**(1985) 12 KL CK 0006**

**In the High Court Of Kerala**

**Case No :** L.A.A. No. 72 of 1980

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| Mohammed Sheriff and Others | APPELLANT |
| Vs | |
| State of Kerala | RESPONDENT |

**Date of Decision :** 09-12-1985

**Acts Referred:**

- Constitution of India, 1950 — Article 254, 254(2)
- Kerala Land Acquisition Act, 1961 — Section 25, 25(2), 30
- Land Acquisition Act, 1894 — Section 23(2), 28

**Citation :** AIR 1986 Ker 67

**Hon'ble Judges :** P.C. Balakrishna Menon, J;M.M. Pareed Pillay, J

**Bench :** Division Bench

**Advocate :** P.C. Chacko and George Thomas, for the Appellant; A.G., for the Respondent

**Final Decision :** Allowed

# Judgement

Balakrishna Menon, J.—This is an appeal by the claimants in a land acquisition reference u/s 20 of the Kerala Land Acquisition Act for enhancement of compensation for their land acquired by the Government. Pending appeal the Land Acquisition Amendment Act, 1984 (Act 68 of 1984) amending the Land Acquisition Act of 1894 came into force on 24th Sept, 1984. The appellants therefore claim also the benefits of the amendments relating to the enhancement of solatium and interest payable on the compensation to be awarded to them.

2. An extent of 1.43 acres of land in Sy. Nos.43/31A, 43/33A and 44/5A of Changanacherry village was acquired by the Government for the establishment of a Fire Station and residential quarters for the staff attached to the Fire Station. The preliminary notification u/s 3(1) of the Kerala Land Acquisition Act was published in the Gazette dated 25-12-1973, the declaration u/s 6 of the Act was published in the Gazette dated 1-10-1974 and an award was passed by the Land Acquisition Officer on 24-1-1976. The land acquired was taken possession from the claimants on 10-2-1976. The land acquisition officer awarded land value

at the rate of Rs. 805/- per cent for the 88 cents of land in Sy. No. 44/5A and at Rs. 700/- per cent for the remaining extent of land acquired from Sy. Nos. 43/31A and 43/33A as against the appellants claim for compensation at the rate of Rs. 5000/- per cent. On reference u/s 20 of the Act the Court below has awarded compensation at the rate of Rs. 2600/- per cent for the entire 1.45 acres of land acquired. In this appeal the claimants restrict their claim for compensation at the rate of Rs. 4000/- per cent.

3. The land acquired is in an important locality in Changanacherry town is clear from the award itself which states;

"The lands under acquisition in survey number 44/5A (37.63 acres) Sy. No. 43/31A (05.26 acres) and survey number 43/33A (21.04 acres) are situated near the Post Office and Municipal Office, Changanacherry, and the M. C. Road, the distance to the site from the M. C. Road through the T. B. road being 200 yards. The northern boundary of the site abuts the T. B. road. There are lanes on the eastern and western boundaries of the site. The southern boundary of the site abuts a poramboke pathway which is not, however, being used by the public now. The Taluk Office, Sub-Registrar''s Office and English High School Sadium and Hospital are also near the site. The lands are thus situated in a most important locality of Changanacherry town. Proximity to the Public Offices adds to the importance of the lands."

The acquired land is 150 metres from Changanacherry junction and 50 metres from the M. C. Road. The Special Surveyor, Land Acquisition examined as D.W. 1 on behalf of the State has deposed that the land acquired is adjacent to the Municipal Shopping Centre on the side of the M. C. Road. The Commissioner''s report Ext.C1 also shows that the Municipal Shopping Centre is situated in between the M. C. Road and the acquired land. The acquired land has road frontage on its north, west and eastern sides. The road on the north is an important road in the town, namely, the T. B. Road. From these materials available in the case it is clear that the acquired land is in a very important locality in the Changanacherry town.

4. The basic document Ext. B2 relied on by the land acquisition officer was not proved and the Court below was right in not relying on the same for fixing compensation. The lower Court has relied on Exts. Al and A2 proceedings to fix the compensation at Rs. 2600/ per cent Ext.A1 is the judgment in L.A.R. No. 25/1972 fixing compensation for the land acquired for the Municipal Stadium at Changanacherry at Rs. 3500/- per cent. The notification u/s 3(1) of the Act in regard to this acquisition was published in the gazette dated 19-8-1969. The acquisition relates to 60.230 cents of land situated about 1 1/2 furlongs away from the land involved in the present acquisition. This Court in appeal found that the compensation awarded was too high and by Ext. A2 judgment dated 16-6-1976 reduced the compensation to Rs. 2500/- per cent. The acquisition in the present case is more than four years after the acquisition involved in Exts. Al and A2. The land involved in that acquisition is 11/2 furlongs away and is not

 

located in such an important locality as in the present case. It is also common knowledge that there had been steep increase in price after 1969 and the price fixed for the land involved in Exts. Al and A2 cannot be the basis for fixing compensation in the present case. Ext.A3 dated 9-8-1968 is a sale deed conveying six cents of land with buildings for Rs. 18000/-. This document was relied on by the claimants in the acquisition involved in Exts. Al and A2. The judgment of this Court Ext A2 shows that deducting the value of improvements the land value for 6 cents of land conveyed under Ext A3 works out at the rate of Rs. 2880/- per cent. The group sketch Ext B1 shows that this land is close to the M. C. Road. Ext.A6 is the judgment in L.A.R. No. 24/1971 relating to the acquisition of 8 cents of land for widening the bus stand at Changanacherry. The notification u/s 3(1) of the Act relating to that acquisition was published in the Gazette dated 24-8-1967. The reference Court awarded land value at the rate of Rs. 4000/- percent. This Court in appeal as per Ext A7 judgment enhanced the land value to Rs. 4500/- per cent The land involved in this acquisition is adjacent to the M. C. Road. The group sketch Ext Bl shows that it is very near the land acquired in the present case. It is, however, situated in a much more important locality abutting the main road, namely, the M. C. Road and relates only to a small plot of land 8 cents in extent. The land involved in the present acquisition abuts the T. B. Road which is only a road leading to the main M. C. Road. Considering the location of the land involved in the present acquisition with all the advantages, it cannot be considered to be equal in value to the land abutting the main M. C. Road. Taking into account all aspects of the case, we are of the view that compensation at the rate of Rs. 3000A per cent would be the true market value of the land acquired on the date of the Section 3(1) notification in the present case. We, therefore, enhance the land value from Rs. 2600/- to Rs. 3000/- per cent for the entire extent of 1.43 acres of land acquired in this case.

5. Section 25 of the Kerala Land Acquisition Act corresponding to Section 23 of the Central Act 1 of 1894 provides for the matters to be considered in determining compensation to be awarded for the land acquired under the Act. Sub-section (2) of Section 25 enacts that "in addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition". Section 30 of the Kerala Act reads as follows: --

"Collector may be directed to pay interest on excess compensation -- 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 in such excess at the rate of four per centum per annum from the date on which he took possession of the land to the date of payment, of such excess into Court."

Section 30 corresponds to Section 28 of the Central Act 1 of 1894 as per which interest on the enhanced compensation is fixed at the rate of 6 per centum per annum. The Parliament by Act 68 of 1984 amended Central Act 1 of 1894 and the amendment provides for enahanced solatium at the rate of thirty per centum on the market value of the land acquired. Section 15(b) of the amending Act reads as follows :--

"15. Amendment of Section 23.-- In Section 23 of the principal Act-

(a)...............

(b) in Sub-section (2), for the words "fifteen per centum", the words "thirty per centum" shall be substituted."

The amendment provides also for enhanced interest. Section 18 of the amending Act is extracted below:-- ''

"18. Amendment of Section 28.-- In Section 28 of the principal Act,--

(a) for the words "six per centum", the words "nine per centum" shall be substituted;

(b) the following proviso shall be inserted at the end, namely : --

"Provided 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 centum 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 Court before the date of such expiry."

Sub-section (2) of Section 30 of the Amending Act makes these provisions retrospective 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". If. the amendment effected by the Central Act 68 of 1984 is applicable to the present case, there cannot be any doubt that the appellants are entitled to the enhanced solatium and interest as provided for in the Amendment Act. The Supreme Court in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, considering the amendment effected by Act 68 of 1984 states at page 1580 : - . ,

"6. The object of Parliament clearly was that the amended provisions of Section 23. Sub-section (2) and Section 28 should be applicable in determination, of compensation where proceedings before the Collector or the Court or the High Court or the Supreme Court were pending on 30th April, 1982 or were commenced after that date, even if such proceedings had finally terminated before the enactment of the Amending Act and no proceedings were pending before the Collector or the Court or the High Court or the Supreme Court at the date of enactment of the Amending Act, if the proceedings had not finally concluded before the enactment of the Amending Act and were pending on that date or were started subsequently, whether before the Collector or the Court or the High Court or the Supreme Court, the amended provisions of Section 23, Sub-section (2) and Section 28 would apply on their own terms in determining compensation. But by virtue of Section 30, Sub-section (2), the amended provisions of Section 23, Sub-section (2) and Section 28 were made applicable also where the proceedings were pending on 30th April, 1982 or were commenced after that date even though they might have finally come to an end before the enactment of the Amending Act Of course, if the proceedings had finally terminated on or before 30th April, 1982, the amended provisions of Section 23, Sub-section (2) and Section 28 could not possibly be intended to apply to the determination made in such proceedings. This was clearly the intendment of Parliament in enacting Section 30, Sub-section (2)."

It is further stated at page 1581 --

"It would not be a correct interpretation of Section 30, Sub-section (2) to say that the provisions of the amended Section 23, Sub-section (2) and Section 28 would be applicable in relation to an order passed by the High Court or Supreme Court only if the order is passed in appeal against an award made by the Collector or Court between 30th. April, 1982 and the commencement of the Amending Act. Even if an award is made by the Collector or Court on or before 30th April 1982 and an appeal against such award is pending before the High Court or the Supreme Court on 30th April, 1982 or is filed subsequent to that date, the provisions of the amended Section 23, Sub-section (2) and Section 28 would be applicable in relation to an order passed in such appeal by the High Court or the Supreme Court."

In the present case the award was passed by the Land Acquisition Officer on 24-1-1976 and the lower Court had passed its award on 28th Oct., 1978. This appeal against the decision of the lower Court was pending on the date on which Central Act 68 of 1984 amending the Land Acquisition Act 1 of 1894 came into force. The appellants will therefore be entitled to the benefits of the Amendment Act 68 of 1984 if the Act of Parliament amending the Central Act is applicable to the State of Kerala.

6. It is contended on behalf of the State that the acquisition in the present case is under the Kerala Land Acquisition Act and is governed only by its provisions and the Central Act 68 of 1984 amending the Land Acquisition Act 1 of 1894 can have no application to the present case.

Legislation relating to land acquisition falls under entry 42 of List III of the Seventh Schedule of the Constitution. Both Parliament and the State Legislature have power to pass law in regard to matters specified in List III. Article 254(1) of the Constitution expressly enacts :--

"If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters numerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void."

Clause (2) of Article 254 saves the State law in spite of such repugnancy "if it has been reserved for the consideration of the President and has received his assent". The Kerala Land Acquisition Act (21 of 1962) had received the assent of the President and was therefore in force in the State in spite of repugnancy with the Central Act 1 of 1894. The proviso to Article 254(2) of the Constitution reads :

"Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter includirfg a law adding to, amending, varying or repealing the law so made by the Legislature of State."

The Parliament is thus empowered to pass any law, to add to, vary, amend or repeal the. State law made under the proviso to Article 254(2) of the Constitution. Article 254 corresponds to Section 107 of the Government of India Act, 19351 with the difference that there is no provision in Section 107 corresponding to the proviso to Article 254(2) of the Constitution.

7. The Land Acquisition Amendment Act. 1984 passed by the Parliament applies to the whole of India except the State of Jammu and Kashmir. The State law providing for solatium at 15% and interest at 4% is repugnant to the Central Act 1 of 1894 as amended and varied - by Parliament as per the provisions in Sections 15 and 18 of Act 68 of 1984.

8. The Supreme Court in Zaverbhai Amaidas Vs. The State of Bombay, stated at page 757 : --

"Now, by the proviso to Article 254(2) the Constitution has enlarged the powers of Parliament, and under that proviso. Parliament can do what the Central Legislature could not u/s 107(2) of the Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State, when it relates to a matter mentioned in the Concurrent List. The position then is that under the Constitution Parliament can acting under the proviso to Article 254(2), repeal a State law. But where it does not expressly do so, even then, the State law will be void under that provision if it conflicts with a later "law with respect to the same matter" that may be enacted by Parliament."

It is further stated in the same page :--

"The principle embodied in Section 107(2) and Article 254(2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the , . Centre should prevail over that of the State."

 

The same principle is reiterated in a later decision of the Supreme Court in T. Barai Vs. Henry Ah Hoe and Another, . Justice A. P. Sen speaking for the Court after referring to Article 254 observed at page 155 .-

"15............ In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union Law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however x be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid b\\ virtue of the President''s assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the ''same matter''. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g. where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1)."

In the light of the principle discussed above Clause (2) of Section 25 and Section 30 of the Kerala Land| Acquisition Act (Act 21 of 1962) are repugnant to the provisions of Section 23(2) and Section 28 of the Central Act 1 of 1894 as amended and varied1 by Parliament as per Sections 15 and 18 respectively of Act 68 of 1984, and are therefore void. Section 23(2) and Section 28 of the Central Act as amended by Act 68 of 1984 apply to the acquisition of land effected under the Kerala Act. The appellants are therefore entitled to solatium at 30% of the total compensation awarded for the 1.43 acres of land acquired. They are also entitled to interest u/s 28 of the Central Act at 9% per annum on the enhanced amount of compensation from the date on which the State had taken possession of the land from them and at 15% from-, the date of expiry of one year after the date of taking possession.

9. We allow the appeal by enhancing compensation for the 1.43 acres of land acquired from Rs. 2600 to Rs. 3000/- per cent. The appellants are entitled to solatium and interest as staled above, and will also be entitled to proportionate costs in this appeal.

 