

(1991) 02 AP CK 0025
In the Andhra Pradesh High Court
Case No : W.A. No. 363 OF 1986

RF (Rasat and Farhat) Charitable Trust, Hyderabad	APPELLANT
Vs	
Special Deputy Collector (General) Land Acquisition, Hyderabad and others	RESPONDENT

Date of Decision : 07-02-1991

Acts Referred:

Andhra Pradesh Housing Board Act, 1956 — Section 40, 40
Constitution of India, 1950 — Article 14, 19, 226
Evidence Act, 1872 — Section 115, 12(2)
Interest Act, 1839 — Section 1
Land Acquisition Act, 1894 — Section 12(2), 15, 18, 22, 4(1)

Citation : AIR 1992 AP 130 : (1991) 1 ALT 598

Hon'ble Judges : P. Venkiatarama Reddi, J; Lakshmana Rao, J

Bench : Division Bench

Advocate : Mr. M.S. Narayanacharyulu, for the Appellant; A.G. and Govt. Pleader, for H.M.A. and C. Venkata Krishna, for the Respondent

Judgement

P. Venkatarama Reddi, J.—Whether reference to civil Court u/s 18 of the Land Acquisition Act has to be directed, on the facts of the case, is the question that falls for consideration in this appeal.

2. The acquisition of the land and building belonging to the petitioner-Trust under the provisions of the Andhra Pradesh Housing Board Act, 1956 for the purpose of execution of a housing scheme by the Housing Board, has given rise to this writ proceeding. u/s 40 of the Housing Board Act, the Housing Board may acquire the land either by entering into an agreement with the land owners or by way of compulsory acquisition in the manner provided by the Land Acquisition Act, 1894 as modified by the A. P. Housing Board Act. Sub-section (2) of Section 40 of the Housing Board Act declares that "the acquisition of any land or any interest therein for the purpose of this Act shall be deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894." Section 40-A of the Housing Board Act lays down the modifications subject to which the Land

Acquisition Act shall apply. The modification relevant for our purpose is the one contained in clause (a) which reads as follows :

"(a) The publication of a draft notification u/s 22-A shall be substituted for and have the same effect as publication in the Andhra Pradesh Gazette, and in the locality of a notification under sub-section (1) of Section 4 or a declaration u/s 6 of the said Act has been previously made and is in force..."

That is how the provisions of the Land Acquisition Act are relevant here though the acquisition is under the A. P. Housing Board Act. The occasion for filing the writ petition against which the present writ appeal is directed has arisen on account of the refusal of the Land Acquisition Officer to refer the matter to the civil Court. After the protest was recorded by the appellant against the award, the Land Acquisition Officer declined to make the reference on the ground that the appellant had waived the right for claiming higher amount under the terms of an agreement entered into between the appellant and the A. P. Housing Board. The writ petition has been filed seeking a writ of mandamus directing the respondents to make a reference u/s 18 of the Land Acquisition Act to the City Civil Court, Hyderabad. The learned single Judge affirmed the order of the Land Acquisition Officer and dismissed the writ petition. Hence the present writ appeal before us

3. Following are the relevant facts:

The appellant-writ petitioner is a public charitable trust which was constituted on 14-1-1972 by a Deed of Trust executed by Prince Muffakham Jah. The corpus of the Trust consisted of a building known as "Mahbob Mansion" situate at Malakpet, Hyderabad with the adjoining structures and appurtenant land of about Ac. 42-00. The said property was made over to the Trust by means of a registered "Indenture" executed by the donor Prince Muffakham Jah on 20th March 1972. It appears that even by that time the trustees were negotiating with the Andhra Pradesh Housing Board for the sale of the said property and this fact is evident from the recitals in the Indenture. One of the trustees, Ataur Rehman who has filed the present writ petition was authorised by the other two trustees, namely, Prince Muffakham Jah and Sri Nadhirshah Mulla, to act, plead and represent for and on their behalf in all the proceedings relating to the disposal and acquisition of "Mahboob Mansion". This authorisation was given on 25.3.1972. An agreement was executed on 3rd July 1972 by the Trustee, Sri Ataur Rehman acting on behalf of the Trust. The other party to the agreement is the Andhra Pradesh Housing Board represented by its Chairman.

4. It is necessary to notice the salient terms of the agreement. It is recited in the agreement that at a meeting held on 14-2-1972, the Housing Board decided to acquire the appellant's land by mutual consent for an agreed consideration as mentioned in the agreement. It is also recited that in order to obtain absolute and unencumbered title to the said property it was felt desirable to have recourse to the provisions of the Land Acquisition Act. The extent of land is

mentioned as Ac.42-30 guntas together with structures and trees standing thereon. The total compensation payable to the appellant is mentioned as Rs. 43,45,110/-. If the actual extent of land is less than that, the agreement provides for proportionate reduction at the rate of Rs. 1,01,640/- per acre when payable. It is specifically stated that the "compensation amount" of Rs. 43,45,110/- or such other reduced amount shall "include the statutory disturbance charges (solatium) of 15% under the Land Acquisition Act". Clause (iv) of the agreement categorically states that "under no circumstances, the First Party shall be entitled to the payment of any other sum except the aforesaid sum of Rs. 43,45,110/- or part thereof as provided in the preceding para." It is reiterated in clause (vii) that the said amount "shall include and be inclusive of the compensation, the disturbance charges and the statutory interest" and the first party "shall not claim any other sum or sums before the Land Acquisition Officer". It is also agreed under Clause (vii) that "the First Party under any circumstances shall not move or have the matter referred to the Competent Court in respect of compensation payable to him or in respect of compensation awarded by the Collector Land Acquisition, in terms of the agreement." Moreover in clause (viii) it is stipulated that "the First Party shall not be entitled to claim from the Second Party either by way of interest or otherwise any sum of sums on the ground of delay" or on the ground of pendency of the proceedings. Under clause (v) the First Party (appellant) agreed that the possession of the land will be given to the Housing Board through the Land Acquisition Officer "immediately" and that the appellant will not be entitled to the statutory interest of 4% or 6% in respect of the compensation fixed for the period between taking over of possession and the actual payment of compensation.

5. It appears that even by the date of this agreement, a notification u/s 22-A of the A. P. Housing Board Act declaring the intention of the Board to make a housing scheme for the area in question was published in the Andhra Pradesh Gazette dated 18-5-1972. This is deemed to be the notification u/s 4(1) of the Land Acquisition Act by virtue of Section 40A referred to supra. After the agreement was executed by the appellant, the Chairman of the Housing Board sent a requisition to the Land Acquisition Officer for the acquisition of "Mahboob Mansion" with the structures and appurtenant land. The Government of Andhra Pradesh by G.O. Ms. No. 93 (Housing) dated 9-9-1974 authorised the Special Deputy Collector (General), Land Acquisition, Hyderabad (1st respondent herein) to exercise the powers of the Collector under the Land Acquisition Act. After considering the report of the enquiry u/s 5A, the draft declaration under S. 6 of the Land Acquisition Act was approved by the Government and published in the Andhra Pradesh Gazette on 6-5-1975. As against the area of Ac.42-30 guntas notified by the Housing Board u/s 22-A, Ac.42-25 guntas was the extent specified to be acquired in the declaration u/s 6 of the Land Acquisition Act. Pursuant to the notice u/s 9 of the Land Acquisition Act served on the appellant on 13-6-1975 the appellant submitted the documents in support of its title. This was followed by a claim petition filed by the appellant before the Land Acquisition

Officer on 16-7-1975. In that petition, the appellant mentioned that the Housing Board had offered to purchase the land at the rate of Rs. 21/- per sq. yard and the Trust accepted the offer and therefore he claimed the land value at the rate of Rs. 21/- per sq. yard. The appellant also claimed solatium at 15% u/s 23(2) of the Act on the compensation to be awarded. The appellant complained against the delay in acquisition and requested for expeditious payment of compensation.

6. There was no progress in acquisition proceedings for nearly three years. Evidently there was some rethinking at the Government level about the compensation to be paid to the land-owner during this interregnum. Pursuant to certain directions issued by the Government on 27-5-1978, the Housing Board invited the Trustee Sri Ataur Rehman for a meeting at the Housing Board's office on 23-11-1978 for the purpose of negotiating the rate of the land under acquisition. It may be noticed at this stage that under S. 79 of the Housing Board Act, the Government is invested with the power to give directions to the Housing Board which may be necessary or expedient for carrying out the purposes of the Act. The Minutes of the meeting held on 23-11-1978 were communicated to the Trustee on 8-1-1979. The Minutes show that the Trustee was requested to reduce the cost of the land, but the Trustee was not agreeable for the same. The Trustee adverted to the inordinate delay that had taken place and expressed the view that the Trust could get much more if the matter was referred to the civil court. The Chairman of the Board explained to him that irrespective of the merits of the legal claims, the Trust should not claim anything more than the amount that was negotiated previously. It is useful to extract the concluding part of the Minutes:

"He (trustee) accepted that he will not claim 15% solatium in view of the agreement already entered into and also agreed not to insist on the H. B. for Ban Guarantee for the amount payable by the H. B. but, however, requested to expedite the L.A. proceedings and pay the compensation expeditiously. He has specifically indicated that no reduction of cost of land is acceptable to the Trust.

It was resolved to address the Government to accord permission to proceed with the acquisition at the cost already negotiated and handover possession very urgently for implementation of Housing Scheme."

On receipt of a copy of the Minutes, the Trustee Sri Ataur Rehman wrote a letter dated 13-1-1979 to the Chairman of the Housing Board pointing out a "serious omission" in the Minutes. In the said letter he maintained that at the meeting he claimed interest at the current rate and also indicated that subject to the approval by the other Trustees, the rate of interest was negotiable.

7. Thus, it is seen that the appellant claimed solatium at the statutory rate, over and above the amount agreed upon in reply to Section 9 notice in the year 1975 and at the meeting held in November 1978, he seems to have claimed interest on the amount to be awarded.

8. In May 1979, the Trustee, Sri Ataur Rehman addressed a letter to the Chief

Minister of Andhra Pradesh. In that letter he referred to some proposal to acquire the land for Marketing Committee instead of Housing Board. The Trustee pointed out that the land acquisition proceedings came to a standstill from 1975 onwards and as a result of the pendency of these proceedings, the Trust was not able to accomplish its charitable objectives. Ultimately he requested the Hon^{ble} Chief Minister to de-notify the property. This request was not acceded to. Then came G.O. Ms. No. 4, (Housing, Municipal Administration and Urban Development Department) dated 8th January 1980. The material part of the G.O. at para 3 is extracted hereunder:

"Government having considered the matter carefully hereby permit the Andhra Pradesh Housing Board to go ahead and finalise the Agreement already entered into with the Royal Family Charitable Trust for sale of "Mehboob Mansion" to the Board at the negotiated rate i.e., Rs. 21 /-(RupeesTwenty one only) with no claim for solatium. The Chairman, Andhra Pradesh Housing Board is requested to get the Land Acquisition proceedings completed and take possession of the land through the Special Deputy Collector (Land Acquisition), Hyderabad District."

In para 4, the Land Acquisition Officer was advised to split up the amount of Rs. 43,45,110/- payable as per the agreement in such a way as to comply with the provisions of the Land Acquisition Act. Soon after this G.O., the Award was passed on 16-1-1980. In the said award, the compensation amount of Rs.43,32,406/- payable for Ae.42-25 guntas (inclusive of solatium) was split up as follows in keeping with the instruction issued by the Government:

1. Value of the land ... Rs. 25,12,794-90
2. Value of structures ... Rs. 12,14,194-40
3. Value of trees ... Rs. 40,140-00

Total: Rs. 37,67,129-30

4. Solatium at 15% ... Rs. 5,65,275-70

Total compensation: Rs. 43,32,405-00

It may be noted that the rate per sq. yard works out to Rs. 21 /- if the total compensation (inclusive of solatium) is taken into account. However, it works out to Rs. 1825ps per sq. yard if the element of solatium is excluded. In the award, the Land Acquisition Officer observed that the rate agreed upon is reasonable and represents the market value of the land under acquisition.

9. Soon after the award was passed, possession of the land and buildings was taken over by the Housing Board on 21-1-1980. On service of notice of passing the award u/s 12(2) of the Act, the appellant received the compensation amount under protest on 2-2-1980. At the same time, he filed objections to the award on 25-1-1980. The appellant contended that the Land Acquisition Officer ought to have awarded compensation of Rs. 1 1/2 crores apart from solatium and interest and the market value was fixed without reference to the relevant principles. The

appellant requested for reference to the civil Court under S. 18 of the Land Acquisition Act for the proper determination of compensation. By the impugned order dated 24-3-1980 the Land Acquisition Officer (3rd respondent) declined to make reference by a reasoned order. He held that in-view of the agreement entered into between the appellant and the Housing Board, the appellant must be deemed to have waived its right to seek a reference under S. 18 and to ask for higher compensation. The Land Acquisition Officer also referred to the fact that the appellant did not at any time deny or go back from any of the terms of the agreement including the renunciation of the right to seek reference. Challenging this order, W.P. 1622/ 80 was filed and the relief sought for was to make a reference to the civil Court u/s 18 of the Land Acquisition Act. (As already stated, the learned single Judge dismissed the writ petition and held that (1) the agreement dated 3-7-1982 entered into between the Trust and the Housing Board was valid and binding and acted upon by both the parties; (2) as per the said agreement, the Trust has waived the right to seek reference u/s 18 of the Act and thus contracted out of the beneficial provisions of the Land Acquisition Act; and (3) even if the reference is maintainable, the reference will be futile and will not serve any purpose for the reason that under S. 25(1) of the Land Acquisition Act (as it then stood) the Court is precluded from awarding any amount in excess of the amount claimed by the landowner pursuant to the notice given u/s 9. It may be stated that the last finding of the learned single Judge is based upon the assumption that in the claim petition filed in reply to Section 9 notice, the appellant-Trustee agreed for the sum fixed in the agreement. This assumption is not correct.

10. The present writ appeal has been filed by the unsuccessful writ petitioner. The learned Counsel for the appellant Sri Narayana-charyulu, vehemently contended that the appellant satisfied all the conditions for making a reference under S. 18, when once these conditions are satisfied there was no discretion left with the Land Acquisition Officer to make or not to make a reference, that it is not open to the Land Acquisition Officer to deny the right of reference by relying upon the terms of an agreement between the appellant and the requisitioning Department, that it is for the civil Court to judge the validity, applicability and effect of the agreement, that the Housing Board did not adhere to the terms of the agreement, that the principle of waiver or estoppel has no place in the face of the specific statutory provisions conferring the right on the aggrieved landowner to seek reference and that the learned single Judge also erred in holding that the reference, even if maintainable, will be otiose and purposeless. The learned Counsel further argued that the agreement which was entered into with the Housing Board cannot be put against the appellant for denying reference to the civil Court under the provisions of the Land Acquisition Act, that too, when the respondents themselves did not act according to the terms of the agreement within a reasonable time. The learned Counsel, inter alia relied upon the judgment of Chinnappa Reddi, J. in W.P. No. 561/77 dated 7-3-1978 which was "confirmed in Writ Appeal No. 184/78.

11. On the other hand, the learned Advocate-General Mr. Venugopal Reddy, appearing for the respondents has supported the reasoning of the learned single Judge and contended that the appellant had consciously waived his right to seek reference to civil Court and to claim higher compensation and such waiver is not prohibited by law. He contended that the agreement had always been regarded by both the parties as valid and binding, that there was no breach of any of the terms of the agreement by the respondents and there was no condition that the award should be passed and possession should be taken within a particular time. The learned Advocate General contends that the appellant shall not be allowed to resile from the solemn undertaking. He also referred to Section 79 of the Andhra Pradesh Housing Board Act; which confers supervisory jurisdiction of the Government and submitted that the delay, if any, had occurred on account of the intervention of the Government in exercise of its legitimate powers and such delay cannot be taken advantage of by the appellant to go back from the terms of the agreement. The learned Advocate General strongly relied upon the judgment of the Supreme Court in *State of Assam and Another Vs. Jitendra Kumar Senapati and Others*, .

12. Before dealing with the rival contentions, let us take stock of the salient features of the case. By means of private negotiations, the appellant Trust and the Housing Board agreed that the trust property viz., Mahboob Mansion with the appurtenant structures and land should be made over to the Housing Board for an agreed price. The Housing Board could have straightway entered into an agreement for the purchase of the property under S. 40(1) of the Andhra Pradesh Housing Board Act. In order to avoid possible disputes with regard to the title, the parties thought it fit to have recourse to the procedure and machinery provided under the Land Acquisition Act. Thus, the arrangement devised by the parties which had its origin in a contractual agreement was sought to be worked out within the statutory framework of the Land Acquisition Act. Under the terms of the agreement, the appellant Trust categorically agreed to receive an amount of Rs.43,45,110/- or such lesser sum that may be calculated on the basis of the actual measurement. It is crystal clear from the agreement that this amount shall be inclusive of solatium of 15%. The appellant also agreed specifically to forego the claim for statutory interest allowable on the compensation amount or any other additional sum despite the delay, if any, in the conclusion of the acquisition proceedings. It is also significant to note that the appellant had given a definite undertaking to the effect that under no circumstances it will move or have the matter referred to the competent court in respect of the compensation payable or awarded by the Collector in terms of the agreement. The payment of amount is linked up with the date of taking possession of the land and buildings. But no time limit is stipulated either for taking possession of land or for passing the award. It is not in dispute that payment has been made immediately after possession was taken pursuant to the award. The appellant was of course ready and willing to give possession. But it took eight long years to implement the arrangement and to conclude the acquisition. There were attempts to resile from

the agreement by both sides in the interregnum. As far as the appellant is concerned, he made a claim for solatium in addition to payment of market value at Rs. 21/- per sq. yard in reply to Section 9(3) notice issued in the year 1975. In the year 1978, pursuant to the directives of the Government, the Housing Board wanted to negotiate with the appellant for a reduction in the agreed amount for which the appellant did not agree. In the course of the said negotiations the appellant took the opportunity to claim reasonable interest on the compensation amount to be paid, but it has not been acceded to. In the year 1980, the Government gave clearance to the Housing Board to go ahead with the acquisition at the rate already agreed upon, without conceding the claim for solatium or interest. The award was passed by the Land Acquisition Officer soon thereafter in conformity with the orders issued by the Government. In the award, the total amount agreed upon between the parties was split up in such a way as to provide the element of solatium in order to comply with the statutory requirement. Possession was taken over immediately thereafter and the compensation amount was received by the appellant under protest, it is to be noted that at no point of time the appellant called upon the Housing Board to perform its part of obligations under the agreement within the stipulated time, nor did the appellant at any time question the validity or subsistence of the agreement. It is with this background that we have to appreciate the rival contentions.

13. As already noticed, the learned counsel for the appellant contends that the Land Acquisition Officer was not competent to consider the scope, effect and binding nature of the agreement and that he has no option but to refer to the matter to the civil Court u/s 18 of the Act, when once the terms of Section 18 read with S. 31 are , satisfied. The learned Counsel submits, that . the appellant made the application stating the grounds of objections within the time stipulated by sub-section (2) of Section 18 and the amount of compensation was received- by the appellant under protest as per the proviso to Section 31. It is therefore incumbent upon the Land Acquisition Officer to refer the matter to the civil Court, argues the learned counsel. The argument of the learned counsel though plausible it is, cannot, in our view, be sustained. When the appellant has approached this Court for directing reference to the civil court u/s 18, it is the duty of this Court to examine whether the appellant had waived his right to seek for reference or whether there is any other legal bar disentitling the appellant from getting the relief sought for. The appellant has come to this Court seeking to enforce the alleged legal right said to have been vested in him. Whether such legal right can be claimed by the appellant is the matter that immediately falls for consideration. If at the threshold there is a legal impediment for directing reference, the relief under Article 226 of the Constitution has to be necessarily refused. It would be inappropriate to direct the reference first and then relegate it to the civil Court to decide whether the claimant is entitled in law for reference of the dispute to the civil Court. The judgment of Chinnappa Reddi, J. (as he then was) in W. P. No. 561/77 relied upon by the appellant's Counsel in this context

does not really help him. In particular, the following observations are sought to be relied upon by the learned Counsel:

"The Collector who is required to make the reference is only concerned with the question whether the award has been accepted or not with the conduct of the parties prior to the making of the award. If the award passed by the Land Acquisition Officer is not accepted and if the party seeks a reference, the Land Acquisition Officer is bound to make a reference. He cannot rely on an anterior agreement to decline making a reference. Such an agreement may perhaps be an answer to the claim for enhancement of compensation once the reference is made, but it cannot be a ground for declining to make a reference.... Whether an agreement has been validly cancelled or whether there are good reasons for not enforcing the agreement may be matters which a Court on reference may properly consider but, surely, they are not matters which the Land Acquisition Officer can properly adjudicate when a reference is sought."

It is to be noted, in that case there was no stipulation in the agreement barring reference to the civil Court on the question of adequacy of compensation. It is also not out of place to point out that in the case decided by Chinnappa Reddi, J., the landholder who entered into an agreement with the Life Insurance Corporation agreeing for compensation at a fixed sum, issued a notice to the Corporation stating that the agreement would be treated as cancelled if payment was not arranged within 20 days from the date of receipt of the letter. No such notice or communication has been addressed in this case by the appellant despite the delay that had occurred. On the other hand, the agreement was throughout treated to be subsisting. The judgment of Gopalrao Ekbote, J. (as he then was) in *Peace Memorial Association, Anantapur* by its Secy. P. Lakshminarayana Reddy Vs. Collector, Anantapur and Another, has also been relied upon by the appellant's Counsel. The learned Judge observed in that case that the Land Acquisition Officer can no doubt withhold the reference if the application does not comply with the requirements of Section 18, but "it is not open to him to decide an application under S. 18 on merits of the objections raised therein and refuse to refer the matter to the civil court." Even this case does not assist the appellant. The question whether reference under S.18 should be directed despite the agreement to waive such right was not in issue in that case.

14. The learned Counsel for the appellant has also cited the decision of the Supreme Court in *Mohammed Hasnuddin Vs. State of Maharashtra*, and of Punjab and Haryana High Court in *Sher Singh v. Union of India*, AIR 1983 Punjab and Har 207 (FB) which laid down the principle that the civil Court can go behind the reference and examine whether the reference made under S. 18 complies with the conditions laid down for such reference. The effect of the agreement waiving the right to move for reference under S. 18 was not considered in those decisions. Moreover, in the instant case, we are still at the stage where the reference is yet to be made to the civil Court. Hence those decisions are of no

assistance to the appellant.

15. We have now to consider whether it is legally permissible to waive or give up the right to seek reference to a civil Court under S. 18 of the Act and if so whether on the facts of the case there is in fact a waiver of the said , right. The legal concept of waiver has been expounded in various decisions of the Supreme Court and in the legal treatises by well- y known jurists. The generally accepted connotation of the term "waiver" is "an intentional relinquishment of a known right or voluntary relinquishment or abandonment of a known existing legal right or conduct such as warrants an inference of the relinquishment of a known right or privilege. Waiver differs from estoppel in the sense that it is contractual and is an agreement to release or not to assert a right, estoppel is a rule of evidence." (Vide *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, .

16. It was observed by the Supreme Court in *Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co.*, after referring to the leading text books on contracts and American decisions that (at p. 694 of AIR):

"Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied. But an agreement to waive an illegality is void on grounds of public policy and would be unenforceable."

How far and to what extent a right flowing from a legal provision could be waived has been succinctly stated by the Supreme Court in *Shri Lachoo Mal Vs. Shri Radhey Shyam*, . The Supreme Court observed thus (at pp. 2214-15 of AIR):

"The general principle is that every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy..... If there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a . more extensive operation as a matter of public policy. In Halsbury's Laws of England, Volume 8, Third Edition, it is stated in paragraph 248 at page 143 :

"As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said can contract himself out of the Act, unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public policy. Statutory conditions may, however, be imposed in such terms that they cannot be waived by agreement, and, in certain circumstances, the legislature has expressly provided that any such agreement shall be void."

In *Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another*, the

Supreme Court pointed out that the essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of the relinquishment of such right. The Supreme Court while pointing out the distinction between waiver and estoppel observed as follows (at p. 1841 of AIR):

"Waiver is distinct from estoppel in that in waiver the essential element is actual intent to abandon or surrender right, while in estoppel such intent is immaterial. The necessary condition is the detriment of the other party by the conduct of the one estopped. An estoppel may result though the party estopped did not intend to lose any existing right. Thus voluntary choice is the essence of waiver for which there must have existed an opportunity for a choice between the relinquishment and the conferment of the right in question."

In the Full Bench judgment of the Patna High Court in *Bibi Amna Khatun and Others Vs. Zahir Hussain and Another*, it was pointed out that estoppel is a rule of evidence and waiver is a rule of conduct and that the principle underlying waiver and estoppel is the same, viz., that a party will not be permitted to approbate and reprobate.

17. What emerges from this well settled) legal position is that the rights and privileges" intended primarily for the private benefit of, the individual can be waived provided that! such waiver is not forbidden by law nor does it infringe the public policy or public rights. The waiver can be of either a contractual or statutory rights. But it is the nature of the right and its repercussions if any on the general public which determines the issue of the enforceability of the plea of waiver. For instance it has been held by the Supreme Court in *Basheshwar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, that the fundamental right to equality and equal protection of law cannot be waived because Article 14 is in the nature of an admonition addressed to the State and does not directly purport to confer any right on any person as some of the other Articles such as Article 19. In *Shri Lachoo Mal Vs. Shri Radhey Shyam*, the Supreme Court saw no objection in the landlord waiving the benefit of exemption available for the constructions made after a particular date in regard to tenancy governed by the Rent Control Act. However in the case of *Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co.*, which is also Rent Control case, the Supreme Court refused to recognise the waiver of the right of the landlord to eject a tenant on the ground of sub-letting. It was contended that the right to sue for ejectment on the ground of sub-letting is a personal right for the benefit of landlord, the landlord could very well part with or renounce the same. The said argument has been repelled by the Supreme Court holding as follows *Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co.*, :

"In the instant case, the question is not merely of waiver of statutory rights enacted for the benefit of an individual but whether the Court would aid the appellant in enforcing a term of the agreement which S. 15 of the Act declares to be illegal. By enforcing the contract, the consequence will be the enforcement of

an illegality and infraction of a statutory provision which cannot be condoned by any conduct or agreement of parties."

The learned Counsel sought to rely upon this decision. However the situation with which the Supreme Court concerned was quite different and the right sought to be waived therein does not bear any comparison to the nature of the right conferred by Sec. 18 of the Land Acquisition Act. The waiver by the landlord would be in the teeth of the prohibition enacted by Sec. 15 of the Bombay Hotels and Lodging House Rates Control Act. In the instant case, we do not see any legal objection for waiving the right conferred by Sec. 18 of the Act on the landowner to move the civil Court for the enhancement of compensation.

18. The right to claim enhanced compensation or for that matter the right to seek reference to the civil Court with a view to get the enhanced compensation is a right intended solely for the benefit of the landholder. It is purely a personal right conferred on him. If such right is waived or given up by his voluntary action, no considerations of public policy would arise, much less would there be any negation of public rights. Nor is there any prohibition in law against waiving the right conferred on him u/s 18. We do not therefore visualise any legal impediment for applying the doctrine of waiver.

19. The Courts have given effect to the agreement fixing compensation payable under the Land Acquisition Act by mutual consensus. As long back as in 1922, the Privy Council in *Fort Press Company Ltd. v. Municipal Corporation of the City of Bombay* AIR 1922 PC 365 held that the agreement made between the parties fixing the price for the property under acquisition was incapable of being enforced in the Court in the ordinary way. The Privy Council repelled the argument that when once the proceedings for compulsory acquisition have been set on foot, the interested parties cannot come to any binding agreement regulating the amount of purchase price. Their Lordships observed:

"There is nothing whatever in the Land Acquisition Act itself to negative any such right. If the parties before the institution of the proceedings contemplated by the Act, choose to agree, they were perfectly competent to do so and there is nothing whatever in the words of the Act to suggest that this power is thereby taken away. The Act certainly does not directly affect such a result,..... Their Lordships think that the agreement made, which is now established beyond dispute is an agreement which bound the parties and that the High Court exercising their appellate jurisdiction were right in the view they took." In *State of Assam and Another Vs. Jitendra Kumar Senapati and Others*, the Supreme Court was dealing with a case where the parties to the land acquisition proceedings agreed to receive certain amount as compensation with a rider that they would make no further claim provided the actual payment is received by a stipulated date. The agreed amount though paid belatedly was accepted by them without demur. However, they made a claim before the Collector claiming interest. The claim for interest having been rejected by the Collector, the aggrieved parties moved the High Court. The High Court of Assam held that the

Collector was bound to pay interest on the amount awarded at 6% per annum from the date of taking possession of the land to the date of payment. The High Court interpreted the word "compensation" in the agreement as not inclusive of solatium and interest which were statutorily payable under Sees. 23 and 34 of the Act. On appeal by the State, the Supreme Court reversed the judgment of the High Court and upheld the order of the Collector declining to grant interest. The Supreme Court thus recognised the validity of an agreement for receipt of compensation under the Land Acquisition Act at a quantified sum without any further entitlement for solatium and interest. A Division Bench of the Calcutta High Court in Lily Ghosh and Others Vs. State of West Bengal, held that as the appellant-landowners had waived their right, they were not entitled to the statutory allowance under S. 23(2) of the Land Acquisition Act. The learned Judges observed (at p. 331 of AIR):

"The question, however, is whether there can be a waiver of a right under a mandatory provision of law. It has been stated in Maxwell's interpretation of Statutes, 12th Ed. page 323 that every one has a right to waive and agree to waive the advantage of a law made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy. The provision of S. 23(2) does not involve public right or public policy. It has been enacted for the benefit of a particular person, namely, the owner of the land. Waiver of the benefit conferred by S.23(2)"on the owner of the land, will not infringe any public right. It is true that S. 23(2) is mandatory, it is obligatory for the Government to pay the additional sum of 15 per cent, but such obligation will arise when the acquisition is compulsory in nature and not where the acquisition made at the instance of the owner of the land and under an agreement between him and the Government as it had happened in the present case. It has been observed in Craies on Statute Law (7th Ed., page 269), "But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the Court." In view of the above principles of law, the owner of the land is entitled to waive the benefit of the payment of the additional sum of 15 per cent as provided in S. 23(2) of the Land Acquisition Act. In our opinion, the appellants have waived their right to the additional sum and after such waiver they are precluded from laying a claim to the same."

The above decisions make it clear that an agreement foregoing the claim for compensation over and above the sum stipulated in the agreement is binding on the party though the acquisition is under the provisions of the Land Acquisition Act. The statutory entitlement by way of solatium and interest could be validly foregone by the landholders. Logically it follows that the right to seek reference to the Civil Court with a view to get enhanced compensation can also be waived in law. We are not inclined to accept the argument of the learned counsel that the appellant could not have waived the right conferred by Sees. 23 and 34 of the

Land Acquisition Act on the¹ operation of the principle that there can be no estoppel against a statute. In the absence of prohibition in the statute operating against such waiver and having regard to the avowed purpose and object of the relevant statutory provisions, such principle has no application. It does not lie in the mouth of the appellant to plead contrary to the terms of the agreement, It is not out of place to mention that the agreement entered into by the appellant as a result of negotiations was not without consideration or benefit to the appellant, though in retrospect, the terms of the agreement may not seem to be as beneficial to the appellant as expected. Thus, viewed from any angle, it is not possible to say that an agreement of this nature is contrary to public policy or otherwise illegal.

20. Coming to the next question, we are of the view that on the undisputed facts of this case, the appellant had waived its right to take any steps for claiming anything more than the amount stipulated in the agreement including the right to seek reference to the civil Court. We have already noticed the various terms of the agreement according to which an amount of Rs. 43 lakhs and odd agreed to be received was the "total compensation" and it was specifically declared in the agreement that it shall include solatium and statutory interest. The clause in the agreement which is of immediate relevance is the clause which says that "the first party under any circumstances shall not move or have the matter referred to the competent Court in respect of compensation payable to him or in respect of compensation awarded by the Collector, Land Acquisition, A. P. Housing Board in terms of this agreement.". It was also expressly stipulated that the appellant shall not be entitled to claim by way of interest or otherwise any sum or sums on the ground of delay in the completion of the land acquisition proceedings. The amount as stipulated in the agreement having been paid to the appellant and the respondents having acted as per the agreement, the appellant is estopped from making a claim contrary to the terms of the agreement and insist upon the enforcement of the rights that he had waived in law. It is to be noted that the agreement had not been put an end to by any mode known to law. The appellant had not at any point of time attempted to repudiate the agreement. No doubt, there, was unusual delay in the completion of the proceedings under the Land Acquisition Act and payment of the agreed amount to the appellant. But going by the plain terms of the agreement, it cannot be said that the time was the essence of contract. The time for payment is linked up with the date of taking over possession and for taking possession, no time limit has been stipulated. The only time schedule prescribed in the agreement is the payment of a sum of Rs. 15 lakhs at the time of "taking possession" and the payment of balance within six months of the taking possession of the property. Admittedly the entire amount has been paid at the time of taking possession. If the appellant had felt that the performance of the obligations under the agreement was being unduly delayed by the respondents, the appellant could have issued a notice stipulating a reasonable time for performance. But nothing to that effect has been done. On the other hand, there was an affirmation of the agreement as late as in

November 1978. It is evident from the minutes of discussions held on 23-11-1978 that the appellant stood by the agreement even at that stage though it made a claim for payment of reasonable interest. Even before the Land Acquisition Officer, the appellant did not file any representation seeking to resile from the agreement on the ground of delay or otherwise. Under these circumstances, it would be an exercise in futility to contend that the agreement had lost its binding force on account of the passage of time. The mere claim of interest though apparently inconsistent with the terms of the agreement, does not have the effect of repudiation, much less termination of the agreement. In view of the specific claim made by the appellant for payment of interest, whether or not he is entitled to the same is a different matter, but the validity and binding force of the agreement remains unaffected by the claim for interest made on 23-11-1978. The waiver of the rights by the appellant under the terms of the agreement therefore remained intact.

21. The learned Counsel for the appellant next contends that the appellant never entered into an agreement with the State Government or the Land Acquisition Officer and that on the strength of the agreement entered into with the Housing Board, the plea of waiver or estoppel cannot be raised against the appellant. We cannot accept this contention. The acquisition of land is by the Housing Board itself under Sections 40 and 40-A of the A.P. Housing Board Act. Sub-section (2) of Section 40 of the Housing Board Act enjoins that the Housing Board shall acquire the land in the manner provided by the Land Acquisition Act as amended by the A.P. Housing Board Act. Thus, the Land Acquisition Officer comes into the picture only incidentally and it is the Housing Board which is primarily concerned with the acquisition. The agreement entered into with the Housing Board is therefore binding on the appellant.

22. For the reasons stated above, we decline to give the direction sought for in the writ petition. At the same time, we feel that in the interests of justice, the appellant-Trust shall be allowed certain additional amount as compensation to offset the loss caused to the appellant by the delay in the completion of the acquisition proceedings. This Court, in exercise of jurisdiction under Article 226, is not powerless to mould the relief in appropriate cases in order to give finality to the litigation and to render be exercised within a reasonable time.

23. It is axiomatic that statutory powers should justice to the aggrieved party. The facts of this case reveal that there was inordinate delay on the part of the respondents in finalising the proceedings and tendering the compensation amount agreed upon. It is not anybody's case that the appellant was not ready and willing to deliver possession of the property or that the appellant had by its conduct contributed to the delay. The appellant is a non-communal public charitable trust. Though according to our judgment the appellant is precluded from moving the civil Court for enhancement of compensation under the provisions of the Land Acquisition Act, we feel that it would be unjust at this stage to relegate the appellant to a civil suit for claiming compensation for the

delayed payment of the amount agreed upon de hors the provisions of the Land Acquisition Act. It is to be noted that the writ petition was filed by the appellant in the year 1980 - soon after the refusal of the appellant's request to refer the matter to civil Court and the appellant has been bona fide litigating for its cause in these writ proceedings. In Chandra Bansi Singh v. State of Bihar ATR 1984 SC 1767 where there was delay in taking over possession- of the land, the Supreme Court directed that the equitable compensation shall be awarded on the special facts of the case. The facts of the case on hand also justify the grant of such additional compensation in the form of interest. Payment of interest at a reasonable rate was demanded by the appellant for the first time on 23-11-1978. The interest so demanded was in respect of the ascertained sum of money due to the appellant under the terms of the agreement. The grant of interest would therefore be not contrary to the provisions of the Interest Act, 1839 which was in force at the relevant time. Keeping in view all these considerations, we quantify the additional compensation to be paid to the appellant as Rs. 5 Lakhs. This amount has been arrived at approximately by calculating the interest at 10% from 23-11-1978 to 1-2-1980 on the amount already awarded as compensation. The Housing Board has to pay the said amount of Rs. 5 Lakhs to the appellant within a period of three months from the date of receipt of this Judgment. Subject to this direction, the Writ Appeal is dismissed. No costs.

24. Appeal dismissed.