
(2009) 04 P&H CK 0216
In the Punjab And Haryana At Chandigarh

Smt. Lalita Pathania and Others

APPELLANT

Vs

Randip Singh Pathania and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Land Acquisition Act, 1894 — Section 28A

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8

Citation : AIR 2009 P&H 141 : (2008) 4 CivCC 422 : (2010) Supp CivCC 594 :
(2009) 155 PLR 680 : (2010) 1 RCR(Civil) 176

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of four F.A.Os bearing Nos. 1319, 1320 of 1989 filed by the claimants and 1346 and 1347 of 1989, filed by Union of India against the impugned award of the Arbitrator dated 29.9.1989. The facts are, however, extracted from F.A.O. No. 1319 of 1989.

2. Briefly, the facts of the case are that Randip Singh son of Am in Chand (since deceased) filed a petition u/s 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short, "the Act") on 31.5.1989, claiming himself to be sole heir of Amin Chand for determining the amount of compensation of the land acquired by the Union of India vide "J" Notice No. 101/SLAC dated 9.3.1970, published in the Punjab Government Gazette dated 13.3.1970, measuring 18 kanals 4 marlas bearing khasra No. 30R/8/2, 9, 12/3 and 13/1 owned by late Amin Chand and a share in land measuring 26 kanals 19 marlas bearing khasra No. 30/8/2, 7, 8/1, 2/1, 239/2, 240/2/2, 240/2/3 belonging to Jumla Malkan, situated in Village Lamini, Tehsil Pathankot. It was alleged that the compensation awarded by respondent Nos. 1 to 3 is highly inadequate because even the land of other owners in the village which was acquired by way of same notification has been assessed @ Rs. 350/- per marla in a Letters Patent Appeal by a Division Bench of the High Court. It was further claimed that the Land Acquisition Collector has ignored the strategic location and

relevant sale deeds for assessing the value in respect of the land in question. Besides, Randip Singh also claimed solatium @ 30% per annum and interest @ 15% per annum onwards till payment.

3. Randip Singh had claimed himself to be sole legal heir of Amin Chand (deceased), on the basis of Will dated 23.8.1978 vide which he alleged to have got the acquired land and other property situated in village Lamini. He filed a writ petition before the High Court for appointment of an Arbitrator which was allowed on 28.7.1986. Consequently, the State Government issued a notification No. 22/I/89-5H(V) 17550 dated 23.5.1989 for appointment of the Arbitrator to determine the amount of compensation and also to specify the person or persons to whom the said compensation is payable in respect of the acquired land.

4. Vide order dated 11.7.1989 passed by the Arbitrator, respondent Nos. 4 to 7 were also impleaded. In the written statement filed by respondent Nos. 4 to 7, the alleged Will dated 23.8.1978 was denied. It was claimed that Amin Chand (deceased) had three sons namely, Kuldip Singh, Randip Singh and Jagdip Singh (since deceased) who is survived by his widow Lalita Pathania. Besides the three sons, Amin Chand (deceased) also left behind three daughters namely Sharda Jaswant Singh, Vimal Kanta and Vinod Parmar. The respondents thus maintained that they are Class I heirs under the Hindu Succession Act, 1956 and were entitled to receive 1/7th share each out of the compensation.

5. On the pleadings of the parties, following issues were struck on 26.7.1989:

1. Whether the compensation already awarded was inadequate? OPA
2. What was the fair and reasonable amount of compensation at time of acquisition? OPA
3. Whether Amin Chand deceased made a valid Will dated 23.8.1978 in favour of the petitioner Randip Singh Pathania? OPA
4. Whether the application is bad for mis-joinder of causes of action? OPA
5. What was the share of Amin Chand in the property of Jumla Malkan? OPA
6. Relief:

6. In order to prove his case, Randip Singh examined Amar Nath Patwari as PW-1, Hari Chand as PW-2, Bua Ditta Mal as PW-3 and himself appeared as PW-4. Respondent Nos. 1 to 3 examined Pritam Singh Girdawar Office of Military Land Acquisition as RW-1 and on behalf of respondent No. 4 to 7, Vinod Kanta Attri appeared as RW-2, Om Parkash as RW-3 and Gulab Singh as RW-4.

7. Issue Nos. 1 and 2 were taken up together and it was decided by the Arbitrator that the compensation should be Rs. 350/- per marla. There is no dispute in the present case in respect of the amount of compensation, but while deciding issue No. 3, the Arbitrator held that the Will dated 23.8.1978 is valid and Randip Singh alone is entitled to receive enhanced compensation on the

basis of the Will. Issue No. 4 was not pressed. Issue No. 5 was decided in favour of the applicant and while deciding issue No. 6, Arbitrator awarded 15% solatium and 6% interest per annum.

8. Mr. M.L. Sarin, Learned Senior Counsel appearing on behalf of the appellants who are the widow of Jagdip Singh and three daughters of Amin Chand (deceased) has vehemently contended that firstly the Will in question is not genuine, secondly even if the Will is accepted, it does not cover the enhanced compensation of the acquired land and thirdly, the amount of solatium and interest be enhanced.

9. To begin with, leaned counsel for the appellants has submitted that the aforesaid appeal was admitted on 11.12.1989 and operation of the impugned order was stayed. The said order was modified on an application i.e. CM. No. 1583-CII of 1990 moved by respondent No. 1. (Randip Singh) on 7.5.1990 according to which it was ordered that 1/7th of the amount of compensation be paid to Randip Singh and rest of the amount be deposited in the FDR. The said order reads as under:

After hearing counsel for the parties, ex-parte order dated December 11, 1989, is modified. One-seventh of the amount of compensation so determined is ordered to be paid to Randeep Singh Pathania, respondent. The rest of the amount would be deposited by the official respondents in the nationalized bank within four months from today in a fixed deposit initially for a period of three years. This amount will be paid in accordance with the directions to be given in appeal. Civil Misc. is disposed of in the terms indicated.

10. Learned Counsel for the appellants has further submitted that the acquired land was already in possession of the Army Authorities since 1964 and was formally requisitioned on 9.3.1970 and acquired on 13.3.1970. Mutation was sanctioned in favour of Union of India on 21.3.1972. It is contended that since the property was already acquired during the life time of Amin Chand (deceased), therefore, he did not mention a word about the acquired land in his Will dated 23.8.1978 as he was not left with its ownership. The Will Ex.P-2 is in Urdu. However, it has been translated in Hindi by the learned Counsel for the appellants, which runs into six pages, who read over the entire Will in the Court in the presence of learned Counsel for the respondents and contended that Amin Chand (deceased) was a retired Superintendent of Police, who had given minutest details in the Will about his entire movable and immovable properties and has also mentioned that the land of village Lamini which stands in his name be given to his son Randip Singh but reference to the Court compensation of the acquired land was conspicuous by its absence. It is argued that since the testator knew that the acquired land does not belong to him and has already been mutated in the name of Union of India on 21.3.1972, therefore, he only referred to that land in Lamini which was standing in the revenue record in his name. The exact word used in the Will in this regard is that "my son Randip Singh shall get entire agricultural land of village Lamini which is in my name". It was also

submitted by learned Counsel for the appellants that the testator has specifically mentioned in the Will that "if any amount is realized from the property - or pension in his life time then the same shall be distributed amongst the poor". On these premises, learned Counsel for the appellants has submitted that basically the Will is not genuine and is shrouded by suspicion because it is unregistered and nothing has been given to the daughters. But even if it is presumed that the Will is genuine, there is no provision made by the testator in favour of the legatee Randip Singh to take away the amount of compensation arising out of the acquired land of village Lamini. Learned Counsel also referred to the statement of Randip Singh, who while appearing as PW-4 has categorically stated that "unacquired land of village Lamini is in my possession since the death of my father" He has also stated that "my father had given some applications for enhancement of compensation but could not pursue them, those were consigned. My father had asked me to pursue for enhancement of compensation but I was in service so I could not do so. Since 1983, I have been pursuing for the enhancement of compensation and filed writ petition in the High Court". Learned Counsel also submitted that the testator had himself tried his best to get enhanced compensation of the acquired land and had even asked respondent No. 1 to pursue the same but he could not pursue it and the same was consigned, therefore, he did not make any reference of the enhanced compensation in his Will dated 23.8.1978 (Ex.P2) and had ultimately died on 24.4.1980. It is also contended that according to respondent No. 1 himself, he started pursuing the matter of enhanced compensation from the year 1983 by filing a writ petition on the basis of which the Arbitrator was appointed on 23.5.1989, thus, it is submitted by learned Counsel for the appellants that the matter with regard to the enhancement of compensation came to an end during the life time of Amin Chand (deceased) as his applications were consigned. Therefore, there was no occasion for him to mention about the amount of enhanced compensation which was neither pending before any authority nor there was any likelihood in future to be realized as his applications had already been consigned. Thus, Amin Chand (deceased) gave rest of his land which was unacquired, to Randip Singh by observing in the Will that the land of village Lamini which stands in his name be given to him which, in fact, as per the statement of Randip Singh (PW4) is already in his possession as he has stated that unacquired land of village Lamini is in his possession since the death of his father.

11. As against this, learned Counsel for respondent No. 1, has vehemently argued that validity of Will has never been challenged since no suit has been filed by the appellants and that the land which has been given by the testator to respondent No. 1 situated in village Lamini, would also include the land which has been acquired.

12. I have considered the rival contentions of both the learned Counsel for the parties and have perused the record with their assistance.

13. Undisputed facts are that the land in question was already in possession of

Army/Union of India since 1964 which was formally acquired vide notification dated 9.3.1970 and published on 13.3.1970. During his lifetime, owner of the acquired land (Amin Chand) filed applications for enhancement of compensation but could not pursue them, therefore, the same were consigned. The Will Ex.P-2 dated 23.8.1978 deals with all members of the family and the entire property in the hands of the testator (Amin Chand) who died on 24.4.1980. After his death, Randip Singh (Respondent No. 1) started pursuing the case" for enhancement of compensation since the year 1983.

14. From the aforesaid resume of the admitted facts, it is apparent that at the time when the Will Ex.P-2 was drafted by the testator Amin Chand (deceased), his applications filed for enhancement of compensation were already consigned, meaning thereby there was neither any likelihood of receiving any enhanced compensation when the Will was drafted nor was there any chance of any enhancement for compensation in future. Thus, in my view, the testator who happened to be a retired I.P.S. Officer has rightly not mentioned anything about the enhancement of compensation of the acquired land in the Will in question and had only referred to the land of village Lamini to be given to Randip Singh (respondent No. 1) which stood in his name. Thus, I am in full agreement with the arguments raised by learned Counsel for the appellants that at the time of execution of the Will by the testator and his death, the testator Amin Chand was left with no interest in the acquired land and, therefore, the Arbitrator had committed a palpable error while interpreting the Will in a manner by which respondent No. 1 has been held entitled to receive the entire amount of compensation of the acquired land. Thus the finding recorded by the Arbitrator on issue No. 3 is hereby reversed and it is held that respondent No. 1 shall not be entitled to receive the entire enhanced compensation on the basis of the Will in question. It is also held that there is no reference of the enhanced compensation of the acquired land in the Will.

15. Mr. Sarin, learned Counsel for the appellants has next argued that the land was acquired in the year 1970 and the Arbitrator was appointed after expiry of 19 years in the year 1989, therefore, the appellants should be awarded solatium @ 30% and interest @ 9% per annum instead of solatium awarded @ 15% and interest @ 6% per annum by the Arbitrator. In this regard learned Counsel for the appellants referred to para 79 of the judgment reported as Union of India (UOI) Vs. Hari Krishan Khosla (Dead) by Lrs., which reads as under:

This is a case in which for 16 years no arbitrator was appointed. We think it is just and proper to apply the principle laid down in Harbans Singh Shanni Devi v. Union of India (Civil Appeal No. 470 and 471 of 1985, disposed of by this Court on February 11, 1985). The Court held as under:

Having regard to the peculiar facts and circumstances of the present case and particularly in view of the fact that the appointment of the arbitrator was not made by the Union of India for a period of 16 years, we think this is a fit case in which solatium at the rate of 30 percent of the amount of compensation and

interest at the rate of 9 percent annum should be awarded to the appellants. We are making this order having regard to the fact that the law has in the meanwhile been amended with a view to providing solatium at the rate of 30 percent and interest at the rate of 9 percent per annum.

Learned Counsel for the appellants has also referred to a Division Bench judgment of this Court in the case of Madan Lal and Ors. v. Union of India and Ors. 1993(3) RLR 743 in which relying upon the order in Civil Appeal Nos. 4688-94 of 1989 and 2674-85 of 1989, referred to above, it was held that solatium and interest has been rightly awarded by the Arbitrator.

16. Mr. Rajiv Sharma, learned Counsel for Union of India has vehemently contended that Union of India has filed two appeals i.e. F.A.O. Nos. 1346 and 1347 of 1989 against the impugned award of the Arbitrator and has challenged only the award of solatium and interest on the ground that there is no provision in the Act to grant solatium and interest on the principle amount determined by the Arbitrator. Mr. Sharma has also vehemently contended that a Full Bench decision of this Court in the case of Hari Krishan Khosla (decd.) and Others Vs. The Union of India (UOI) and Another, , whereby it was held that Section 8(3)(a) of the Act ultravires Article 14 of the Constitution of India and the claimants were held entitled to receive solatium @ 15% per annum along-with interest @ 6% per annum has already been reversed by the Apex Court in the case of Union of India v. Hari Krishan Khosla (Dead) by LR's (supra) in which it has been held that Section 8(3)(a) of the Act is in no way violative of Article 14 of the Constitution of India and as such the award by the Arbitrator of 15% solatium and 6% interest was set aside.

17. Learned Counsel for Union of India has further relied upon a decision of the Supreme Court in the case of Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others, and Dayal Singh and Others Vs. Union of India (UOI) and Others, . He submits that in the case of Union of India v. Chajju Ram (supra), the question came before the Supreme Court with regard to the validity of Defence of India Act, 1971 on the premise that absence of provision for payment of solatium and interest for acquisition of land is hit by Article 14 of the Constitution of India. In the said case, 15% solatium and 6% interest on the amount of compensation was not granted. The High Court held that Section 31 of Defence of India Act, 1971 is ultra vires Article 14 of the Constitution of India and the claimants were entitled to solatium @ 15% and interest @ 6% per annum. It is further submitted that in the said case, while relying upon an earlier decision in the case of Union of India v. Hari Krishan Khosla (supra), it was held that solatium and interest cannot be granted because the Act is silent and the provisions are not ultra vires Article 14 of the Constitution of India. In para 35 of the said case, the Supreme Court, has held that the question as to whether the amount of solatium and interest which the claimants have been paid should be directed to be refunded. Again, the order recorded in para 79 of the case of Union of India v. Hari Krishan Khosla (Dead) by LR's (supra) was noticed and it was observed as

under:

In these cases also, it is said that the arbitrators have not yet been appointed despite the demand made in this behalf by the respondents. The amount of solatium at the rate of 15% per annum and the interest there upon had been paid in the earlier eighties when the Punjab and Haryana High Court declared the said Act ultravires Articles 14 of the Constitution of India.

In the peculiar fact and situation obtaining in these cases and inasmuch as the amount sought to be recovered are small which were paid to the respondents a decade back, we are of the opinion that interest of justice shall be met if the appellants are directed not to recover the amount of compensation from the respondents pursuant to or in furtherance of this judgment. However, we hasten to add that this direction shall not be treated as a precedent".

18. Learned Counsel for Union of India has further submitted that in the case of Dayal Singh and Ors. v. Union of India and Ors. (supra), the question was that if the land is acquired under the Act then whether an application u/s 28-A of the Land Acquisition Act, could be filed for redetermination of compensation. The Supreme Court observed in negative and held as under:

The right to get the amount of compensation redetermined must expressly be provided by the statute. Such a right being a substantive one cannot be sought to be found out by implication nor can the same be read therewith.

The appellants, thus, cannot invoke a right by reading the same into a statute although admittedly there exists none.

It is a well settled principle of law that the Court cannot read anything into the statutory provision which is plain and unambiguous. The court has to find out legislative intent only from the language employed in the statutes. Surmises and conjectures cannot be restricted to for interpretation of statutes.

19. Learned Counsel for Union of India has further submitted that the amount of solatium and interest which has been awarded but has not been distributed to the extent of 6/7th share as per the order of stay obtained on 7.5.1990 passed in F.A.O. No. 1320 of 1989 filed by the claimants, the award of solatium and interest should be deleted from the order of the Arbitrator.

20. After giving my thoughtful consideration to the arguments raised by learned Counsel for the parties, I am of the view that the appeals filed by the Union of India deserves to be allowed. No doubt, that at the time of passing of the order by the Arbitrator when he awarded solatium @ 15% per annum and interest @ 6% per annum, the law laid down by the Full Bench in the case of Hari Krishan Khosla (Dead) and Ors. (supra) was holding the field as the order passed by the Arbitrator is of 29.9.1989. However, the said judgment of the Full Bench has now been over-ruled by the Supreme Court in the case of Union of India v. Hari Krishan Khosla (Dead) by LRs (supra) and the fact that there is no provisions in the statute for the award of solatium and interest, the claimants are not entitled

to solatium and interest at all.

21. Insofar as the order passed in Civil Appeal Nos. 4688-94 of 1989 and 2674-85 of 1989 which is recorded in para 79 of the judgment of Union of India v. Hari Krishan Khosla (Dead) by LR's (supra), is concerned, that too has been referred to by the Supreme Court in the case of Union of India v. Chajju Ram (Dead) by LR's and Ors. (supra) and it has been held that in the peculiar facts and situation pertaining in the case and the amount sought to be recovered are smaller which has already been paid to the claimant a decades back, shall not be got refunded, but at the same time, it has been held that this direction shall not be treated as a precedent. Since the Apex Court has also held that directions contained in the case of Union of India v. Chajju Ram (Dead) by LR's and Ors. (supra), should not be treated as a precedent, therefore, the claimants cannot take advantage of the order passed in Civil Appeal Nos. 4688-94 of 1989 and 2674-85 of 1989.

22. Now the question is as to whether the claimants are entitled to interest @ 6% per annum on equitable ground. Learned Counsel for the appellants has further relied upon a decision of the Apex Court in the case of Union of India v. Parmal Singh and Ors. J.T. 2008 (12) S.C. 611. In this case, lands in village Mola Agri (now District Ghaziabad) were requisitioned by the Central Government in 1963 u/s 29 of the Defence of India Act, 1962 (for short, "the Act of 1962"). Subsequently, the said lands were acquired u/s 36 of the Act of 1962 in the year 1965. The Special Land Acquisition Officer, Meerut determined the compensation payable to the respondents in the year 1966. Not being satisfied with the compensation determined by him, the claimants sought reference to arbitration u/s 37(2) of the Act. In one of the arbitrations, vide an award dated 8.9.1986, compensation @ Rs. 2.60 per sq.yd with interest at 6% per annum from the date of acquisition till date of deposit with solatium at the rate of 30% per annum on the additional amount from the date of acquisition till date of payment was awarded. The Arbitral award was challenged by the claimants by way of writ petitions before the High Court. The High Court vide its order dated 1.4.1999 increased the compensation to Rs. 3.60 per sq. yd but award of solatium was set aside and the interest was reduced to 6% per annum from the date of acquisition till the date of payment/deposit. Union of India filed SLP against the order of High Court, challenging the award of interest at the rate of 6% per annum. Relying upon the decision of the Supreme Court in the cases of Hari Krishan Khosla and Chajju Ram (supra), alleging that there is no provision for granting solatium or interest in the Act. In the case of Union of India v. Parmal Singh (supra), the Apex Court observed as under:

When a property is acquired, and law provides for payment of compensation to be determined in the manner specified, ordinarily compensation shall have to be paid at the time of taking possession in pursuance of acquisition. By applying equitable principles, Courts have always awarded interest on the delayed payment of compensation in regard to acquisition of any property. When a

requisitioned property is acquired, as possession had already been taken from the landholder, the compensation becomes payable from the date of acquisition. When a property is requisitioned, the land-owner is compensated for the denial of possession by paying compensation based on the rent it would have fetched had it not been requisitioned. But once the property is acquired, the rent is stopped, as compensation based on open market value becomes payable against acquisition. Therefore while interest is payable, it is not awarded from the date of requisition (taking over of possession) but only from the date of acquisition. This principle has been recognized and applied by Courts consistently. Whenever the Arbitrator of High Court increases the compensation for the acquired land, the increase relates back to the date of acquisition as they are merely doing what the Special Land Acquisition Officer ought to have done in the first instance. Therefore, interest is awardable on the increased amount also from the date of acquisition. The said general principle will not apply in two circumstances. One is where a statute specifies or regulates the interest. In that event, interest will be payable in terms of the provisions of the statute. The second is where a statute or contract dealing with the acquisition specifically bars or prohibits payment of interest on the compensation amount. In that event, interest will not be awarded. Where the statute is silent about interest, and there is no express bar about payment of interest, any delay in paying the compensation or enhanced compensation for acquisition would require award of interest at a reasonable rate on equitable grounds. We are fortified in this view by the enunciation in *Satinder Singh and Others Vs. Amrao Singh and Others*, which has been reiterated in *Hirachand Kothari (Dead) by Lrs Vs. State of Rajasthan and Another*, .

23. It was also held that the property was acquired in the year 1965 and more than four decades have elapsed whereas the landowners are yet to get compensation in entirety. In these circumstances, the Supreme Court upheld the award of interest at the rate of 6% per annum on the compensation amount on equitable grounds. Thus, taking into consideration the totality of circumstances, F.A.O. Nos. 1319 and 1320 of 1989 filed by the claimants/landowners against the award of the Arbitrator on issue No. 3 are allowed and the finding recorded thereunder is hereby reversed. F.A.O. Nos. 1346 and 1347 of 1989 filed by Union of India against issue No. 6 are allowed only to the extent that the appellants shall not be entitled to any solatium as it is not provided in the Statute. However, since the possession of the land in question was taken by Union of India in the year 1964 and the arbitrator was appointed in the year 1986, the claimants are held entitled to interest at the rate of 6% per annum on equitable grounds in terms of the decision of the Supreme Court in the case of *Union of India v. Parmal Singh (supra)*, from the date of acquisition till date of payment/deposit. However, in the facts and circumstances of these cases, the parties shall bear their own costs.