of the land in question.......Even assuming'' that the expression ''taking possession of the land'' u/s 28 of the Act, would only mean taking possession of the land under or in pursuance of the Act we do not see any reason why the taking of possession of the land prior to the Land Acquisition proceedings without any objection by the owner (in this case by private negotiation with his consent) followed by valid proceedings under the Act should not be held to be taking possession of the land under the Act. The Act does not prescribe when the Collector representing the Government should take possession of the land. u/s 16 of the Act he may take possession after he has made an award but there is nothing in that section or in any other provision of the Act, which prevents the Collector from taking possession of the land earlier with the consent of the owner. On the other hand there are provisions in the Act, for instance, Section 17 which authorises the Collector, in case of urgency to take possession of any waste or arable land needed for public purposes, after expiration of fifteen days from the publication of the notice mentioned in Section 9(1) of the Act. The fact that on 30-11-1950 it was the Municipality that took possession and not the Government would not make any difference as the acquisition of the land by the Government was at the instance and for the purpose of the Municipality and it is also stated in the award that the cost of acquisition would be met from the amount deposited by the Municipality under Works Deposit in the name of the Revenue Divisional Officer, Guntur. Therefore, no distinction can be made between the possession of the Government in the circumstances of this case.

At any rate we are of the opinion that interest is payable on equitable principles on the compensation amount from the date when the owner was deprived of his possession on 30-11-1950. There is abundant authority which will be referred to presently, for the award of interest from the date of taking possession, even though the possession was taken long prior to the date of notification for acquisition or of the award. It is a well established principle that on a contract for sale and purchase of land, the purchaser has to pay interest on the purchase money from the date of taking possession. This principle is recognised by Section 55(4) of the Transfer of Property Act, which states that where the ownership of the property has passed to the buyer he is bound to pay interest on the purchase money or any part thereof remaining unpaid from the date on which the possession has been delivered. Even in cases to which Section 55{4)(a) of the Transfer of Property Act is, in terms not applicable it has been held that interest is payable from the date of taking possession on equitable principles."

11. In Satinder Singh and Others Vs. Amrao Singh and Others, one of the question in controversy was whether the amount of compensation awarded for the property acquired under the East Punjab Requisition of Immovable Property (Temporary Powers) Act (48 of 1948) should carry a reasonable rate of interest from the date when the claimants lost possession of their properties. The following pertinent observations made in that context in the decision rendered in that case are reproduced hereinbelow :

"What then is the contention raised by the claimants? They contended that their immovable property has been acquired by the State and the State has taken possession of it. Thus they have been deprived of the right to receive the income from the property and there is a time lag between the taking of the possession by the State and the payment of compensation by it to the claimants. During this period they have been deprived of the income of the property and they have not been able to receive interest from the amount of compensation. Stated broadly the act of taking possession of immovable property generally implies an agreement to pay interest on the value of the property and it is on this principle that a claim for interest is made against the State....It would thus be noticed hat the claim for interest proceeds on the assumption that when the owner of immovable property loses possession of it he is entitled to claim interest in place of right to retain possession. ....When a claim for payment f interest is made by a person whose mmovable property has been acquired coinpulsorily he is not making claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he would be put in possession of compensation immediately, if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation.........We have already seen that the right to receive interest in lieu of possession of immovable property taken away either by private treaty or by compulsory acquisition is generally regarded by judicial decisions as an equitable right, and so, the proviso to Section 1 of the Interest Act saves the said right. We must accordingly hold that the High Court was in error in rejecting the claimanls'' case for the payment of interest on compensation amount, and so we direct that the said amount should carry interest at 4% per annum from the date when respondent 2 took possession of the claimant''s lands to the date on which it deposited or paid the amount of compensation to them."

12. The decision in The Revenue Divisional Officer, Guntur Vs. Vasireddy Rama Bhanu Bhupal and Others, with which I am in respectful agreement, is an authority for the proposition that the liability to pay interest on the amount of compensation does not arise only from the date on which the Collector takes possession under the Act. The liability arises from the date when the Collector takes possession, irrespective of whether such possession is taken under any of the provisions of the Act or by private negotiations or otherwise. Besides the Act of taking possession before the initiation of acquisition proceedings without any

objection on the part of the owner followed by valid proceedings under the Act must be regarded as tantamounting to taking possession of the land under the Act. In any case, as held Satinder Singh and Others Vs. Amrao Singh and Others, , as well as in Vasireddy Rama''s case (supra), interest is payable on equitable principles on the compensation amount from the date when the owner is deprived of the possession of the land. The very act of taking possession of immovable property generally implies an agreement to pay interest on the value of the property. A person whose immovable property has been acquired compulsorily is entitled to base his claim for interest on the general rule founded on equitable principles that he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition, interest should paid to him on the amount of compensation from the date of dispossession. In view of the foregoing legal position, which must be regarded as well settled, the Sub-mission made by the learned Advocate-General that the liability to pay interest arose, in the present case, earliest on June 1, 1983, when the award was announced must be rejected. It may be recapitulated that even the Land Acquisition Collector has awarded interest from Nov. 1, 1966, that is, the date on which the area in which the acquired land is situate became part of the State of Himachal Pradesh.

13. The alternative question arising for consideration, namely, that interest at the rate of 15 per cent per annum could not have been allowed on the entire amount of , compensation from June 1, 1959 till the date of deposit or payment, however, bears closer scrutiny. The legal position which emerges upon a conspectus of the legislative changes from time to time introduced in Section 34, insofar as they are relevant for the purposes of the present case, is that depending upon the facts and circumstances of the case, interest at different rates varying between six and fifteen per cent per annum becomes payable on the amount of compensation awarded by the Collector, if such compensation is not paid or deposited on or before taking possession of the acquired land and the varying rates of interest are as follows : --

(1) Up to Sept. 23, 1984:-

Six per cent per annum from the date of so taking possession till payment or deposit;

(2)(i) on and from Sept. 24, 1984 :-

Nine per cent per annum from the date of so takingpossession till payment ordeposit;

(ii) fifteen per cent per annum, in case the compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken however, such enhanced interest becomes payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry;

(3) The provision relating to the payment of interest at the rate of nine and/or fifteen per cent per annum, as the case may be, is applicable also to and in relation to every case in which possession of the acquired land had been taken before April 30, 1982, and the compensation for such acquisition had not been paid or deposited till such date; interest at the rate of nine and/or fifteen per cent per annum, as the case may be, becomes payable in such a case only on and from April 30, 1982;

Likewise, the legal position as emerging from similar legislative changes from time to time introduced in Section 28, in so far as they are relevant for the purposes of the present case, is that depending upon the facts and circumstances of the case, the Court is empowered to direct the Collector to pay , interest at different rates varying between six and fifteen per cent per annum on the excess mount of compensation awarded by it and the varyingratesofinterestareasfollows :

(1) Up to Sept. 23, 1984.:- Six per cent per annum from the date on which the Collector took possession of the land to the date of payment of such excess into Court;

(2)(i) On and from Sept. 24, 1984 : nine per cent per annum from the date on which the Collector took possession of the land to the date of payment of such excess into Court,

(ii) fifteen per cent per annum, in case the excess amount of compensation, or any part thereof, is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, however such enhanced interest becomes payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry,

(3) The provision relating to the payment of interest at the rate of nine and/or fifteen per cent per annum, as the case may be, is applicable 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 after April 30, 1982 and before September 24, 1984.

14. It is apparent against the aforesaid background that the learned District Judge has committed an error while granting interest on the compensation amount. The learned District Judge, as earlier pointed out, has awarded interest at the rate of fifteen per cent per annum on the aggregate amount of compensation, that is, on the compensation awarded by the Land Acquisition Collector as well as on the excess amount of compensation awarded by aim from June 1, 1959 till the date of deposit or payment of compensation, Sub-ject to the direction that the amounts of solatium and interest allowed and paid by the Land Acquisition Collector be adjusted against the excess sum becoming due and payable under the award of the Court. Now, in the present case, the award of the Land Acquisition Collector, was made on June 1,1983. The reference u/s 18 of

the Act was received in the District Court on Jan. 13, 1984 and it was decided on January 17, 1985. At the date of the commencement of the Amendment Act that is, September 24, 1984, the proceedings for determination of compensation were thus pending before the learned District Judge in reference. Section 28, as amended by the Amendment Act, was, therefore, applicable to such proceedings. Under the circumstances, so far as the award of interest on the amount of enhanced compensation is concerned, the learned District Judge was entitled to direct that interest at the rate of nine per cent per annum to be paid thereon from the date on which possession of the acquired land was taken till the date of expiry of a period of one year therefrom and at the rate of fifteen per cent per annum from the date of the expiry of the said period of one year till the date of payment of such excess into Court. Besides, in view of the fact that the provisions of Section 34, as amended by the Amendment Act, have been given retrospective effect so as to cover every case in which possession of any acquired land had been taken before April 30, 1982, and in which the amount of compensation for such acquisition had not been paid or deposited until such date, that is, April 30, 1982, the learned District Judge was also within his competence to give effect to those provisions in the present case and to hold that interest at the rate prescribed in the said amended Section should have been awarded by the Land Acquisition Collector on and from April 30, 1982, and that, accordingly, interest at the rate of fifteen per cent per annum was required to be awarded, on the facts and in the circumstances of the case, on the amount of compensation offered by the Land Acquisition Collector, from April 30, 1982 till the date of award, that is, June 1, 1983 or any other Sub-sequent date on which the amount of such compensation was paid or deposited in Court. Furthermore, the Land Acquisition Collector was clearly in error in taking the view that the respondent was not entitled to any interest on the amount of compensation awarded by him for the period prior to November 1,1966 on the ground that the Stale of Himachal Pradesh could not be held liable to pay interest for the period prior to the date on and from which the area wherein the acquired land is situate became a part of Himachal Pradesh. This much indeed is conceded even by the learned Advocate General appearing on behalf of the appellants and, in my opinion, rightly. The learned District Judge, therefore, was also competent to order the payment of interest on the amount of compensation awarded by the Land Acquisition Collector for the period from June 1,1958 to Oct. 31,1966 at the rate of six per cent per annum.

15. In view of the foregoing discussion and on the facts and in the circumstances of the case, the learned District Judge should have allowed interest as follows at varying rates for different periods on the different components of the total compensation awarded to the respondent:

A.

On the amount of compensation awarded by the Land Acquisition Collector :

(i) For the period from June I, 1958 to October 31, 1966, that is, from the date of taking over possession of the acquired land to the date up to which no interest was awarded by the Collector on the erroneous ground that the State of Himachal Pradesh was not liable to pay the same and for the subsequent period up to April 29, 1982.

At the rate of six per cent per annum.

(ii) For the period from April 30, 1982, till May 31, 1983, or any other subsequent dale on which the amount of compensation was paid or deposited :

At the rate of fifteen per cent per annum.

B.

On the excess amount of compensation awarded by the Court :

(i) For the period from June 1, 1958 to May 31, 1959, that is, from the date of taking over possession of the acquired land to (he date of expiry of a period of one year therefrom :

At the rate of nine per cent per annum.

(ii) From June 1, 1959 to the date of payment of such excess into Court, that is June 28, 1985:

At the rate of fifteen per cent per an-num.

16. The award under appealsuffers from errors of law to the aforesaid extent, and, consequently the appeal is allowed only to the said extent. Accordingly, the decision under appeal, insofar as it awards interest at the rate of fifteen per cent per annum on the aggregate amount of compensation, that, is on the amount of compensation awarded by the Land Acquisition Collector as well as on the excess amount of compensation awarded by the Court, from June 1, 1959, till the date of deposit or payment, is set aside. The respondent is held entitled to interest on the different components of the aggregate amount of compensation awarded to him at the varying rates for the different periods as found hereinabove. The sum(s) already realised by him as and by way of interest on the compensation amount will be set off against the sum becoming due and payable to him as and by way of interest under these orders and only the balance amount, if any will be payable to the respondent. Though the respondent has not preferred a cross appeal or cross-objections, he is entitled to support the award made in his favour on grounds other than those on which the award is founded and, therefore, the directions hereinabove have been issued on the said basis. Besides, the learned Advocate-General has fairly stated to the Court that in the interest of justice, the appellants do not raise any objection to the award of interest in favour of the respondent in accordance with law on the aggregate amount of compensation to which he has been held entitled by the Land Acquisition Collector and by the Court.

17. Be it stated that no other point was urged in support of the appeal.

18. There will be no order as to the costs of the appeal.

