

(1977) 12 KL CK 0013

In the High Court Of Kerala

Case No : C.M.P. No. 9569 of 1977 in L.A.A. No. 305 of 1976 and C.R.P. No"s. 2435 and 2436 of 1976

Ommen Simon and Others

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 05-12-1977

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 25(2), 30
Land Acquisition Act, 1894 — Section 28

Citation : AIR 1978 Ker 130

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;P. Subramonian Poti, J;P. Janaki Amma, J

Bench : Full Bench

Advocate : C.S. Thomas, T. Unnikrishna Menon, K.A. Alexander and M.P. Vasudevan Nair, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—These three cases raise a common question in regard to the correctness of certain observations in a Division Bench Judgment of this Court in State of Kerala v. Periyar & Pareekanni Rubber Ltd., Palai ILR (1973) Ker 1 in which, the judgment was delivered by one of us (myself). The question is whether interest can be awarded on the statutory solatium provided for under the Land Acquisition Act, in reckoning the compensation payable.

2. C. M. P. No. 9569 of 1977 : The question arises on an application preferred to correct the decree passed by this Court in L. A. A. No. 305 of 1976. The decree, which was drawn up by the office, limited interest at 4 per cent to the amount of compensation awarded, excluding solatium. The office, when drawing up the decree, followed the principle of the Supreme Court decision reported in Union of India (UOI) Vs. Shri Ram Mehar and Others, . We have examined this case. The Supreme Court's decision was with reference to Section 4 (3) of the Land Acquisition (Amendment and Validation) Act (1967), which is as follows:

"4 (3). -- Where acquisition of any particular land covered by a notification under Sub-section (1) of Section 4 of the principal Act published before the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967, is or has been made in pursuance of any declaration u/s 6 of the principal Act, whether made before or after such commencement, and such declaration is or has been made after the expiry of three years from the date of publication of such notification, there shall be paid simple interest, calculated at the rate of six per centum per annum on the market value of such land, as determined u/s 23 of the principal Act, from the date of expiry of the said period of three years to the date of tender of payment of compensation awarded by the Collector for the acquisition of such land:

Provided.....,"

It will be seen that the above Section limits the award of interest to the "market value of the land" and not to the compensation adjudged by the Court, Quite different are the provisions we are concerned with, in the Kerala Land Acquisition Act, or, for that matter, in the Travancore Land Acquisition Act, (which was the Act concerned in the decision reported in ILR (1973) Ker 1. In the Kerala Land Acquisition Act, S, 25 (1) provides that: "in determining the amount of compensation, the Court shall take into account" the considerations mentioned therein. Sub-section (2) of the said Section provides:

"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."

It is, thus, clear that the solatium provided by Sub-section (2) is part of the compensation that is envisaged by sub-section (1) of the said section. The award of interest is provided for in Section 30 of the Act, which is as follows:

"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 65 compensation, the award of the Court may direct that the Collector shall pay interest on 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."

Interest being on the compensation awarded by the Court, on the statutory provisions, it is clear that, interest must attach to the solatium also. We are, therefore, of the opinion that, the office was wrong in drawing up the decree by deleting the interest on the amount of solatium. C.M.P. No. 9569 of 1977 is allowed. No costs.

3. C.R.P. Nos. 2435 & 2436 of 1976: These revisions arise out of orders passed by the Sub Court, Ernakulam, dismissing the applications for amendment of the decree in so far as it denied interest on solatium. The decree, as drawn up, did not allow interest on the solatium. Applications for correction praying, inter alia,

to award interest on the solatium also, was disallowed, on the basis of the Union of India (UOI) Vs. Shri Ram Mehar and Others, . In our judgment in C.M.P. No. 9569 of 1977 we have examined the decision in Union of India (UOI) Vs. Shri Ram Mehar and Others, , and held that the failure to award interest on solatium cannot be sustained. The decision of the Supreme Court in Union of India (UOI) Vs. Shri Ram Mehar and Others, was concerned with the provisions of a Statute, quite differently worded, from the terms of which, it is clear that interest is only as (on) the market value, and as such, has no application.

4. The observations in State of Kerala v. Periyar & Pareekanni Rubber Ltd., Palai ILR (1973)Ker 1 in paragraph 18 of the Judgment are as follows :

"The Advocate-General's contention that interest awarded cannot cover the solatium is well founded in view of the recent decision of the Supreme Court in Union of India (UOI) Vs. Shri Ram Mehar and Others, ."

In the light of the statutory provisions of the Land Acquisition Act, which we have examined in C.M.P. No. 9569 of 1977 in L.A.A. No. 305 of 1976, the above observations were unfounded and cannot be accepted as correct. The learned Advocate-General who appeared in these cases, also accepted the position.

These revision petitions are allowed and the applications for correction of the decree will stand allowed to the extent of allowing interest on the amount of solatium awarded also. There will be no order as to costs.