

(2007) 10 J&K CK 0011
In the Jammu And Kashmir High Court

Union of India (UOI)	Vs	APPELLANT
Abdul Rashid and Others		RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2008 J&K 53 : (2008) 2 JKJ 145

Hon'ble Judges : Y.P. Nargotra, J;Virender Singh, J

Bench : Division Bench

Judgement

Virender Singh, J.—The instant Letters Patent Appeal has been preferred by the Union of India (appellant in CIMA No. 32/97) for setting

aside the judgment dated 26.9.2005 passed by the learned Single Judge vide which the award dated 30.5.1995 of learned District Judge, Jammu

(Arbitrator) allowing the compensation on the basis of two different classes of land and also the interest @ 12% p.a. from the date of passing of

the award has been confirmed.

2. Pursuant to notice all the respondents have put in their appearance.

3. We have heard learned Counsel for the parties and also perused the impugned judgment of the learned Single Judge and award.

4. Mr. Gagan Basotra, submits that the learned Arbitrator had assumed that the appellant had agreed for the payment of compensation to the land

owners (respondents-herein) on the basis of class II and class III land, whereas the rate of compensation was never proposed by the appellant at

all. It was in fact, proposed by the Collector which was not agreed by the appellant. Mr. Basotra then submits that even, otherwise, the learned

District Judge (Arbitrator) had fixed the compensation of the acquired land on

the higher side and the same was upheld by the learned single Judge without considering the evidence on record and simply observing that the value of the immovable property every where is increasing day by day. This approach was not applicable in the present case on the present set of circumstances and exorbitant rates have been given to the respondents and call for satisfaction of the amount.

5. The other argument advanced by Mr. Basotra is that the interest granted to the respondents is contrary to the provisions of the Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968 (hereinafter referred to as the 'Act of 1968') as no interest can be awarded under the Act. He then submits that the judgment relied by the learned single Judge The Managing Director, J. and K. Handicrafts, Jammu Vs. M/s. Good Luck Carpets, was under the Arbitration Act which cannot be made applicable in the facts and circumstances of the present case as the land of the respondents was requisitioned and acquired by the State u/s 7 of the Act. In the said Act, there is no provision of interest at all and, therefore, the impugned award dated 30-05-1995 passed by the learned District Judge, Jammu (Arbitrator) and subsequently upheld by the learned Single Judge deserves to be set-aside to that extent atleast.

6. In support of his contentions, Mr. Basotra relies upon a judgment of Hon'ble Apex Court rendered in Union of India (UOI) Vs. Hari Krishan Khosla (Dead) by Lrs., by LR's and subsequently relied upon by Division Bench of this Court in case titled Gurdwara Guru Nanak Devji v. Union of India and Anr. LPA(C)32/97 decided on 25-05-2004.

7. Learned Counsel for respondents (land owners) repudiated the submissions advanced by Mr. Basotra and submit that both the Courts below have indulged deeply into the matter so far as amount of compensation is concerned, and, therefore, the said observations do not call for any indulgence of this Court. With regard to the interest part, the learned Counsel relied upon a latest judgment of Hon'ble Apex Court rendered in Spl. Deputy Collector (Land Acquisition), General Hyderabad v. B. Chandra Reddy AIR 2007 SC 15779 and drawn our attention to paras-21 and 22 of the judgment.

8. After giving our thoughtful consideration to all the aspects of the matter, we

do not find any substance in the arguments of Mr. Basotra so far as fixing of amount of compensation is concerned.

9. The learned District Judge, Jammu (Arbitrator) had entered into a detailed discussion while fixing the amount of compensation for class-II land

@ 24,000/- and class three land @ Rs. 20,000/-per Kanal. The learned single Judge has also re-scanned the entire case once again and returned

a categoric finding that the compensation awarded to the respondents is assessed on the basis of documentary evidence placed before the

Arbitrator and, therefore, cannot be said to be excessive one. We, while sitting in intra-Court appeal do not intend to disturb the concurrent finding

on facts as we do not find any basic infirmity in it. Consequently, we repel the argument of Mr. Basotra on this aspect.

10. We, however, find force in the other submission advanced by Mr. Basotra vis-a-vis, interest granted to the respondents @ 12% P.A. from the

date of passing of the award by the Arbitrator and subsequently upheld by the learned single Judge. In our considered view, granting of interest is

contrary to the provisions of the Act.

11. The Apex Court, while dealing with constitutionality of Section 8(3) (a) of the Act in Hari Krishan Khosla's case (supra) observed that the

aforesaid section is not violative of Article 14 of the Constitution of India. It was observed in the aforesaid judgment that amount of compensation

can be fixed by agreement u/s 8(1) (b) and in the absence of such an agreement it is left to the discretion of the Arbitrator, who u/s 8 (1) (e) is to

hear the dispute. The Arbitrator must determine the amount of compensation which appears to him to be just but he must have regard to Sub-

sections (2) and (3) of Section 8. It was then observed that the significant omission of solatium is indicative of the legislative intent necessitating

stress on the expressions "'just' and "'circumstances of which case'" occurring in Sub-section (1) (e) of Section 8. Further it was observed that

another distinguishing feature is the expression with 'open market' in Section 8(3) (a) and the reasons why solatium has not been provided is that

open market'" contemplates a bargain between 'free buyer' and a 'free seller' unfettered by the consideration of requisition and consequent

acquisition.

12. In Gurdawara Sh. Nanak Dev Ji's case (supra) relied upon by Mr. Basotra, the

Division Bench of this Court, while relying upon Hari Krishan

Khosla's case (supra) declined the solatium and interest to the appellant. In the said case the land owner was granted the compensation under the

Act, whereas no solatium and interest was awarded. Union of India had shown its grievance with regard to the amount of compensation, whereas

the land owners were unhappy in disallowing the interest and solatium to them. Ultimately, both the sides had filed letters patent appeals before this

Court. The Division Bench of this Court while agreeing that the amount of compensation as already enhanced by the learned single Judge also

agreed with the view of the learned Single Judge in not awarding the solatium and interest. Therefore, in our view, the aforesaid two judgments

cited by Mr. Basotra, resolve the controversy with regard to the interest part.

13. With due respect, the judgment in case M/s Good Luck Carpets (Supra) relied upon by the learned Single Judge so as to award interest

would not be applicable in the present case. It was with regard to the proceedings under the Jammu and Kashmir Arbitration Act (2 of 2002 Svt.).

However, in the present case the arbitrator was appointed u/s 8 (1) (b) of Act of 1968.

14. To be fair to learned Counsel for the respondents, we may observe here that the judgment in case Spl. Deputy Collector (Land Acquisition),

General Hyderabad (Supra) cited by them would have no bearing on the facts of the present case. In the aforesaid case, the Hon'ble Supreme

Court did not disturb the finding with regard to grant of benefit of solatium and interest to the land owners primarily on the pretext that the award

was passed by the Arbitrator sixteen years back and it had attained finality being not challenged. That is not the position in the case in hand. In the

aforesaid case, Hari Krishan Kholsa's case (supra) was also referred to by the appellant(s) but no finding is returned thereto.

15. From the perusal of the provisions of the Act it is manifest that no provision for payment of interest on the compensation payable on the

acquisition of immovable property has been made. The reason for not providing for interest is obvious. Section 7 of the Act vests the Government

with Power to acquire only such property which is subject to requisition. Unless the property sought to be acquired has already been requisitioned

in terms of Section 3 of the Act the same cannot be acquired in terms of Section

7.

16. When a property is requisitioned in terms of Section 3, the person to whom such property belongs becomes entitled to the payment of periodic

compensation during the period of requisition fixed in terms of Rule 9 of the rules framed u/s 22 of the Act which can be in the shape of monthly

rental. Thus until the property is acquired and just compensation is paid, the person to whom such property belongs continues to remain entitled to

be paid the requisition compensation/rental. Therefore, at no point of time the right of such person to receive compensation for acquisition remains

in jeopardy.

17. Testing the case in hand on that rationale, we are of the confirmed view that the respondents are not entitled to any interest and the view taken

by the learned Arbitrator awarding them the interest on the acquired property and subsequently upheld by the learned Single Judge deserves to be

disturbed.

18. Ordered accordingly,

19. The net result is that the instant appeal is partly allowed confirming the amount of compensation already awarded to the respondents (land

owners) and disentitling them to the interest as already awarded.

20. LPA (C) No. 60/2005 alongwith connected CMPs is disposed of in the aforesaid terms.