

(1986) 10 OHC CK 0024

In the Orissa High Court

Case No : Civil Revision No"s. 832 and 833 of 1983

Mahamed Isak and Zubeda Begum

APPELLANT

Vs

Land Acquisition Collector

RESPONDENT

Date of Decision : 21-10-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Land Acquisition Act, 1894 — Section 28

Citation : (1986) 2 OLR 639

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : P.K. Misra, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—These two civil revisions arise out of the orders refusing to exercise power u/s 152, Code of Civil Procedure, for correction of the land acquisition award.

2. As the question involved in both the petitions is the same, they are heard together and are disposed of by this common judgment. Lands belonging to both the petitioners were acquired. Petitioners not being satisfied with the compensation awarded by the Collector objected to the same and the matter was referred to the Court for decision. While the Court enhanced the compensation it did not take into consideration the question of payment of interest as is provided u/s 28 of the Land Acquisition Act. Having noticed that interest has not been awarded, petitioners filed applications u/s 152, CPC, for correction of the award being of the view that omission to award statutory interest is not an accidental slip. The applications having been rejected, the present civil revisions have been filed.

3. That omission to award interest can be rectified in exercise of the power u/s 152, CPC, is no longer res integra in view of the decisions of this Court reported

in ILR 1972 Cutt. 222 (Srinivas Sundar Oas v. State of Orissa) and 41(1975) CLT 1175 (Jaikrishna Mangaraj Mohapatra v. State of Orissa and another). Relying upon the decision reported in Smt. Swarnamayi Panigrahi and Others Vs. Land Acquisition Collector, , it was held in ILR 1972 Cutt. 222 (supra) that u/s 28 the Court is required to allow payment of interest on the excess amount awarded, since payment of this interest is a statutory duty and hence mandatory and constitute an integral part of the compensation to be awarded. It was held that in cases where the Court while awarding compensation omitted to provide for payment of interest that is payable the same is nothing but due to an accidental slip or omission and the Court has every power to correct the same. In that view of the matter, non-consideration of the binding decision of the Court amounts to material irregularity in exercise of jurisdiction and the orders being vitiated are liable to be set aside.

4. In conclusion, the lower Court had jurisdiction to exercise power u/s 152, CPC, to correct the award to grant interest under, Section 28 of the Act.

5. In the result, the orders are set aside and the civil revisions are allowed. The trial Court is directed to correct the award in exercise of the power u/s 152, CPC, awarding interest on the enhanced compensation as per law. As there is no appearance on behalf of the opposite party in both civil revisions, I make no order as to costs.