

(2012) 01 AHC CK 0341
In the Allahabad High Court
Case No : First Appeal No. 600 of 1995

Union of India	Vs	APPELLANT
Mohd. Ashiq and Others		RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Defence of India Act, 1962 — Section 37

Citation : (2012) 01 AHC CK 0341

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Misra, J.—Heard Sri I.H. Ansari holding brief of Sri Subodh Kumar learned counsel for the appellant which is the Union of India. List of final hearing cases has been revised. None appears on behalf of the claimant respondents.

2. This First Appeal arises out of Land Acquisition Case no. 188 of 1982 (Mohd. Ashiq and Others Vs Collector Saharanpur) wherein by the judgment and order dated 19.2.1988 the District Judge, Saharanpur has enhanced the compensation of the land in question to Rs. 3450/- per Bigha and has awarded solatium @ Rs. 30 along with interest @ 9 percent per annum.

3. Learned counsel for the appellant has made two submissions, the first is that the enhancement of compensation to Rs. 3450/- per Bigha is highly excessive and the second is that solatium with interest could not be awarded when the land has been acquired under the Defence India Act 1962 for the purpose of construction. He states that the present proceedings were initiated under the Requisitioning and Acquisition of Immovable Property Act 1952 read with Defence of India Act 1962.

4. Having considered the submission of learned counsel for the appellant and perused the record in paragraphs 7 and 8 of the judgment impugned the exemplar sale deeds were considered and it was found that the land in question

was valued at Rs. 4000/- to Rs. 6000/- per Bigha. However the first exemplar sale deed dated 5.1.1971 was taken into account wherein the compensation paid was @ Rs. 4600/- per Bigha. But since the area of the first sale deed was only 7 Bigha 12 Biswa and the area acquired in the present proceedings was 249 Bigha 14 Biswa, it was found that due to large area of acquisition Rs. 4600/- per Bigha was required to be reduced by 25 percent for the purpose of compensation and therefore it fixed Rs. 3450/- per Bigha. No error can be found in the reasoning given in paragraphs 7 and 8 of the impugned award.

5. Insofar as the second submission is concerned it has been stated that the land in question was acquired for defence purpose and was initially requisitioned under the Requisitioning and Acquisition of Immovable Property Act 1952 read with Section 37 of the Defence of India Act 1962. Consequently, it appears that the land in question was acquired for defence purpose.

6. Learned counsel has submitted that in view of the judgment of the Supreme Court in the case of Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others, when there is acquisition under the Defence of India Act solatium and interest are not payable and he has further referred to a decision of the Supreme Court in the case of Union of India (UOI) Vs. Parmal Singh and Others, to say that 9 percent interest could not have been granted.

7. In view of the decision of the Supreme Court in the case of Chajju Ram (supra) the solatium granted by the impugned award under Issue no. 4 appears to be without jurisdiction since the land in question has been admittedly acquired for defence purpose under the Defence of India Act. The interest of 9 percent per annum also could not have been granted on the enhanced compensation in view of the decision in the case of Parmal Singh (supra).

8. Under such circumstances grant of 30 percent solatium being without jurisdiction since the land was acquired under the Defence of India Act for defence purpose stands set aside and the interest of 9 percent per annum on the enhanced compensation would stand reduced to 6 percent per annum. The impugned judgment is therefore set aside to the above extent only.

9. The appeal stands partly allowed as above.

10. No order is passed as to costs.