
(1972) 12 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 817 of 1970

Ramesh Chandra Seal

APPELLANT

Vs

Deputy Commissioner and Collector, Kararup and others

RESPONDENT

Date of Decision : 22-12-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 Guw 119

Hon'ble Judges : P.K. Goswami, C.J.;Baharul Islam, J

Bench : Division Bench

Advocate : J. P. Bhattacharjee and S. N. Medhi, for the Appellant; D. K. Hazarika, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P. K. Goswami, C. J.

1. This application under Art, 226 of the Constitution of India is directed against an award of the District Judge. Lower Assam Districts, made on 31st August 1970 under the Defence of India Act, 1962, hereinafter called "the Act".

2. Briefly the facts are as follows: The Government of Assam, by a notification dated 17th March 1964, acquired some land of the petitioner measuring 52 Bighas 1 Katha 7 Lechas, covered by different Dags and Pattas of Rangiya town, Mouza-Panduri of District Kamrup. The land had earlier been requisitioned u/s 29 of the Act. The Collector granted compensation to the petitioner at the rate of Rs. 3000/- per bigha. The petitioner, being aggrieved by the amount of compensation determined by the Collector, sought for a reference u/s 37 of the Act. The petitioner states that the Collector made undue delay in referring the application to the arbitrator. The said application was, however, taken up by the learned arbitrator for disposal and was numbered as Misc. Case No. 2 of 1969. The learned arbitrator disposed of the above case along with two other applications and increased the valuation of the land to Rs. 10,000/- per bigha in

place of Rs. 20,000/- per bigha claimed by the petitioner. The arbitrator did not however grant any interest on the excess amount determined by him for the period from the date of taking over possession of the land till payment of such excess, amount. It is, however, admitted that the petitioner himself had not claimed any interest before the arbitrator. Hence this application for a writ of Mandamus directing the respondents to enhance the compensation for the land acquired and to grant interest on the excess amount of compensation determined by the arbitrator from the date of acquisition of the land till the date of payment of compensation.

3. Mr. J. P. Bhattacharjee, the learned counsel for the petitioner, does not press the claim for compensation before us. He, however, submits that the arbitrator failed to exercise his jurisdiction in not granting the interest which the petitioner was entitled to under the general law. He frankly submits that there is no provision for granting interest in the Defence of India Act, but relies upon the decision of the Supreme Court in *Satinder Singh and Others Vs. Amrao Singh and Others*, in support of his submission. He also draws our attention to a decision of the Assam High Court in *The All India Tea and Trading Co. Ltd. Vs. Sub-divisional Officer of Mangaldai and Others*, which was based on the above decision of the Supreme Court.

4. The Assam case was out of an application under Article 226 of the Constitution. To the objection raised on behalf of the respondents with regard to non-maintainability of the application under Article 226, the Court observed as follows:-

"The Collector has rejected the prayer of the petitioner to pay the interest on the ground that there is no express provision in the Act itself which provides for payment of interest. That, in our opinion, is an erroneous view of the Act which has been taken by the Collector. That being so, a mandamus can be issued to the Collector to consider the application of the petitioner for payment of interest in the light of the observations which we have already made, namely, that the petitioner has got the right to get interest on the amount of compensation from the date of his dispossession till the date of payment of the compensation money." (Para 7)

The Assam case was with reference to Section 4 (3) of the Assam Land (Requisition and Acquisition) Act (25 of 1948). The Supreme Court's decision was in connection with a group of seven appeals arising from certain land acquisition proceedings and the law was settled as follows:

"When a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily 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 should 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." (Para 19)

The Supreme Court followed the principle which has been recognised ever since the decision in *Birch v. Joy*, (1852) 3 HLC 565, where Viscount Cave, L. C., observed:

"this practice rests upon the view that the act of taking possession is an implied agreement to pay interest."

The Supreme Court also referred to AIR 1928 P. C. 287 (*Inglewood Pulp and Paper Co., Ltd v. New Brunswick Electric Power Commission*) where the Privy Council held as follows:

"Upon the expropriation of land under statutory power. whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest upon the principal sum awarded from the date when possession was taken, unless the statute clearly shows a contrary intention."

It also referred to further observation of the Privy Council, which may be quoted:

"The right to receive the interest takes the place of the right to retain possession and is within the rule."

It is, therefore, well settled that a person is entitled to claim interest in addition to compensation even though interest is not provided under the Law of Acquisition.

5. The point, therefore, that arises for consideration is whether, in the absence of a claim made by the petitioner before the Arbitrator, we will be justified in issuing a writ of mandamus to the Arbitrator to consider the claim of interest made for the first time before this Court.

6. In the *Arambam Manikchand Singh and Others Vs. The Manipur Administration*, relied upon by the learned counsel for the petitioner a claim for interest had been made before the Collector who rejected the same on a misapprehension of the law. This is not the case here. After taking all matters into consideration we feel that we will not be justified in this case to issue a writ of mandamus to the Arbitrator to consider the question of interest that may be allowed to the petitioner when he has increased the amount of compensation which had been awarded by the Collector at the first instance. After all, writ of mandamus is not as of right and we do not feel compelled by the circumstances of this case to use our discretionary power to issue the writ prayed for.

7. In the result, the application fails and is dismissed. There will, however, be no order as to costs.

Baharul Islam, J.

8. I agree.