

(1983) 02 AHC CK 0029
In the Allahabad High Court
Case No : Writ Petition No. 4289 of 1981

Union of India (UOI)

APPELLANT

Vs

1st Additional District Judge and Another

RESPONDENT

Date of Decision : 14-02-1983

Acts Referred:

Arbitration Act, 1940 — Section 37(2), 46
Constitution of India, 1950 — Article 226
Defence of India Act, 1962 — Section 19, 19(2), 29, 30, 31
Land Acquisition Act, 1894 — Section 23, 23(1), 23(2), 28, 34

Citation : (1983) 02 AHC CK 0029

Hon'ble Judges : O.P. Saxena, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : Anshuman Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—This writ petition under Article 226 of the Constitution has been filed by the Union of India challenging the award of the arbitrator appointed under the Defence of India Act, 1962 (Act 51 of 1962) (hereinafter referred to as the Act).

2. The facts of the present case lie in a narrow compass. 201.890625 acres land of village Sikandarpur, Paragana Loni, tehsil and district Ghaziabad was acquired for construction of Hindan Air Field by the Government of India. A major portion of the land had earlier been requisitioned u/s 29 of the Act on 18-9-1963 and was, subsequently, acquired on 9-7-1964. The remaining land had been requisitioned in between the dates from October 29, 1963, to March 19, 1965. This also had been, subsequently, acquired u/s 36 of the Act.

3. Section 37 of the Act deals with determination of compensation for acquisition of requisitioned property. The relevant provision is Sub-section (1) of Section 37. It reads as under:

The compensation payable for the acquisition of any property u/s 36 shall be:

(a) the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition.

Whichever is less.

4. Upon the land being acquired, the proceedings for compensation were started before the Special Land Acquisition Officer. On the basis of the evidence filed before him, the Special Land Acquisition Officer held that the market rate of the land on the dates of requisition and acquisition was Rs. 1,200/- and Rs. 3080/- per bigha respectively. In view of Sub-section (1)(b), the Special Land Acquisition Officer determined the compensation at the rate of Rs. 2,400/- per bigha, double of the market value prevailing on the date of the requisition. It may be noted that Clauses (a) and (b) deal with two different dates with reference to which compensation payable for the acquisition of the property has to be found. Out of these two valuations, compensation whichever is less would be payable.

5. Being aggrieved by the amount of compensation determined in accordance with Sub-section (1), Respondent 2 Shyam Singh moved an application to the appropriate government for referring the matter to an arbitrator. The arbitrator appointed in this case for the purpose of Sub-section (2) of Section 37 was the First Additional District Judge, Meerut. Before the arbitrator, Respondent 2 claimed compensation at the rate of Rs. 3/- per square yard. He also claimed interest @ 12% per annum on the amount of compensation. Union of India contested the claim and filed a written statement asserting that compensation awarded by the Special Land Acquisition Officer was just, proper and adequate.

6. On the pleadings of the parties, the arbitrator framed the following issues:

1. Whether the compensation awarded is inadequate and unfair? If so, what should be fair and proper compensation for the land acquired?

2. To what compensation, if any, is the claimant entitled?

3. Whether the Petitioner is entitled to interest? If so, what rate?

7. There is no controversy between the parties that compensation in the present case has to be determined in accordance with Section 37 of the Defence of India Act which, as quoted above, has two Clauses (a) and (b). The price of the property acquired has to be determined both in accordance with Clauses (a) and (b) and out of these two whichever is less becomes payable to the person whose land is acquired. In the instant case it appears that the learned Additional District Judge had applied this method and after finding that the rate of compensation payable to Respondent 2 should be at the rate of Rupees 2.60 Paise per square

yard, the arbitrator partly accepted his claim and directed for payment of compensation in accordance with the same. In coming to this conclusion, apart from the exemplars filed before him, the arbitrator has made reference of several other awards given by him at this rate for the land of the neighbouring villages, namely, Pasonda and Karhera, which had also been acquired for the construction of Air Field.

8. Holding that Respondent 2 was entitled to get compensation @ 2.60 Paise per square yard, the arbitrator made reference to the Special Land Acquisition Officer's decision in which the rate was different from one which had been adopted in this case. The rate of that case was higher than the one which was found payable by the Special Land Acquisition Officer in this case. However, that apart, the arbitrator referred to the decision of Land Acquisition Reference No. 15 of 1968, *Risal Khan v. Union of India*, pertaining to village Pasonda. In that case, six sale deeds were filed to show that the market rate of the land on the date of acquisition was not less than Rs. 7/- per square yard. On a consideration of these sale deeds, the market rate on the said date was found to be Rs. 2.60 per square yard. At this rate of Rs. 2.60 a number of awards have been given by the arbitrator u/s 37 of the Act. Some of these awards had been challenged in this Court by means of appeals. Those appeals were dismissed on the ground that there being no provision for filing of an appeal against an award made u/s 37, the same was not maintainable. The award in which compensation had been awarded at the rate of Rs. 2.60 had also been upheld. Union of India had filed applications for leave to appeal to the Supreme Court in these cases, but they were also dismissed summarily.

9. In the instant case, Sri Ansuman Singh, learned Senior Standing Counsel appearing for the Union of India, contended that in the absence of evidence that the land of the village in question was similarly situate as that of the lands involved in the aforesaid cases on the decision of which the judgment of the present case is based, the arbitrator committed an error in treating the same as evidence in the instant case. The admissibility of the awards relied upon by the arbitrator had not been questioned by the Union of India on this ground before the arbitrator. It is not possible to permit the Union to challenge the correctness of the award for the first time in the present proceedings in which this Court has only supervisory jurisdiction and can interfere only on a limited ground when there is a mistake apparent on the face of the record. The power conferred by Article 226 of the Constitution is not that of a court of appeal and as such, it cannot reappraise the evidence and circumstances and reverse the finding of the Court subordinate.

10. The second submission of the learned Senior Standing Counsel was that as the award had not been given by the arbitrator within four months of entering upon the reference by him, the award was vitiated and is liable to be quashed. For this submission, learned Counsel relied on para. 3 of the First Schedule of the Arbitration Act, which lays down that:

The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.

In support of his submission that the aforesaid paragraph applied to the present case, counsel relied on Section 46 of the Arbitration Act which, according to him, makes all the provisions of the same applicable to any arbitration under any other enactment. Learned Senior Standing Counsel contended that although Section 47 of the Act is contained in another enactment, but the same has to be read along with Section 46 of the Arbitration Act.

11. We are unable to accept this submission. The Defence of India Act is a special Act providing for special measures to ensure public safety and interest as well as the Defence of India and civil defence etc. For that limited purpose it is that under Chapter VI of the Act a property can be first requisitioned and thereafter acquired. Sections 29, 30, 31, 32, 33 and 34 provide a wholesome scheme laying down the procedure in accordance with which any property can be requisitioned, any immovable property, which has been requisitioned u/s 29 of the Act, can be acquired in the circumstances specified in. Clauses (a) and (b) of Sub-section (1) of Section 36. Upon the notifications of acquisition being issued under Sub-section (2) of Section 36 a notice is required to be served on the owner of the property or is published in the official gazette under Sub-section (3). Upon the publication or service of the notice, the property vests in the government free from any mortgage, pledge, lien or other encumbrances and the period of requisition thereof comes to an end. Section 37 thereafter provides for payment of compensation.

12. Reading all these provisions would indicate that appointment of arbitrator under Sub-section (2) of Section 37 for determining compensation is for a specific purpose, and that he is not an arbitrator of the type as is contemplated under the Arbitration Act. The arbitrator appointed by Section 37(2) is not required to submit the award to any Court, and that such an award is not to be made a rule of the Court. It is final and becomes operative after the same is pronounced. Unlike the Arbitration Act, the award cannot be remitted or quashed on the basis of objections which can be filed u/s 30 of the same. In this way, the provisions of the Defence of India Act are absolutely inconsistent and cannot be administered simultaneously.

13. Furthermore, Section 43 of the Defence of India Act lays down that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. In this way, we find that the Defence of India Act covers all matters relating to arbitration and is exhaustive about the manner of determining the amount of compensation.

14. The question of applicability of the provisions of the Arbitration Act to Defence of India Act, 1939, had been a subject matter of decision by a number

of High Courts. Some of them, which have relevance on this subject, may be referred to. These are found reported in (1) State of West Bengal Vs. Nandalal Dey, . (2) Union of India (UOI) Vs. Ramdas Oil Mills, and (3) Dinshaw Manekji Petit Vs. G.B. Badkas and Others, . This controversy is covered by these decisions with which we respectfully agree.

15. Counsel for Respondent 2, in addition to interest, has made a claim of solatium payable under Sub-section (2) of Section 23 of the Land Acquisition Act. The submission has no substance. The Act has confined the amount which can be determined as compensation for payment to the persons whose properties are acquired. In addition to the compensation to be determined in accordance with Section 37(1), there is no power either in the arbitrator or in this Court to award anything not provided for. The Legislature has not applied the provisions of the Land Acquisition Act for determining the compensation. It has made a special provision for determining the same. That being so, the principle *generalia specialibus non derogant* and *generalibus specialia derogant* (special things derogate from general things) would apply. Accordingly, since a special provision is made on this matter, that matter is excluded from the general provision. Section 37 being specific, Sub-section (2) of Section 23 cannot be applied. In District Collector of Krishna Vs. Pulavarthi Viswanadam and Others, , the Madras High Court was called upon to consider whether Sub-section (2) of Section 23 could be applied for awarding solatium to the acquisition made under the Defence of India, Act, 1939. It may be noted that Section 19(2)(i) of the Defence of India Act laid down specifically that in making the award, the arbitrator shall have regard to the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act. Since Sub-section (2) of Section 23 had not been applied, the Madras High Court held that the specific mention of Sub-section (1) impliedly excluded the application of Sub-section (2), with the result that it was not open to the arbitrator to award any solatium on the compensation. To the same effect is the decision of the Supreme Court in Satinder Singh and Others Vs. Amrao Singh and Others, . It said:

It would be legitimate to hold that by the application of Section 23(1) in terms, the provisions of Section 23(2) are by necessary implication excluded.

Counsel for Respondent 2 contended that the Explanation (exclusion?) of Sub-section (2) of Section 23 is arbitrary, and therefore, this Court should find that the solatium is payable in case of acquisition under the Defence of India Act also. For this proposition, counsel relied upon a decision of the Supreme Court in P.C. Goswami Vs. Collector of Darrang, and also on another case reported in State of Kerala and Others Vs. T.M. Peter and Others, . These two cases are clearly distinguishable. The Supreme Court found that as there was no justification for discrimination between an acquisition under one Act and acquisition under another Act, solatium must be held to be payable even under the Act in which the provision for the same has not been made. It is to be noted that there was no difference between the two Acts, one which contemplated of providing

solatium and (the other) which did not have the provision for payment of the same.

16. In the instant case, the Defence of India Act has already been pointed out by us to be of a special nature having no resemblance with any other Act. No other Act of a similar nature could be pointed out to us which had a provision for the payment of solatium. It is be noted that the land needed for the defence of the country cannot be kept at par with any other public purpose of acquisition made in public interest for the purposes other than defence. We, therefore, are unable to accept the submission of the Respondent's counsel.

17. In Union of India (UOI) Vs. Deben Adhichary, , the Calcutta High Court has also taken the view that as there is no provision for any statutory allowance under the Defence of India Act, the provision for statutory allowance of fifteen per cent u/s 23(2) of the Land Acquisition Act cannot be imported into Section 19 of the Defence of India Act. Tins supports our view that under the Land Acquisition Act compensation consists of the market value plus fifteen per cent solatium; but since that provision does not apply to the Defence of India Act, Sub-section (2) of Section 23 cannot be applied to the acquisitions made under the Defence of India Act.

18. Coming to the main question, which had been argued on behalf of the Union of India, the submission of the learned Counsel for the Union of India was that there is no provision in the Defence of India Act, 1962, for the payment of interest on compensation and as Sections 28 and 34 of the Land Acquisition Act have not been applied to it, the arbitrator committed an error in awarding interest on the compensation with effect from the date of acquisition of the land. He contended that the law allows interest only on the ground of a contract, express or implied, for its payment, or as damages for the detention of money, or for breach of soma contract, or the violation of some duty, or where it is provided for by statute. In the instant case, according to the learned Counsel, none of these conditions was present.

19. After hearing counsel for the parties, we find ourselves unable to uphold the submission of the Union of India. The theory on which interest is allowed is that it is held in such a way that it may be put to work and earn it, that is to say, the relation of debtor and creditor exists between the user and owner of the fund. In other words, interest is charged not only because of the value to the one who uses the money, but also as compensation to the one who has been deprived of the use of money, In the instant case, interest is allowable on compensation because of the money being withheld by the Union, as a result of which Respondent 2 was deprived of its use. There is a duly in a debtor to make available to the person entitled to money immediately on its accruing and if money is not paid, interest becomes payable on the same. In fact, as stated above interest is compensation for the use of money.

20. It is true that Section 37 of the Defence of India Act talks of compensation

which has to be determined in the manner laid down in Clause (a) and (b) of Sub-section (1). The compensation in cases of acquisition governed by the Defence of India Act has to be determined and calculated in the manner provided in this provision. Section 37(1) is exhaustive on the point. But, so far as interest is concerned, there is nothing in the Defence of India Act which excludes the principle of Sections 28 and 34 of the Land Acquisition Act on which the liability of payment of interest accrues. The interest, which is liable to be paid, is not part and parcel of the compensation to be determined u/s 37. Hence, it is not correct to say that since Section 37 does not provide for payment of interest, the Union of India cannot be held liable for the same. For acquisition compensation is to be determined according to Section 37(1), but for withholding the payment of compensation or the price of land taken possession of, interest is payable on the amount determined or found due to the claimant.

21. In support of the proposition that interest is not part of compensation, reference may be made to the judgment of the Supreme Court in *Dr. Shamlal Narula Vs. Commissioner of Income Tax, Punjab*, . The Supreme Court said (at p. 1880):

A perusal of the provisions of Section 23 shows that interest is not an item included in the compensation for any of the matters mentioned therein... It is a consideration paid either for the use of the money or forbearance from demanding it after it has fallen due. Therefore, the Act itself makes a clear distinction between the compensation payable for the land acquired and the interest payable on the compensation awarded.

22. For what we have said above, we find that Section 37(1) of the Defence of India Act may be exhaustive for the purposes of determining compensation, but merely for that reason the principle on which interest is payable cannot be said to have been expressly excluded from application in cases of acquisition of land under the Defence of India Act.

23. The question of liability of payment of interest in cases of acquisition under the Land Acquisition Act came up for consideration before the Supreme Court in *Satinder Singh and Others Vs. Amrao Singh and Others*, . In that case, the Supreme Court found that the Act although contained no express provision for payment of interest on compensation determined by the arbitrator, but still the Supreme Court rejected the contention of the State of Punjab that Sections 28 and 34 of the Land Acquisition Act, which dealt with the payment of interest, were not intended to be applied to the proceedings before the arbitrator. It observed at p. 132 of AIR 1968 SC:

Stated broadly the act of taking possession of immovable property generally implied an agreement to pay interest on the value of the property and it is on this principle that a claim for interest is made against the State.

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(e) 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 the payment of interest.

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.

24. In *T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, Madras*, , the Supreme Court was called upon to consider whether interest received in land acquisition proceedings is a capital receipt, or revenue receipt. The Supreme Court decided the case against the Assessee holding that interest received was liable to tax. It observed (at p. 133):

The source of the right to interest in both the cases did not arise from the statute or agreement. In the case on hand, the right to interest arose by virtue of the provisions of Sections 28 and 34 of the Land Acquisition Act, 1894, and the arbitrator and the High Court merely gave effect to that right awarding interest on the amount of compensation. Interest received by the Assessee was therefore properly held taxable.

25. Following the decision in *Satinder Singh and Others Vs. Amrao Singh and Others*, , a Division Bench of the Gauhati High Court in *Ramesh Chandra Seal v. Deputy Commr.* AIR 1973 Bau 119, held that interest is payable on compensation in cases of acquisition under the Defence of India Act, 1962, as well. These decision would support the case of Respondent 2 with regard to his right to receive interest.

26. For these reasons, we do not find any merit in the writ petition and dismiss the same. But in the circumstances we direct the parties to bear their own costs. The stay order is discharged.