
(2008) 12 AP CK 0018

In the Andhra Pradesh High Court

Case No : Review C.M.P. No. 2760 of 2008 against C.M.A. No. 1077 of 1987

State of A.P.

APPELLANT

Vs

Attili Narayana Rao

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(1), 23(2), 25

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8(1)

Citation : (2009) 2 ALD 178 : (2009) 1 APLJ 50

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : Govt. Pleader for Civil Supplies, for the Appellant;

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This review petition has been filed by the State represented by the District Collector & Competent Authority, Visakhapatnam, requesting to review the order of this Court Dated 26-07-1989 granting interest and solatium, which is prohibited as per the judgment of the Division Bench in The Competent Authority, Special Deputy Collector, Land Acquisition (Defence), Hyderabad Vs. Thota Penta Reddy and Others, , and as land was acquired under Requisitioning and Acquisition of Immovable Property Act (30 of 1952).

2. The learned Counsel for the respondent resisted the application by submitting that there are judgments in support of the contention that there shall not be any discrimination in awarding compensation irrespective of the Act under which the acquisition was made, therefore, this Court was right in granting solatium and interest.

3. This Court through the Judgment dated 26-07-1989 observed as follows:

The award under appeal is dt.10-03-1987, i.e., after Section 23(2) of the Land Acquisition Act was amended in 1984. Hence solatium has to be granted at 30% and the interest at 9% per annum from 14-11-1972 for one year and thereafter

at 15% per annum till the date of payment. The appellant will be entitled to the interest at 6% per annum from the date of O.P. till the date of payment on the amount of solatium.

4. The learned Government Pleader representing the review petitioner submits that since there is no express provision in the Requisitioning and Acquisition of Immovable Property Act (30 of 1952), granting of interest and solatium are prohibited, therefore, the order has to be reviewed by deleting the direction to pay solatium and interest.

5. The learned Counsel for the review petitioner relied on a judgment of A.P. High Court in *The Competent Authority, Special Deputy Collector, Land Acquisition (Defence), Hyderabad Vs. Thota Penta Reddy and Others*, wherein a Division Bench of this Court observed as follows:

The reasoning of the Bench decision in *M. A. Waheduddin and Ors. v. The Collector, Hyderabad* (I supra) runs thus. Where a citizen is deprived of his property whether by way of acquisition or requisition, as the case may be: in exercise of the State's power of eminent-domain, the owner has to be compensated for the loss which he suffers by reason of such compulsory acquisition. True it is that there is no provision in the 1952 Act corresponding to Section 23(2) of the Land Acquisition Act, 1894. At the same time, there is also no provision excluding the payment of solatium. Solatium is included in the concept of compensation by necessary implication. Solatium is an amount in the shape of damages granted in lieu of the injury and the distress caused to the feelings of the owner. Thus solatium is a part and parcel of compensation. The Bench has referred to several decisions and text-books to come to said conclusion. We have carefully gone through the judgment and we must say, with great respect to the learned Judges, that none of the decisions or text-books cited do lay down that as a matter of principle the concept of compensation necessarily includes solatium. None of the decisions or text-books say that even though the statute does not provide, solatium must be awarded as a matter of rule. The several decisions and texts emphasise only the aspect, that a person who is compulsorily deprived of his property to serve a public purpose must be compensated "for all the loss incurred for the expulsion" and that the compensation to be awarded should not only include "the actual value of such lands but all damages directly consequent on the taking thereof under the statutory powers". There can be little doubt about the above principle. Indeed, Section 23(1) of the Land Acquisition act expressly recognizes these grounds and provides that they shall be taken into consideration in determining the compensation. All that the 1952 Act requires is that a just and fair compensation should be awarded. What is fair and just is a matter of factual determination taking all relevant material into consideration including those specified in Section 23(1) of Land Acquisition Act, 1894. But there appears to be no warrant to say that just and fair compensation must necessarily include recompense or consideration for compulsory acquisition in the shape of solatium. There is more

over an inherent difficulty in saying so. If it is said that solatium must be awarded in all cases, even if the statute does not so provide, question would immediately arise, at what rate? Whether it should be 5%, 10%, 15% or 30%. Suppose, the Parliament amends the Land Acquisition Act, 1894 and deletes Section 23(2) altogether Just as it has increased the solatium from 15% to 30%, it can also remove it. We therefore, do not think that any such broad proposition can be enunciated. Everyday the State acquires industrial and commercial undertakings, essential commodities and many other goods and enterprises. The Acts providing for such acquisition do not provide for payment of solatium and it has been never contended that solatium ought to be paid as a matter of law in such cases too. It is only because of and by virtue of Sub-section (2) of Section 23 of the Land Acquisition Act, 1894 that solatium is paid for the land acquired under that Act. Apart from Sub-section (2) of Section 23 solatium has no existence in law. Indeed, a Constitution Bench of the Supreme Court has said so in *Prakash Amichand Shah v. State of Gujarat and Ors.* 1985 (1) Scc 581. It is observed. "it cannot also be said as a rule that State which has got to supply and maintain large public services at great cost should always pay, in addition to a reasonable compensation, some amount by way of solatium. " this is also our respectful view. We are also of the opinion that in view of this decision of Supreme Court it is not necessary for us to refer, the matter to Full Bench on the ground that we are "disagreeing with an earlier Bench decision of this Court.

6. The learned Counsel for the respondent submits that the judgment rendered by the Division Bench has no relevancy in the present matter, in the light of the judgment rendered by the Supreme Court and relied on the following judgments.

7. In *P.C. Goswami Vs. Collector of Darrang*, wherein the Supreme Court while considering Assam Land (Requisition and Acquisition) Act (25 of 1948) and Section 23 of the Land Acquisition Act held as follow: "There is no justification for discriminating between an acquisition under one Act and an acquisition under another Act in so far as payment of solatium is concerned. This should be more so in respect of an acquisition to which the State Government is empowered to extend the provisions of the Land Acquisition Act. Thus, in the matter of payment of solatium, no discrimination can be made between acquisition under the Assam Act and those made under the Land Acquisition Act."

8. In *Mawahedduddin and Others Vs. The Collector, Hyderabad*, a Division Bench observed as follows:

The concept of compensation when exposed to the radiation of the above reasoning thus broached, the conclusion that could be reached are that: Solatium is some amount or damages allowed for injury or distress to the feeling of the owner to cover the disinclination caused to the owner due to displacement from his lands. The solatium is part of compensation and the compensation is intended to amend or recompensate the loss occasioned to the owner or injuries effected on the owner by exercise of eminent domain. We therefore hold that the word "compensation" u/s 8(1)(e) encompasses within its ambit the payment of

solatium under the given facts and circumstances of a case. The Arbitrator while awarding just compensation in considering the facts and circumstances, is also competent to award solatium at the rate of 15%. The Act by necessary implication did not exclude the application of this principle of payment of solatium. Accordingly, we direct the Competent Authority on the facts of this case to pay solatium on the total amount of compensation at 15% awarded to the appellants as part of the compensation determined by the authorities below and the appellants are also entitled for payment of interest at 4% per annum on solatium as well. Accordingly, the appeal is partly allowed, but in the circumstances, without costs.

9. In *State of Kerala and Others Vs. T.M. Peter and Others*, the Supreme Court while considering Section 34 of Town Planning Act and Section 25 of the Land Acquisition Act observed as follows:

The only discriminatory factor as between Section 34 of the Act and Section 25 of the Land Acquisition Act vis--vis quantification of compensation is the non-payment of solatium in the former case because of the provision in Section 34(1) that Section 25 of the Land Acquisition Act shall have no application. Thus, to achieve the virtue of equality and to eliminate the vice of inequality what I needed is the obliteration of Section 25 of the Land Acquisition Act from Section 34(1) of the Town Planning Act. The whole of Section 34(1) does not need to be struck down. Once we excise the discriminatory and therefore void part in Section 34(1) of the Act, equality is restored. The owner will then be entitled to the same compensation, including solatium, that he may be eligible for under the Land Acquisition Act. What is rendered void by Article 13 is only "to the extent of the contravention" of Article 14. The lancet of the Court may remove the offending words and restore to constitutional health the rest of the provision.

10. The trend of the above decisions clearly indicates that the provisions of the Land Acquisition Act can be made applicable to Requisitioning and Acquisition of Immovable Property Act (30 of 1952) and the solatium can be granted with interest. This Court after considering the material available on record observed that after Section 23(2) of the Land Acquisition Act was amended, claimants are entitled to solatium at the rate of 30% and interest at 9% per annum. After going through the order, I am of the view that there is no error apparent on the face of the record and there are no grounds to review the order.

11. In the result, the Review C.M.P. is dismissed. The claimants are at liberty to withdraw the amount lying in deposit of the District Court, Visakhapatnam. No order as to costs.