(2003) 07 JH CK 0027

In the Jharkhand High Court

Case No : A.F.O.D. No''s. 31 and 32 of 1988

State of Bihar (now Jharkhand) APPELLANT

Vs

Hari Prasad Sahu and Another and Moso Pahan RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 11, 30, 30(2)
Land Acquisition Act, 1894 — Section 23(2), 28

Citation : (2003) 4 JCR 73

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : Manjul Prasad, S.C. LC, Dilip Kumar Prasad, J.C. to S.C. LC and Manoj Kumar, J.C. to S.C. LC in F.A. No. 31 of 1988, Samim Akhtar S.C. II and A.K. Mehta, J.C. to S.C. in F.A. No. 32 of 1988, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—Both the appeals aforesaid filed by the appellant State of Bihar (now Jharkhand) are directed against the impugned judgment and award dated 11.12.1986 and 20.12.1986 respectively passed by Shri A.K. Verma, Special Sub-Judge, Ranchi passed in I.A. Case No. 100 of 1971 and 101 of 1971 where by and whereunder the quantum of compensation awarded by the Collector u/s 11 of the L.A. Act was enhanced. Both the appeals were heard together and are being disposed of by this order.

2. Plot No. 531 Khata No. 52 having an area of 24 decimals being Dhan III land of respondent Moso Pahan and Plot No. 429/2, Khata No. 24 having an area of 76 decimals being T and I land having a "Pacca" house thereon with tile roof of respondent Hari Prasad Sahu and others situate in village Harmu, P.S. and District Ranchi were acquired for Harmu Housing Scheme. Notification u/s 4 of the L.A. Act (hereinafter referred to as the said Act) was issued on 2.12.1964 and a declaration u/s 6 of the said Act was issued on 31.3.1965. The award of

the Collector u/s 11 of the said Act was made on 22.5.1971 and the possession of the said land was taken on 30.3.1972 and the amount of compensation as per the award of the Collector has already received by the respondents though under protest.

3. The respondents after receiving the compensation amount as per the award of the Collector challenged the said award u/s 18 of the said Act and it gave rise to the reference cases aforesaid. The award of the Collector made in land acquisition case No. 165 of 1966 has valued the market price of the land on the date of the Notification u/s 4 of the said Act @ Rs. 25,000/-, Rs. 18,750/- and, Rs. 15,125/- per acre regarding Class I, Class II and Class III lands respectively and the land of the respondent Moso Pahan being Class III land the compensation was assessed @ Rs. 15,125/- per acre and a sum of Rs. 3,630/- along with additional compensation @ 15% by way of solatium amounting to Rs. 544.50 paise total being Rs. 4,174.50 paise was awarded as compensation to Moso Pahan, whereas the valuation of the land of respondent Hari Prasad Sahu and others being T and I land was assessed at Rs. 13,137.36 paise and the valuation of the house standing on the said plot was assessed at Rs. 3,961.00, the total being Rs. 17,098.36 paise and on which additional compensation by way of solatium @ 15% was allowed which comes to Rs. 2,564.76 paise and the total compensation amounting to Rs. 19,663,12 paise was awarded as compensation as per the award of the Collector which the said respondent received under protest.

4. The case of the respondent Moso Pahan, inter alia is that valuation of the land in question fixed by the Land Acquisition Officer, Ranchi is very low, inadequate and improper and the prevailing market price in the area on the day of the Notification u/s 4 of the said Act is @Rs. 900/- per decimal and he is entitled to get compensation of his land @Rs. 900/- per decimal. It has also been stated that the said land is situated in the midst of the village and is fit for building purposes and the said land is situated in the Ranchi town area with all modern facilities and there is also school, college and government offices at a very short distance from the said land and the said land has great potential and lies in the fast developing area of the town. The case of respondent Hari Prasad Sahu and others is similar to that of the case made by respondent Moso Pahan. The further case of this respondent is that his house over the land under acquisition consist of five big rooms, two verandahs and compound wall all made of bricks and the value of the said house as per prevailing market price is Rs. 15,000/- and the Land Acquisition Officer has incorrectly assessed the valuation of the building standing on the land under acquisition and it is very low and inadequate and compensation was claimed @Rs. 900/- per decimal for the land besides Rs. 15,000/- being the prevailing market price of the house standing thereon.

5. In view of the oral and documentary evidence on the record, the learned Court below came to the finding that the compensation awarded by the I.A. Officer does not appear adequate as it does not reflect the market price prevailing at

that time and he assessed the proper market value of T and I land @ Rs 40,000/- per acre, T and II land @Rs. 35,000/- per acre and Dhan 1 land @Rs. 25,000/- and the land of Moso Pahan was valued @ Rs. 30,000/-per acre whereas the land of respondent Hari Prasad Sahu was valued @ Rs. 40,000/- per acre and the compensation was enhanced and besides that solatium @ 30% was allowed on the amount of compensation and besides that interest (r) Rs. 15% w.e.f. 3.3.1972 to 2.3.1973 and interest @ 9% w.e.f. 3.3.1973 till the payment of enhanced amount of compensation was also allowed. The learned Court below, however, did not find any cogent reason to enhance the valuation of the house of respondent Hari Prasad Sahu and others.

6. Assailing the impugned judgment and award of the learned Court below it has been submitted by Mr. Manjul Prasad, learned counsel for the appellant that payment of solatium @30% and interest @15% from 3.3.1972 to 2.3.1973 and further the interest w.e.f. 3.3.1973 till the payment of excess amount of compensation @9% per annum awarded by the Court is illegal and without jurisdiction in view Of Section 30 of the Land Acquisition (Amendment) Act, 1984. It has also been submitted that the award of the collector was prepared on 22.5.1971 and amount of compensation as per award of the Collector was paid prior to taking of possession on 30.3.1972 and as such the amended provision of Section 23 whereby rate of solatium has been enhanced to 30% as well as the amended provision of Section 28 whereby the rate of interest has been modified and enhanced has no retrospective application and the amount of solatium and the interest is payable as per the old provision in respect thereof contained in the said Act. It has also been submitted that the learned Court below did not properly construe Section 30 of the Land Acquisition (Amendment) Act. 1984 and has gravely erred in respect of the amount of solatium and the interest allowed by him in favour of the respondents. It has also been submitted that the appellant does not dispute the quantum of compensation at the enhanced rate regarding the land under acquisition as per the prevailing market price as found by the learned Court below: In support of his contention reliance has been placed upon the ratio of the case of Ghaziabad Development Authority v. Anoop SIngh and Anr., AIR 2003 SC 1004 and also the ratio of the case of State of Bihar Vs. Jagarnath Mehra and Others, Jhabru Mahto and Others and Abhi Mahto and Others, .

7. Nobody appears on behalf of the respondent to controvert the submission made by the learned counsel for the appellant.

8. It is pertinent to mention at the very outset that no additional compensation as per Section 23(1)(A) inserted by virtue of the Amending Act, 1984 was awarded In this case by the learned Court below. However, the learned Court below by its award dated 20.12.1986 had allowed solatium @30% and interest @15% for one year w.e.f. 3.3.1972 to 2.3-1973 and @9% per annum w.e.f. 3.3.1973 till the payment of the excess amount of compensation awarded by him. Solatium @ 15% of the market value u/s 23(2) and interest @6% u/s 28 of

the said Act were admissible prior to its amendment by the amending Act of 1984. The Land Acquisition (Amendment) Act, 1984 came into force w.e.f. 24.9.1984. By virtue of the amendment of 1984 solatium payable @15% of the market value of the land acquired in consideration with the compulsory nature of the acquisition was increased to 30%. Similarly the rate of interest payable on the excess compensation awarded by the Court and on the compensation in cases where possession of land was taken before payment of compensation were also increased substantially @9% and a proviso was inserted in Section 28 of the said Act whereby interest @ 15% shall made applicable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the Court before the date of such expiry. In this connection Section 30 of the Amending Act, 1984 has its importance which is quoted hereunder :

"30. Transitional Provisions - (i) The provisions of Sub-section (1-A) of Section 23 of the Principal Act, as inserted by Clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,--

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the house of the people), in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector, before the date of commencement of this Act.

2, The provisions of Sub-section (2) of Section 23 and Section 28 of the Principal Act, as amended by Clause (b) of Section 15 and Section 18 of this Act, respectively, shall apply and shall be deemed to have applied, also to, and in relation to, any award made by the collector or Court or to any order passed by the High Court or Supreme Court in appeal against such award under the provisions of the principal Act, after the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the house of the people) and before the commencement of this Act."

It has to be borne in mind that Section 30 of the amending Act is a transitional provision and Sub-section (2) of Section 30 of the amending Act has its application and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against such award under the provisions of the principal Act after 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the house of the People) and before the commencement of this Act. In construing Section 30(2) of the amending Act it is just as well to be clear that the Collector makes the award u/s 11 of the said Act and the award made by the Court is the award made by the Principal Civil Court of original jurisdiction u/s 23 of the Principal Act on a reference made to it by the collector u/s 19 of the Principal Act. There can be no doubt that the benefit of enhanced solatium is intended by Section 30(2) of the amending Act in respect of an award made by the Collector between April 30, 1982 and September 24, 1984. Likewise the benefit of the enhanced solatium is extended by Section 30(2) of the amending Act to the case of an award made by the Court between April 30, 1982 and September 24, 1984 even though it be upon reference on an award made before April 30, 1982. It, therefore, appears that Section 30(2), of the amending Act shall have its application in a case where both the award made by the Collector u/s 11 as well as the award made by the Court on reference fall within the two termini indicted in Section 30(2) of the amending Act.

9. In the case of K. Kamalajammanniavaru (Dead) by Lrs. Vs. Special Land Acquisition Officer, it was observed by the Apex Court that it is clear that Parliament wanted the amended Section 23(2) to have a very limited retrospectivity and it has made the provisions applicable to awards made after April 30, 1982 and before September 24, 1984 and also further to appeals to the High Court and the Supreme Court arising from such awards. It has further been observed that Parliament did riot intend and could not have intended that whatever be the date of the award, however, ancient it may be solatium would stand enhanced to 30% if an appeal happened by chance or accident to be pending on April 30, 1982. However, in para 10 of the said judgment it has also been observed that new Section 23(2) of course necessarily applies to awards made by the collector or Court after the commencement of the Act i.e. after September 24, 1984, which was the date on which the amending Act has received the assent of the President.

10. In the case of Union of India and Anr. v. Raghubir Singh, 1989 (2) SCC 754, it has been observed that the benefit of the enhanced solatium is intended by Section 30(2) of the amending Act in respect of an award made by the Collector between April 30, 1982 and September 24, 1984. Likewise the benefit of the enhanced solatium is extended by Section 30(2) to the case of an award made by the Court between April 30, 1982 and September 24, 1984, even though it be upon reference from an award made before April 30, 1982. It has also been observed that it must be remembered that the value of land is taken u/s 11(1) and Section 23(1) of the said Act with reference to the date of publication of the Notification u/s 4(1) of the said Act and it is that to be which is usually material for the purpose of determining the quantum of compensation and solatium. Both Section 11 (1) and 23(1) speak of compensation being determined on the basis, inter alia on the market value of the land on that day and solatium by Section 23(2) is computed as percentage on such market value. It has also been observed that what Parliament intends to say is that the benefit of Section 30(2) of the amending Act will be available to an award by the Collector or the Court made between the aforesaid two dates or to an appellate order of the High Court or a Supreme Court which arises out of the award of the Collector or the Court made between the said two dates. In this case ward of the Collector u/s 11 of the Act was made on March 30, 1963 and the award of the Court was made on

June 10, 1968 and appeal was preferred by the claimant claiming further compensation and during the pendency of that appeal the amending bill 1982 was introduced on April 30, 1982 in the Parliament and the bill became amending Act on receiving the assent of the President on September 24, 1984. The High Court disposed of the said appeal on December 6, 1984 whereby and whereunder besides raising the amount of compensation rate of interest on it was also raised and also awarded solatium @30% by applying the change effected by the amending Act of 1984. In view of the facts aforesaid the Apex Court observed that benefit of amended provision cannot be granted by High Court and Supreme Court in respect of awards made by the collector or the Court prior to April 30, 1982 and September 24, 1984. In the case of Union of India and Ors. v. Filip Tiago De Gama MR 1990 SC 981 the Collector made the award on 5.3.1969 and the Court made the award on 28.5.1985 on the reference u/s 18 of the said Act and awarded solatium @ 15% and interest @6% from the date of taking possession till payment of compensation. Not being satisfied, the claimant preferred an appeal to the High Court seeking further enhancement of compensation and also solatium @30%. This claim was apparently based as per the amended provision introduced by the amending Act of 1984 and the High Court modified the award and awarded solatium @30% and also enhanced the rate of interest. The Apex Court in para 18 of the judgment has observed "we, therefore, hold that benefit of higher solatium u/s 23(2) should be available also to the present case". It, therefore, appears that the benefit of higher solatium u/s 23(2) of the Act as amended by the Amending Act, 1984 was made available in cases where the award was made after 24.9.1984 i.e. enforcement of the said amending Act, 1984. It is pertinent to mention here that in the case of Raghubir Singh the award of the Collector as well of the Court were made prior to 30.4.1982. It was not a case for consideration there in which the award of the Collector was made prior to 30.4.1982 and award of the Court was made after the commencement of the amending Act, 1984. However, in the case of K. Kamalajammannia Varu, (supra) it has been categorically observed by the Apex Court that new Section 23(2) of course necessarily applies to awards made by the collector or Court after the commencement of the amending Act i.e. after 24.9.1984. The ratio of the case of K. Kamalajammannia Varu, (supra) was approved in the case of Raghubir singh by the Apex Court. Considering the ratio of both the cases aforesaid it has been observed by the Apex Court in the case of Filip Tiago De Gama, (supra) which is quoted hereunder :

"..........The amended Section 23(2) by itself is not retrospective in operation Section 30(2) of amendment Act of 1984 which is a transitional provision provides that amended provisions of Section 23(2) shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court between 30th April, 1982 and 24th September, 1984, or to an appellate order therefrom passed by the High Court or Supreme Court. The purpose of these provisions seems to be that the awards made in that interregnum must get higher solatium in as much as to awards made subsequent to 24th September, 1984. Perhaps, it was thought that awards made after the commencement of the amending Act 68 of 1984 would be taken care of by the amended Section 23(2). If strict grammatical construction of Section 30(2) is followed and benefit of higher solatium is denied to cases where award is passed after 24.9.1984 the result would be an obvious anomaly. Take for example; the proceedings of acquisition were initiated in the year 1960 in which award was made on 1 May, 1982. Then the amended Section 23(2) shall apply and higher solatium is entitled to. But in an acquisition initiated on 23rd September, 1984, and award made in the year 1989 the higher solatium is ruled out. This is the intrinsic illogicity if the award made after 24th September, 1984, is not given higher solatium. Such a construction of Section 30(2) would be vulnerable to attack under article 14 of the Constitution and it should be avoided. If there is obvious anomaly in the application of law the Court could shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the Court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislature. That could be done, if necessary even by modification of the language used. The legislators do not always deal with specific controversies which the Courts decide. They incorporate general purpose behind the statutory words and it is for the Courts to decide specific cases. If a given case is well within the general purpose of the legislature but not within the literal meaning of the statute, then the Court must strike the balance."

In the case of K.S. Paripoornan v. State of Kerala and Ors., AIR 1995 SC 1012, it has been observed which runs hereunder :

"..........Merely because Sub-section (1) of Section 30 only refers to award made by the collector while Sub-section (2) of Section 30 also refers to an award made by the Court as well as the order passed by the High Court or the Supreme Court in appeal against such award does not mean that Section 23(1-A) was intended to have application to all proceedings which were pending before the Civil Court on the date of the commencement of the amending Act. The difference in the phraseology in Sub-sections (1) and (2) of Section 30 only indicates the limited nature of the retrospectivity that has been given to provisions contained in Section 23(1-A) u/s 30(1) as compared to that given to provisions of Sections 23(2) and 28 and Section 30(2)........"

Based upon the aforesaid ratio in the case of K.S. Paripoornan Vs. State of Kerala and Others, where the award of the Collector made u/s 11 of the said Act on 30.12.1980 and award of the Court u/s 23 of the said Act on reference made on 28.2.1985 it was observed by the Apex Court that :

"........the restricted interpretation should not be understood to mean that Section 23(2) would not apply to the award of the Civil Court pending at the time when the Act came into force or, thereafter. In this case, admittedly the award of the Civil Court made on 28.2.1985 was after the Act had come into force. Therefore, if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the Court shall direct the Collector to pay interest u/s 28, on such excess at the rate of 9% per annum from the date on which the Collector took possession of the land to the date of payment of such excess into the Court. By operation of the proviso, if such excess or any part thereof is paid into the Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of 15% per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the Court before the date of such expiry........"

It is, therefore, crystal clear in view of the law laid down by the Apex Court referred to above that solatium at the enhanced rate of 30% as per amended Section 23(2) of the said Act on the market value of the land on the date of notification u/s 4(1) of the said Act and interest under amended Section 28 of such excess @ 9% per cent annum from the date on which the Collector took possession of the land to the date of payment of such excess into the Court and by operation of the proviso to Section 28 inserted by amending Act, 1894, if such excess or any part thereof is paid into the Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of 15% per annum payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the Court before the date of such expiry shall have their application to an award made by the Court after 24.9.1984 i.e. the date of the commencement of the amending Act. Here in this case the award of the Collector u/s 11 of the said Act was made on 22.5.1971 and award of the Court was made on 11.12.1986/ 20.12.1986 i.e. after the commencement of the amending Act, 1984 w.e.f. 24.9.1984. Therefore, the claimant is entitled for solatium @30% on the market value of the land under acquisition along with interst at the enhanced rate as per amended Section 23(2) and Section 28 respectively of the said Act. The ratio of the case of Ghaziabad Development Authority, (supra) relied upon by the appellant has no relevancy in the facts, and circumstances, of this case-in view of the fact that both the award made by the Collector u/s 11 as well as the award made by the Court in that case fall within the two termini indicated u/s 30(2) of the amending Act, 1984. The ratio of the case of State of Bihar v. Jagan-nath Mehra and Ors. [2003 (2) JCR 202 (Jha)] has also no application in this case. The contention of the learned counsel for the appellant has, therefore, no substance. It is made clear that in the present case the learned counsel for the appellant has not disputed the quantum of compensation at the enhanced rate regarding the land under acquisition as per the prevailing market price as found by the learned Court below including the building standing thereon. Additional compensation u/s 23 (1-A) of the Act has not been awarded in this case. The learned Court below has rightly awrded solatium @30% as per amended Section 23(2) and interest at the enhanced rate as per amended Section 28 of the said Act and there is no illegality therein. I, therefore, confirm the finding of the learned Court below.

11. There is no merit in these appeals and they fail and they are hereby dismissed but without costs.

