
(2011) 02 SC CK 0057

In the Supreme Court Of India

Case No : C.A. No. 1494 of 2011 (Arising out of SLP (C) No. 30709 of 2008)

State of Punjab

APPELLANT

Vs

Amarjit Singh and Another

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Income Tax Act, 1961 — Section 45(5)

Land Acquisition Act, 1894 — Section 23, 23(1A), 23(2), 28, 34

Citation : AIR 2011 SC 982 : (2012) AIRSCW 1177 : (2011) AIRSCW 3639 : (2011) 5 ALD 96 : (2011) 3 ALLMR 444 : (2011) 2 AWC 1905 : (2011) 3 CTC 657 : (2011) 4 MhLj 539 : (2011) 4 MLJ 331 : (2011) 164 PLR 571 : (2012) 4 RCR(Civil) 358 : (2011) 2 RCR(Civil) 595 : (2011

Hon'ble Judges : R.V. Raveendran, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Kuldip Singh, K.K. Pandey and H.S. Sandhu, for the Appellant; Arun Nehra, Shobha, Mohinder Pal Thakur and Ridhima Garg, for the Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran, J.—Leave granted. The question raised in this appeal is whether additional amount u/s 23(1A) of the Land Acquisition Act, 1894 ('Act' for short) is payable on the solatium u/s 23(2) of the Act.

2. In regard to acquisition of land belonging to the Respondents, the reference Court by judgment dated 5.3.2001 awarded compensation at the rate of Rs. 6,96,000/- per acre alongwith statutory benefits u/s 23(1A), 23(2) and 28 of the Act. The Respondents filed an execution application wherein they claimed additional amount of 12% per annum for the period 11.11.1993 to 16.6.1994 (that is from the date of notification u/s 4(1) of the Act till the date of the award) u/s 23(1A) of the Act, not only on the market value of the land, but also on the solatium amount. The said claim was accepted by the Executing Court by order dated 8.5.2008. The revision filed by the Appellant was rejected by the High Court on 4.9.2008. The said revisional order of the High Court is challenged in this appeal by special leave.

3. To find an answer to the question arising for consideration, it is necessary to refer to Section 23 of the Act dealing with matters to be considered in determining compensation. The said provision is extracted below:

23. Matters to be considered in determining compensation:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

first, the market-value of the land at the date of the publication of the notification u/s 4, Sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, Sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. - In computing the period referred to in this Sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition.

(emphasis supplied)

4. Section 23 of the Act refers to four distinct amounts:

(i) Market value of the land on the date of publication of the notification u/s 4(1) of the Act is first and foremost of the six factors to be taken note of for determining the amount of compensation for the land acquired. It is the major component (and in most cases, the only component) of the compensation determined by the court u/s 23(1) of the Act.

(ii) Compensation to be awarded to a person for the acquired land, is to be determined u/s 23(1) of the Act by taking into consideration six factors - (i) the market value of the land, on the date of publication of the notification u/s 4(1) of the Act; (ii to iv) damage sustained by the person interested by reason of the taking of any standing crops or trees in the lands, or severing such land from his other land/s, or the acquisition injuriously affecting his other property or earnings; (v) the reasonable expenses incidental to the person interested being compelled to change the residence or place of business as a consequence of acquisition; and (iv) the damage bonafide resulting from diminution of the profits of the land between the time of publication of declaration u/s 6 and the time of the Collector's taking possession of the land.

(iii) Additional amount at the rate of 12% per annum on such market value (for the period commencing on and from the date of publication of notification u/s 4(1) of the Act to date of award of the Collector or the date of taking possession of the land, whichever is earlier).

(iv) Solatium at 30% on such market value, in consideration of the compulsory nature of acquisition.

While market value and compensation are factors to be assessed and determined by the court, no such judicial exercise is involved in regard to additional amount payable u/s 23(1A) and solatium payable u/s 23(2) as they are statutory benefits payable automatically at the rates specified in those Sub-sections, qua the market price. No reasons need be assigned for grant of additional amount or solatium.

5. This Court explained the object of granting additional amount u/s 23(1A) of the Act in Assistant Commissioner, Gadag SUB-Division, Gadag Vs. Mathapathi Basavanneewa and others, and in State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., In Mathapathi Basavanneewa (supra) this Court observed:

The object of introducing Section 23(1-A) is to mitigate the hardship caused to the owner of the land, who has been deprived of the enjoyment of the land by taking possession from him and using it for the public purpose, because of considerable delay in making the award and offering payment thereof. To obviate such hardship, Section 23(1-A) was introduced and the Legislature envisaged that the owner of the land is entitled to 12 per cent per annum additional amount on the market value....

In L. Krishnan (supra) this Court observed:

The provisions in this Sub-section are designed to compensate the owners of the land for the rise in prices during the pendency of the land acquisition proceedings. It is a measure to off-set the effects of inflation and the continuous rise in the values of properties over the last few decades....

In *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, this Court held that additional amount u/s 23(1A) of the Act was payable only on the market value determined u/s 23(1) of the Act, thereby clearly implying that it was not reckonable on any other amount:

The amount awardable under Sub-section (1-A) of Section 23 of the LA Act, therefore, would be an amount of 12 per centum per annum on the market value of the land determined under first Clause of Sub-section (1) of Section 23 for the period between the date of publication of Notification under

Section 4(1) and to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.... In this context it has to be noted that the amount payable is 12 per centum per annum on the market value in the first Clause of Sub-section (1) of Section 23 of the LA Act. It has also to be noted that solatium under Sub-section (2) is not payable in respect of the amount awardable under Sub-section (1-A), in that, Sub-section (2) says that in addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition.

(emphasis supplied)

In *Sunder Vs. Union of India*, a Constitution Bench of this Court held that the terms 'sum awarded' or 'amount awarded' occurring in Sections 34 and 28 of the Act would include not only the compensation determined by taking note of the six factors mentioned in Section 23(1) of the Act, but also amounts awarded under the remaining Sub-sections of Section 23 as well, for the purpose of calculating interest. The words 'compensation to be awarded' used in Section 23(1) of the Act refers to the total of the sums awarded with reference to the six factors enumerated in Section 23(1). On the other hand, the words 'amount awarded' or 'sum awarded' in Sections 28 and 34 of the Act refers to the aggregate of the compensation determined by the court u/s 23(1), the additional amount payable u/s 23(1A) and the solatium payable u/s 23(2) of the Act.

6. Section 23(1) refers to market value of the land on the date of publication of the notification u/s 4(1) of the Act as a relevant factor for determining the amount of compensation to be awarded for land acquired under the Act. Sub-section (2) provides that in addition to the market value of the land determined u/s 23(1), the Court shall, in every case, award a sum of 30% on such market value in consideration of the compulsory nature of acquisition. Sub-section (1A) of Section 23, inserted by Act 68 of 1984 provides that in addition to the market value of the land, as provided u/s 23(1), the Court shall, in every case, award an

amount calculated at the rate of 12% per annum on such market value for the period commencing on or from the date of publication of the notification u/s 4(1) in respect of such land to the date of award of the collector or the date of taking possession of the land, whichever is earlier. The additional amount u/s 23(1A) and solatium u/s 23(2) are both payable only on the market value determined u/s 23(1) of the Act and not on any other amount. Solatium u/s 23(2) is not payable on the additional amount nor additional amount u/s 23(1A) payable on solatium. Solatium and additional amount are also not payable on the damages/expenses that may be awarded under second to sixth factors u/s 23(1) of the Act.

7. Thus a person whose land is acquired is entitled to the following amounts under the Act.

(a) Compensation determined u/s 23(1) of the Act (comprising the market value of the land referred to as the first factor and any damages/expenses referred to as the second to sixth factors under the said Sub-section).

(b) Solatium at 30% on the market value determined as the first factor u/s 23(1) of the Act.

(c) Additional amount at 12% per annum of the market value of the land referred to as the first factor u/s 23(1) of the Act, for the period specified in Section 23(2).

(d) Interest on the aggregate of (a), (b) and (c) above for the period between the date of taking possession to date of payment/ deposit at the rate of 9% per annum for the first year and 15% per annum for the remaining period.

Payments made are to be adjusted and accounted in the manner set out in Gurpreet Singh Vs. Union of India (UOI),

8. Learned Counsel for the Respondents placed reliance on the following observations of this Court in Commissioner of Income Tax, Faridabad Vs. Ghanshyam (HUF),

The additional amount payable u/s 23(1A) of the 1894 Act is neither interest nor solatium. It is an additional compensation designed to compensate the owner of the land, for the rise in price during the pendency of the land acquisition proceedings. It is a measure to offset the effect of inflation and the continuous rise in the value of properties. Therefore, the amount payable u/s 23(1A) of the 1894 Act is an additional compensation in respect to the acquisition and has to be reckoned as part of the market value of the land.

The learned Counsel for Respondents submitted that as this Court has treated additional amount u/s 23(1A) as part of the market value, additional amount is payable on the solatium. There is no logic in the contention as the decision nowhere holds that solatium is part of market value nor holds that additional amount u/s 23(1A) is payable on the solatium amount. Be that as it may. More importantly, what requires to be noticed is that the entire consideration and

analysis in that decision was with reference to the question whether solatium, additional amount and interest are part of 'enhanced compensation' for the purposes of Section 45(5)(b) of the Income Tax Act, 1961. The observations therein should be understood in the context of the provisions of the Income Tax Act. For example the decision also holds that interest payable u/s 28 of the Act is 'enhanced compensation' for the purposes of Section 45(5)(b) of Income Tax Act, which if taken as-the interpretation with reference to the Land Acquisition Act, 1894, will be contrary to the constitution bench decision in *Sunder* (supra). We may also note that the decision clearly holds that additional amount is awardable only against the market value and not solatium:

It is clear from reading of Sections 23(1A), 23(2) as also Section 28 of the 1894 Act that additional benefits are available on the market value of the acquired lands u/s 23(1A) and 23(2) whereas Section 28 is available in respect of the entire compensation.

9. In view of the above, the appeal is allowed, the orders of the High Court and the Executing Court, in so far as they hold that additional amount u/s 23(1A) is payable on solatium, are set aside. It is declared that additional amount u/s 23(1A) is awardable only on the market value determined under the first factor of Section 23(1) of the Act and cannot be calculated on the solatium payable u/s 23(2) of the Act.