
(2016) 04 SC CK 0071

In the Supreme Court Of India

Case No : Civil Appeal No.1363 of 2007

Lilawati Agarwal (D) By Lrs.

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Citation : (2016) 162 AIC 168 : (2016) AIR(SCW) 1885 : (2016) 3 AIRJharR 281 : (2016) AIRSC 1885 : (2016) AllSCR 972 : (2016) 116 ALR 439 : (2016) 3 AndhLD 177 : (2016) 2 BBCJ 113 : (2016) 2 BLJud 196 : (2016) 2 CalLJ 81 : (2016) DNJ 426 : (2016) 2 JBCJ 408 : (2016)

Hon'ble Judges : Dipak Misra;V. Gopala Gowda;Kurian Joseph, JJ.

Bench : Full Bench

Advocate : Ajit Kumar Sinha, Sr. Adv,Gopal Prasad, Shashank Singh, Ajit Kumar Sinha, Sr. Adv, Shashank Singh, R.K. Ojha, Anil K. Jha, Anip Sachthey, Ms. Anjali Chauhan, Himanshu Munshi, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J. - A two-Judge Bench of this Court in Lilawati Agarwal (Dead) By Lrs. and Others v. State of Jharkhand, (2008 15 SCC 464, after referring to the paragraphs 31 and 34 of the pronouncement in Union of India and Another v. Raghubir Singh (Dead) By Lrs. Etc., (1989) 2 SCC 754, expressed doubt with regard to the correctness of the decision in K.S. Paripoornan (II) v. State of Kerala and Others, (1995) 1 SCC 367 and eventually expressed thus:-

"In Raghubir Singh case two terminus points were fixed i.e. award by the Collector or decision of the Reference Court must have been taken between 3-4-1982 and 24-9-1984. It has been clearly stated in the last line of para 34 that every case "must" have been decided between the aforesaid terminus. In Paripoornan II case at para 4 it was observed that restrictive interpretation should not be given. With great respect we are unable to subscribe to the view. As a matter of fact a three-Judge Bench was trying to give an interpretation different from what was specifically given by the Constitution Bench.

Therefore, we think it appropriate to refer the matter to a larger Bench to consider correctness of the view expressed in para 4 in Paripoornan II case holding that a restricted interpretation should not be given, on the face of what has been stated in para 34 of Raghubir Singh case. Records may be placed before the Hon"ble Chief Justice of India for necessary details."

On the basis of the aforesaid order, the matter has been placed before us.

2. As we perceive, it is necessary to express an opinion whether the correctness of the decision in K.S. Paripoornan (II) deserves to be considered by a Constitution Bench as the pronouncement in the said case is binding on us.

3. To appreciate the controversy, we think it appropriate to reproduce paragraphs 30, 31 and 34 from Raghubir Singh (supra):-

"30. We now come to the merits of the reference. The reference is limited to the interpretation of Section 30(2) of the Land Acquisition (Amendment) Act of 1984. Before the enactment of the Amendment Act, solatium was provided under Section 23(2) of the Land Acquisition Act (shortly, "the parent Act") at 15% on the market value of the Land computed in accordance with Section 23(1) of the Act, the solatium being provided in consideration of the compulsory nature of the acquisition. The Land Acquisition Amendment Bill, 1982 was introduced in the House of the People on 30 April, 1982 and upon enactment the Land Acquisition Amendment Act 1984 commenced operation with effect from 24 September, 1984. Section 15 of the Amendment Act amended Section 23(2) of the parent Act and substituted the words "30 per centum" in place of the words "15 per centum". Parliament intended that the benefit of the enhanced solatium should be made available albeit to a limited degree, even in respect of acquisition proceedings taken before that date. It sought to effectuate that intention by enacting Section 30(2) in the Amendment Act, Section 30(2) of the Amendment Act provides:

"(2) the provisions of sub-Section (2) of Section 23.....of the principal Act, as amended by clause (b) of Section 15.....of this Act 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 after the 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."

31. In construing Section 30(2), it is just as well to be clear that the award made by the Collector referred to here is the award made by the Collector under Section 11 of the parent Act, and the award made by the Court is the award made by the Principal Civil Court of Original Jurisdiction under Section 23 of the parent Act on a reference made to it by the Collector under Section 19 of the parent Act. There can be no doubt that the benefit of the enhanced solatium is intended by Section 30(2) in respect of an award made by the Collector between

30 April 1982 and 24 September, 1984. Likewise the benefit of the enhanced solatium is extended by Section 30(2) to the case of an award made by the Court between 30 April 1982 and 24 September 1984, even though it be upon reference from an award made before 30 April, 1982.

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34. Our attention was drawn to the order made in *State of Punjab v. Mohinder Singh*, (1986) 1 SCC 365, but in the absence of a statement of the reasons which persuaded the learned Judges to take the view they did we find it difficult to endorse that decision. It received the approval of the learned Judges who decided *Bhag Singh*, (1985) 3 SCC 737, but the judgment in *Bhag Singh*, (supra) as we have said earlier, has omitted to give due significance to all the material provisions of Section 30(2), and consequently we find ourselves at variance with it. The learned Judges proceeded to apply the principle that an appeal is a continuation of the proceeding initiated before the Court by way of reference under-Section 18 but, in our opinion, the application of a general principle must yield to the limiting terms of the statutory provision itself. Learned counsel for the respondents has strenuously relied on the general principle that the appeal is a re-hearing of the original matter, but we are not satisfied that he is on good ground in invoking that principle. Learned counsel for the respondents points out that the word "or" has been used in Section 30(2), as a disjunctive between the reference to the award made by the Collector or the Court and an order passed by the High Court or the Supreme Court in appeal and, he says, properly understood it must mean that the period 30 April, 1982 to 24 September, 1984 is as much applicable to the appellate order of the High Court or of the Supreme Court as it is to the award made by the Collector or the Court. We think that what Parliament intends to say is that the benefit of Section 30(2) will be available to an award by the Collector or the Court made between the aforesaid two dates or to an appellate order of the High Court or of the Supreme Court which arises out of an award of the Collector or the Court made between the said two dates. The word "or" is used with reference to the stage at which the proceeding rests at the time when the benefit under-Section 30(2) is sought to be extended. If the proceeding has terminated with the award of the Collector or of the Court made between the aforesaid two dates, the benefit of Section 30(2) will be applied to such award made between the aforesaid two dates. If the proceeding has passed to the stage of appeal before the High Court or the Supreme Court, it is at that stage when the benefit of Section 30(2) will be applied. But in every case, the award of the Collector or of the Court must have been made between 30 April, 1982 and 24 September, 1984."

[Emphasis supplied]

4. In *Raghubir Singh* (supra), the question of law referred to the Constitution Bench was:-

"Whether under the Land Acquisition Act, 1894 as amended by the Land

Acquisition (Amendment) Act, 1984 the claimants are entitled to solatium at 30 per cent of the market value irrespective of the dates on which the acquisition proceedings were initiated or the dates on which the award had been passed?"

5. In the said case, the award with regard to compensation was passed by the Collector in March, 1963 and the reference under Section 18 of the Act was disposed of by the Additional District Judge on June 10, 1968. The reference court had enhanced the compensation granted by the Collector under the Land Acquisition Act, 1894 (for brevity, 'the Act'). The claimant had preferred an appeal to the High Court claiming further compensation. During the pendency of the appeal, the Land Acquisition (Amendment) Bill, 1982 was introduced in the Parliament on April 30, 1982 and became law as the Land Acquisition (Amendment) Act, 1984 when it received the assent of the President on September 24, 1984. The High Court disposed of the appeal by its judgment and order dated December 6, 1984. While it raised the rate of compensation it also raised the rate of interest payable on the compensation and taking into account the amendment Act, awarded solatium at 30%. The judgment and order of the High Court was under assail before this Court and a two-Judge Bench keeping in view the decisions in *K. Kamalajammanniavar v. Special Land Acquisition Officer*, (1985) 1 SCC 582, and *Bhag Singh v. Union Territory of Chandigarh*, (1985) 3 SCC 737 thought it apt to refer the matter to a larger Bench which ultimately resulted in the verdict in *Raghubir Singh* (supra).

6. To understand the dictum in *Raghubir Singh* (supra), it is necessary to understand what was stated in *Bhag Singh* (supra) and what has been overruled in *Raghubir Singh* (supra). In *Bhag Singh* (supra) a three-Judge Bench was dealing with the question of law relating to interpretation of Section 30(2) of the Amendment Act. In the said case, the award was passed by the land acquisition collector on October 9, 1975 and the reference court had passed the award on July 31, 1979. The award passed by the reference court was assailed in appeal before the High Court. The three-Judge Bench considered the decisions in *State of Punjab v. Mohinder Singh*, Civil Appeal No. 3267 of 1979 decided on May 1, 1985 and *K. Kamalajammanniavar* (supra) and agreed with the view expressed in *Mohinder Singh* is case and recorded therein disagreement with the view taken in *K. Kamalajammanniavar* (supra). Be it stated, the three-Judge Bench in *Bhag Singh* (supra) while agreeing with the earlier three-Judge Bench decision has opined thus:-

"We may first consider what would be the position if Section 30 sub-section (2) were not enacted and the amendments in Section 23 subsection (2) and Section 28 were effective only from the date on which they were made, namely, September 24, 1984 when the Amending Act received the assent of the President and was brought into force. If at the date of the commencement of the Amending Act, any proceedings for determination of compensation were pending before the Collector under Section 11 of the Act or before the court on a reference under Section 18 of the Act, the amended Section 23 sub-section (2)

and Section 28 would admittedly be applicable to such proceedings. This much indeed was conceded by the learned counsel appearing on behalf of the respondents and even in Kamalajammanniavar case (supra) it was accepted to be the correct position. Chinnappa Reddy, J. speaking on behalf of the Court in Kamalajammanniavar case (supra) observed (SCC p. 584): "The new Section 23(2), of course, necessarily applies to awards made by the Collector or court after the commencement" of the Amending Act. ..."

7. Regard being had to the both the aspects, it is imperative to understand the issue that was referred to the Constitution Bench. As is noticeable, the larger Bench observed that the reference was limited to the interpretation of Section 30(2) of the Amendment Act. The Constitution Bench noted the intention of the Parliament, referred to Section 30(2) of the Amendment Act and in that context opined that:-

"32. The question is: What is the meaning of the words "or to any order passed by the High Court or Supreme Court on appeal against any such award?" Are they limited, as contended by the appellants, to appeals against an award of the Collector or the Court made between 30-4-1982 and 24-9-1984, or do they include also, as contended by the respondents, appeals disposed of between 30-4-1982 and 24-9-1984 even though arising out of awards of the Collector or the Court made before 30-4-1982. We are of opinion that the interpretation placed by the appellants should be preferred over that suggested by the respondents. Parliament has identified the appeal before the High Court and the appeal before the Supreme Court by describing it as an appeal against "any such award". The submission on behalf of the respondents is that the words "any such award" mean the award made by the Collector or Court, and carry no greater limiting sense; and that in this context, upon the language of Section 30(2), the order in appeal is an appellate order made between 30-4-1982 and 24-9-1984 - in which case the related award of the Collector or of the Court may have been made before 30-4-1982. To our mind, the words "any such award" cannot bear the broad meaning suggested by learned counsel for the respondents. No such words of description by way of identifying the appellate order of the High Court or of the Supreme Court were necessary. Plainly, having regard to the existing hierarchical structure of fora contemplated in the parent Act those appellate orders could only be orders arising in appeal against the award of the Collector or of the Court. The words "any such award" are intended to have deeper significance, and in the context in which those words appear in Section 30(2) it is clear that they are intended to refer to awards made by the Collector or Court between 30-4-1982 and 24-9-1984. In other words Section 30(2) of the Amendment Act extends the benefit of the enhanced solatium to cases where the award by the Collector or by the Court is made between 30-4-1982 and 24-9-1984 or to appeals against such awards decided by the High Court and the Supreme Court whether the decisions of the High Court or the Supreme Court are rendered before 24-9-1984 or after that date. All that is material is that the award by the Collector or by the Court should have been made between

30-4-1982 and 24-9-1984. We find ourselves in agreement with the conclusion reached 781 by this Court in *K. Kamalajammanniavaru v. Special Land Acquisition Officer*, and find ourselves unable to agree with the view taken in *Bhag Singh v. Union Territory of Chandigarh*. The expanded meaning given to Section 30(2) in the latter case does not, in our opinion, flow reasonably from the language of that sub-section. It seems to us that the learned Judges in that case missed the significance of the word "such" in the collocation "any such award" in Section 30(2). Due significance must be attached to that word, and to our mind it must necessarily intend that the appeal to the High Court or the Supreme Court, in which the benefit of the enhanced solatium is to be given, must be confined to an appeal against an award of the Collector or of the Court rendered between 30-4-1982 and 24-9-1984".

8. The aforesaid larger Bench decision, as we find, was only concerned with the grant of solatium in respect of the award passed between two dates, namely, April 30, 1982 and September 24, 1984. The issue before the Constitution Bench was not relatable to any award as such passed after the amended date.

9. In *K.S. Paripoornan (II)* (supra), the three-Judge Bench appreciated the law laid down in *Raghubir Singh*'s case and referred to Section 30(2) of the Land Acquisition (Amendment) Act, 1984 (68 of 1984) which was a transitory provision and reproduced paragraph 31 of the Constitution Bench judgment and then proceeded to state thus:-

"This Court thereby clearly held that even in the pending reference made before 30-4-1982, if the civil court makes an award between 30-4-1982 and 24-9-1984, Section 30(2) gets attracted and thereby the enhanced solatium was available to the claimants. Since Section 30(2) deals with both the amendments to Section 23(2) and Section 28 of the Principal Act by Section 15(b) and Section 18, respectively, of the Amendment Act by parity of the reasoning the same ratio applies to the awards made by the civil court between those dates. The conflict of decisions as to whether Section 23(2) as amended by Section 15(b) of the Amendment Act through Section 30(2) of the transitory provisions would be applicable to the pending appeals in the High Court and the Supreme Court was resolved in *Raghubir Singh* case 1 by the Constitution Bench holding that the award of the Collector or the court made between 13-4-1982 and 24-9-1984 would alone get attracted to Section 30(2) of the transitory provision. The restricted interpretation should not be understood to mean that Section 23(2) would not apply to the award of the civil court pending at the time when the Act came into force or thereafter. In this case, admittedly the award of the civil court was made after the Act had come into force, namely, 28-2-1985."

10. On a perusal of the principle stated in *Raghubir Singh* case and what has been clarified in *K.S. Paripoornan (II)* case, we do not find that the three-Judge Bench decision runs counter to the authority in the Constitution Bench. It also does not give a different interpretation to Section 30(2) that what has been stated by the Constitution Bench. In fact, *K.S. Paripoornan (II)* clearly postulates

about the awards that have been passed by the court after the Act has come into force which is in consonance with the ratio laid down in Raghbir Singh's case. The three-Judge Bench has only observed that the restricted interpretation placed by the Constitution Bench in Raghbir Singh (supra) should not convey that Section 23(2) would not apply to the awards of the civil court pending at the time when the Act came into force or thereafter. Thus, the controversy with which the three-Judge Bench was dealing with was absolutely different and the view expressed by it is absolutely in accord with the principles laid down in Raghbir Singh's case. Additionally, it is also in consonance with the provisions contained in Section 23(2) of the Act. Therefore, we do not see any reason to disagree with the view expressed in K.S. Paripoornan (II) as we are of the convinced opinion that it has appositely understood the rule expounded in Raghbir Singh's case.

11. Having so stated, ordinarily we would have directed the matter to be placed before a two-Judge Bench, but it is not necessary to do so. We have been apprised at the Bar that the award in this case had been passed by the reference court on 30th September, 1985. Therefore, there cannot be any trace of doubt that principle stated in K.S. Paripoornan (II) would squarely be applicable.

12. The High Court by the impugned judgment has opined that the principle stated in the K.S. Paripoornan (II) (supra) would not be applicable. The said view is perceptibly erroneous. We are of the considered opinion that the appellant shall be entitled to the benefits as per the law laid down in K.S. Paripoornan (II). It is not disputed at the Bar that the appellants are not entitled to the benefits under Section 23(1A) in view of the decision in K.S. Paripoornan (I) v. State of Kerala, (1994) 5 SCC 593.

13. We will be failing in our duty if we do not take note of another aspect. A Constitution Bench of this Court in Sunder v. Union of India, (2001) 7 SCC 211 has opined that:-

"24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum 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". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted.

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27. In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

14. We have referred to the aforesaid authority by abundant caution so that the respondent while computing the amount shall take the same into consideration. Needless to say, in case the respondent do not comply with the judgment, execution can be levied and at that juncture this aspect can also be taken note of as it forms a part of the decree.

15. Resultantly, the appeal is allowed and it is directed that the appellants shall be entitled to the benefits as stated herein-above. The judgment and the decree passed by the High Court stands modified. The respondents are directed to deposit the amount before the executing court within six weeks hence. If any amount has already been deposited, that shall be taken into consideration while computing the amount. In the fact and circumstances of the case, there shall be no order as to costs.