

(1992) 05 CAL CK 0004

In the Calcutta High Court

Case No : Appeal from Original Decree No. 770 of 1963

The Union of India (UOI)

APPELLANT

Vs

Lalit Kumar Mukherjee and Others

RESPONDENT

Date of Decision : 06-05-1992

Acts Referred:

Defence of India Act, 1939 — Section 19, 19(1)
Defence of India Rules, 1962 — Rule 75A(2)
Government of India Act, 1935 — Section 299
Land Acquisition Act, 1894 — Section 28, 34

Citation : (1992) 2 CALLT 213

Hon'ble Judges : Sunil Kumar Guin, J;Anandamoy Bhattacharjee, J

Bench : Division Bench

Advocate : Sisir Kumar Bose and Gouri Prosad Mukherjee, for the Appellant;S. Bakshi and Subrata Nayak for Respondents-Cross Objectors Nos. 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Guin, J.—A firm land measuring about 12 bighas 10 kattas and 4 chhataks with a garden house known as "Aloka" thereon and a tank measuring about 1 bigha 15 kattas and 15 chhataks comprised in C.S. plots No. 269, 270 and 276 to 282 of mouja Jungalpur belonged to Marina Debi, the predecessors-in-interest of the Referring Claimants. The said properties were requisitioned by the Government on 19.12.41 under the provision of Rule 75A(1) of the Defence of India Rules. A recurring monthly compensation was assessed for the said properties at Rs. 700/- which was agreed to by the owner. Subsequently the said properties were acquired by the Government on 5.4.46 under the provision of Rule 75A(2) of the said Rules. The collector assessed the compensation for the acquired properties By adopting two methods, namely, Rental Method and Land and Building Method. After taking the average of the two, he assessed the compensation for the acquired properties at Rs. 1,68,630/-. Malina Debi died in the meantime and her sons and legal heirs i.e. the Referring Claimants did not

agree to such valuation. So, an Arbitrator was appointed by the Government under the provision of Section 19(1) (b) of the Defence of India Act, 1939 and he was directed to make his award for acquisition of the aforesaid properties.

2. The Referring Claimants contended before the learned Arbitrator that valuation of land, tank, trees and structures on the acquired land as made by the collector was inadequate and that they were entitled to get interest at the rate of 6% per annum on the amount of compensation. Both sides adduced evidence-oral and documentary. The learned Arbitrator in terms of proviso to Section 19(1) (e) of the Defence of India Act appears to have considered what was the value of the acquired properties at the time of requisition. Considering the evidence as adduced before him, he calculated the valuation of land and tank at the rate of Rs. 1,500/- per bigha and assessed the compensation on that score at Rs. 21,468.75P. He also assessed Rs. 3,126.75p as the fair amount of compensation for trees on acquired land and assessed Rs. 2,01,054.50p as fair amount of compensation for acquired constructs. In view of the decision in 66 CWN 412, the learned Arbitrator also directed payment of interest at the rate of 3 % per annum from the date of acquisition till the date of payment. Thus he made an award for a total sum of Rs. 2,29,512.50p on 31.8.62 in Arbitration Case No. 196 of 1959.

3. Being aggrieved, the Union of India has preferred the instant appeal challenging the propriety and correctness of the award as made by the learned Arbitrator. Mr. Bose, learned advocate appearing for the appellant has argued that the learned Arbitrator's valuation regarding land, trees and structures is highly excessive and that he should have assessed compensation on the basis of agreed rental of Rs. 700/- per month. He has also argued that the Referring Claimants have got no legal right to get interest on compensation as assessed by the learned Arbitrator u/s 19 of the Defence of India Act which makes no provision for payment of any interest on the amount of compensation. In support of his view he has referred to a Division Bench decision of this Court in the case of Balai Lal Pal v. State of West Bengal reported in 70 CWN 363. In this connection, he has also referred to the decision in the case of State of West Bengal v. Nandalal Dey reported in AIR 1975 Cal 139 and to the decision in the case of Roufannessa Bibi v. Union of India reported in 66 CWN 412.

4. Mr. Bakshi learned Advocate appearing for the respondent-cross objector Nos. 1 and 3 has argued that the learned Arbitrator should have assessed the valuation of the acquired properties as on the date of acquisition and not as on the date of requisition. In support of his view he has referred to the decision in the case of Union of India (UOI) Vs. Deben Adhichary, He has also argued that the learned Arbitrator should have assessed compensation on the basis of admitted rental of Rs. 700/- per month for the acquired properties. In support of his argument he has referred to and relied upon the decisions of the Supreme Court in the cases of Rustom Cavasjee Cooper Vs. Union of India (UOI), ; Mirza Nausherwan Khan and Another Vs. The Collector (Land Acquisition), Hyderabad,

and State of Kerala Vs. P.P. Hassan Koya, In this connection, he has also referred to the decision in the case of Union of India v. Deben Adhicary (supra). He has further argued that the Referring Claimants are entitled to interest at the rate as provided in Section 28 of the Land Acquisition Act, 1894 as amended by Act 68 of 1984. In support of his argument he has referred to the decisions of the Supreme Court in the cases of Satinder Singh and Others Vs. Amrao Singh and Others, ; T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, Madras, , and Raghubans Narain Singh v. Uttar Pradesh Government reported in AIR 1967 SC 465.

5. The instant case relates to assessment of compensation for acquisition of the properties under the provision of Rule 75A(2) of the Defence of India Rules. Undisputedly the properties were acquired on 5.4.46. Prior to that, the same properties were requisitioned by the Government on 19.12.41 under the provision of Rule 75A(1) of the said Rules. For assessment of compensation for acquisition of the said properties, the Government appointed an Arbitrator under the provision of Section 19(1) (b) of the Defence of India Act, 1939. As per proviso to Section 19(1) (e), where any property requisitioned under any rule made under the said Act is subsequently acquired, the Arbitrator in any proceedings in connection with such acquisition shall take into consideration the market value of the property at the date of its requisition and not at the date of its subsequent acquisition. So in terms of the said proviso, the learned Arbitrator considered and found what was the value of the acquired properties at the time of requisition and made an award accordingly. But it is clear from the decision in the case of Union of India v. Deben Adhicary (supra), the said proviso to Section 19(1)(e) has since been declared ultra vires Section 299 of the Government of India Act, 1935 by a Division Bench of this Court. That being so, the learned Arbitrator committed an error in assessing the market value of the property under acquisition at the date of its requisition. He should have assessed the market value of the said properties at the date of acquisition i.e. on 5.4.46.

6. Since the market value of the acquired properties as on the date of requisition cannot be taken into consideration in assessing the compensation for the acquired properties, we shall have to look into and find whether there is adequate evidence for coming to a conclusion as to what was the market value of the properties under acquisition on the date of acquisition. Though some of the documents already brought into evidence may be taken into consideration in assessing the market value of the properties on the date of acquisition but the evidence as a whole-both oral and documentary was adduced by the parties to show what the market value of the properties on the date of requisition i.e. on 19.12.41. Such evidence in our opinion is not adequate in arriving at a finding as to the market value of the properties on the date of acquisition. In the circumstances, we are to consider whether there is any other method suitable for assessment of compensation for the properties under acquisition. It appears from the judgment of the learned Arbitrator that the Union of India contended before him that compensation should be assessed on the basis of rental method

inasmuch as there was an agreed rent payable for the requisitioned properties. But such contention was not accepted by the learned Arbitrator and he appears to have proceeded to assess, valuation on the basis of Land and Building Method. The parties adduced before him evidence both oral and documentary to show what was the value of the acquired properties on the date of requisition. But for the reasons already given by us, such evidence is not adequate for assessing the valuation of the properties as on the date of acquisition. In this appeal learned Advocate for the appellant and also the learned Advocate for the respondents-cross objectors 1 and 3 have submitted that valuation of the acquired properties should be assessed according to the rental method. In the facts and circumstances of the case we are inclined to accept the submission as made by the learned Advocates of the parties. In the instant case, the properties under acquisition consist of land with building and tank. Undisputedly after requisition on 19.12.41, the monthly, recurring compensation for the said properties was assessed at Rs. 700/- which was agreed to by the then owner. The evidence on record, as we have stated earlier, is not sufficient to prove the market value of the properties as on the date of acquisition. In several cases Supreme Court and this Court have held the rental method to be an approved method for assessment of valuation of the properties. In the case of *R.C. Cooper v. Union of India* (supra), the Supreme Court has enumerated six different methods for determination of compensation and observed that they are, however, not the only methods. It has held that the method of determining the value of properties by the application of an appropriate multiplier to the net annual income or profit is a satisfactory method of valuation of lands with buildings, only if the land is fully developed and the income out of the property is; a normal commercial and not a controlled return or a return depreciated on account of special circumstances. In the case of *Mirza Nausherwan Khan v. The Collector (Land Acquisition)* (supra), the method of capitalisation by application of suitable multiplier to the net rent fetched for the house was held to be an approved method of valuation for building. In the case of *State of Kerala v. P. P. Hassan Koya* (supra), the Supreme Court has observed as follows :

"When the property sold is land with building, it is often difficult to secure reliable evidence of instances of sale of similar lands with buildings proximate in time to the date of notification u/s 4. Therefore, the method which is generally resorted to in determining the value of land with buildings specially those used for business purposes is the" method of capitalisation of return actually received or which might reasonably be received from the land and buildings."

7. In the case of *Union of India v. Deben Adhichary* (supra), the Division Bench of this Court has approved the assessment of market value by the Arbitrator on rental method but has cautioned that when the market value of land acquired is assessed by the method of capitalization, the authority must be satisfied that the value so assessed is real market value of the land which is expected to be obtained from the intending purchaser at the material time. So, having regard to the facts and circumstances of the present case and also having considered the

aforesaid decisions, we are of the opinion that the rental method should be adopted in the matter of assessing the valuation of the acquired properties. Undisputedly the monthly recurring compensation for the requisitioned properties, which were subsequently acquired, was assessed at Rs. 700/- which was agreed to by then owner. So, on the date of acquisition i.e. on 5.4.46 the annual income from the acquired properties was Rs. 8,400/-. A sum of Rs. 100/-, as submitted by the learned Advocate for the respondents-cross objectors, is to be deducted from the aforesaid sum on account landlord's rents and municipal tax. So the net annual income from the acquired properties on the date of acquisition was Rs. 8,300/-.

8. Now the question arises what should be the multiplier to arrive at the market value of the acquired properties on the basis of rental method. Relying upon the decision in the case of *Union of India v. Deben Adhichary* (supra) learned Advocate for the respondents-cross objectors has submitted that at the relevant time income from the gilt-edged securities was at the rate, of 2 % per annum and that by calculating on that basis the multiplier should be 36. The learned Advocate for the appellant has not made any submission as to what should be the multiplier in arriving at market value of the acquired properties. In the case of *Union of India v. Deben Adhichary* (supra), the notifications of the Government of India relating to issue of 2 1/4% loan in 1954 and issue of 2 3/4% loan in, 1962 were produced before the learned Arbitrator. Though the said notifications were produced, still the Referring Claimants submitted before him that at least twenty times the annual compensation for requisition would afford the fair capitalized value of the acquired land. The learned Arbitrator, however, held that 6 1/2% would be a proper return of investment at the material time and that the amount of compensation of requisition multiplied by 16 would afford the correct market value of the acquired land. But the aforesaid notifications as produced before the learned Arbitrator did not find place on the record and were not produced before the Division Bench at the time of hearing. So the learned Judges of the Division Bench doubted that there might be other Government notification showing, a higher percentage of return from the gilt-edged security. In the facts and circumstances of the case, the Division Bench appears to have held that the Arbitrator was right in assessing the market value at 16 times the annual recurring compensation for the requisitioned land. So this decision, in our opinion, does not indicate that the multiplier should be 36" as has been submitted by Mr. Bakshi. In the case of *Mirza Nawsherwan Khan v. The Collector (Land Acquisition)* (supra) the property was acquired on 3.1.57. From this decision it appears that at that time interest on gilt-edged securities was payable at the rate of 3 1/4% per annum. On the basis of return from such gilt-edged securities, the Court held that the multiplier 27 was reasonable. In the case of *the State of Kerala v. P.P. Hassan Koya* (supra), the notification u/s 4 of the Land Acquisition Act was published on 8.12.54. The learned Subordinate Judge in that case adopted the method of determining the market value by capitalizing the net rent received from the property and taking into consideration the return from gilt-

edged securities. At the relevant time, the return from gilt-edged securities was at the rate of 3 1/2% per annum. By adopting the aforesaid method the learned Subordinate Judge assessed compensation at 35 times, the net annual rent. The High Court of Kerala, however, determined compensation by multiplying the net rent by 33 1/3 times which in their view was the true multiple derived from the return based on the current return from gilt-edged securities. The Supreme Court appears to have approved such multiplier. In the instant case the properties were acquired on 5.4.46. The parties could not produce any notification issued by the Government of India showing the rate interest on gilt-edged securities at the relevant time. But there can be no manner of doubt that such interest on gilt-edged securities was not less than 3 1/2 which was prevalent in 1954 as is evident from the decision in the case of the State of Kerala v. P. P. Hassan Koya (supra). So, in the facts and circumstances of the case, we think it reasonable to hold that the multiplier in the instant case would not be less than 33. We have stated earlier that the net annual rental income from the properties under acquisition at the date of acquisition was Rs. 8,300/-. Multiplying the same by 33 we get the figure Rs. 2,73,900/-. Accordingly we assess the market value of the property under acquisition on the date of acquisition at Rs. 2,73,900/- and the Referring Claimants shall get the said amount as compensation for acquisition of the said, properties.

9. Next let us come to the question of payment of interest on the amount of compensation and consider whether or not the Referring Claimants are entitled to get interest. In the instant case, as we have already stated, the properties were acquired under the provisions of Rule 75A(2) of the Defence of India Rules and the Government of India appointed an Arbitrator under the provisions of Section 19(1) (b) of the Defence of India Act, 1939 to make an award for such acquisition of properties. Section 19(1) (e), inter alia, provides that the Arbitrator in making his award shall have regard to the provisions of Section 23(1) of the Land Acquisition Act, 1894, as far as the same can be made applicable. Section 23(1) of the said Act enumerates the matters to be taken into consideration in determining compensation and does not say anything about payment of interest on such compensation. Sections 28 and 34 of the said Act relate to payment of interest on such amount of compensation that may be assessed by the Collector or by the Court. Section 19(1) (e) of the Defence of India Act does not enjoin that the Arbitrator while making his award shall also have regard to the provisions of Section 28 or Section 34 of the Land Acquisition Act, 1894. So, in the Defence of India Act, 1939 there is no specific provision empowering the Arbitrator to direct payment of interest on the amount of compensation that may be assessed by him.

10. Mr. Bose, learned advocate appearing for the appellant has argued that the Referring Claimants have got no legal right to get interest on compensation assessed by the Arbitrator. In support of his view he has referred to and relied upon the decision of a Division Bench of this Court in the case of Balai Lal Pal v. State of West Bengal (supra). A question arose before the said Division Bench

whether interest could be allowed by the Arbitrator on the amount of compensation assessed for acquisition of the property under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act XXX of 1952) which makes no provision for payment of interest on compensation. Their Lordships have held that the claimant has got no legal right to get interest on the compensation assessed and that his claim is based on consideration of equity and that it is entirely within the discretion of the Court to allow or reject that claim. Considering the facts and circumstances of the reported case and the earlier decisions on this point, Their Lordships have held that it is quite within the competent of the Arbitrator to award interest on compensation assessed under the said Act. It is clear from this decision that though Act XXX of 1952 does not make any provision for payment of interest on compensation still the Arbitrator may award interest on compensation on consideration of equity. So this decision is of little help to the appellant. In the case of Roufannessa Bibi v. Union of India (supra) referred to by the learned advocate for the appellant, another Division Bench of this Court has held that in land acquisition proceeding under the provisions of the Defence of India Act or Rules, the Arbitrator can award interest on the entire amount of compensation for the acquired property. In the case of State of West Bengal v. Nandalal Dey (supra) which relates to assessment of compensation under the provisions of the Defence of India Act, the Arbitrator awarded interest at the rate of 3 1/2% per annum. It was urged before the Division Bench that under the Defence of India Act there was no provision for payment of interest and that in absence of provision for interest as provided in Section 28 of the Land Acquisition Act, the Arbitrator could not grant the same. It has been held by the Division Bench of this Court in that case that the Arbitrator has the power to fix compensation in accordance with the provision of Section 23(1) of the Land Acquisition Act so far as they can be made applicable and that though the said section does not mention interest, that by itself does not exclude the power of the Arbitrator to allow interest to give the proper compensation to the party concerned. The decision in the case of Satindar Singh v. Umrao Singh (Supra) relates to a case of acquisition under the East Punjab Requisition of Immovable Property (Temporary Powers) Act, 1948 which requires the Arbitrator while making the award to have regard to Section 23(1) of the Land Acquisition Act, as is required u/s 19(1)(e) of the Defence of India Act. In that case the Supreme Court has observed as follows :-

"It would thus be noticed that the claim for interest proceeds on the assumption that when the owner of immovable property loses possession of it he is entitled to claim interest in place of right to retain possession. The question which we have to consider is whether the application of this rule is intended to be excluded by the Act of 1948, and as we have already observed, the mere fact that Section 5(3) of the Act makes Section 23(1) of the Land Acquisition Act of 1894 applicable, we cannot reasonably infer that the Act intends to exclude the application of this general rule in the matter of payment of interest."

11. The Supreme Court in this connection has further observed as follows :-

"When a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily he is not making claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he should be put in possession of compensation immediately ; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation."

12. Following the above decision the Supreme Court in the case of T.N.K. Govindaraju Chetty v. Commissioner of Income Tax (supra) has held that there is nothing in Section 19(1)(g) of the Defence of India Act which excludes the application of substantive law relating to payment of interest. So in view of the aforesaid decisions we hold that though Section 19 of the Defence of India Act makes no specific provision for payment of interest still that will not exclude the application of substantive law relating to payment of interest and that Referring Claimants are entitled to get interest on the amount of compensation as assessed above.

13. The next question that arises for consideration is what should be the rate of interest to be paid on such amount of compensation. The Referring Claimants claimed interest at the rate of 6% per annum. But the learned Arbitrator has awarded interest at the rate of 3 % per annum from the date of acquisition till the date of payment. The learned Advocate for the appellant has argued that the learned Arbitrator in exercise of his discretion has rightly allowed the interest at the rate of 3% per annum and that such award of interest should not be interfered with in this appeal. Mr. Bakshi, learned Advocate for the respondents-cross objectors, on the other hand, has argued that the learned Arbitrator has already exercised his discretion whether or not he will award any interest on the amount of compensation and that as, in exercise of such discretion, he has already awarded interest, he has no further discretion to exercise in the matter and is required to pay interest in terms of Section 28 of the Land Acquisition Act. In support of his argument he has referred to and relied upon the decision in the case of Raghubans Narain Singh v. The Uttar Pradesh Government (supra). In the reported case the District Judge held that Referring Claimant is entitled to interest u/s 28 of the Land Acquisition Act, but allowed interest at 3% per annum observing that since the acquisition was for educational institution, interest at that rate was proper. The Supreme Court has held that it is the discretion of the Court whether it would allow interest or not, that once such discretion has been exercised, there is no further discretion and that interest if awarded has to be awarded at the rate as mentioned in Section 28 of the said Act. So in view of the aforesaid decision of the Supreme Court we hold that once the Arbitrator has exercised his discretion to allow interest on the amount of compensation, he has no further discretion and that the interest as directed to be paid by him is to be paid at the rate as provided in Section 28 of the Land Acquisition Act. It has not been disputed that at the relevant time the rate of interest as payable u/s 28 of the Land Acquisition Act was 6% per annum. Though the respondents-cross objectors claimed interest at the rate as provided in Section 28 of the Land

Acquisition Act as amended by Act 68 of 1984, but in view of the decision of the Supreme Court in the case of Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , they have not pressed this claim for interest at enhanced rate any further. Mr. Bakshi has submitted that his clients are entitled to get interest at the rate of 6% per annum, as provided in Section 28 of the Land Acquisition Act before the said amendment. Thus on consideration of facts and circumstances of the case and the decision of the Supreme Court on this point as referred to, we hold that the Referring Claimants are entitled to get interest at the rate of 6% per annum on the amount of compensation.

14. In the result, the Referring Claimants who are the respondents here shall get Rs. 2,73,900/- as compensation for the properties under acquisition. They shall also get interest at the rate of 6% per annum on the said amount from 5.4.46 till the date of withdrawal of 50% of compensation of the acquired structures and they shall also get further interest at the rate of 6% per annum on the balance amount from the date of withdrawal of said 50% compensation of acquired structures till payment or deposit by the Union of India.

15. Appeal is thus dismissed. Cross-objection is allowed to the extent as indicated above. In the circumstances of the case, we make no order as to cost.

Anandamoy Bhattacharjee, J.

16. I agree.