
(1991) 03 GAU CK 0010
In the Gauhati High Court
Case No : MA (F) No. 87 of 1990

Union of India (UOI)

APPELLANT

Vs

Gathia Nath and Others

RESPONDENT

Date of Decision : 20-03-1991

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8(1), 8(3)

Citation : (1991) 2 GLR 237

Hon'ble Judges : Manisana, J;J.M. Srivastava, J

Bench : Division Bench

Advocate : R.P. Kakati, Additional Central Govt. Standing, for the Appellant;
K.R. Pathak and R.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—This appeal arises from an award made on 12.11.86 by the Arbitrator in Misc. (Arb) Case Nos. 5 to 18 of 1975.

2. Facts, - A piece of land measuring 28 acres situated at Kaltasiddhi village in Chayani mouza was requisitioned in the year 1963 under the Defence of India Act, 1962. The said land was subsequently acquired under the Requisitioning and Acquisition of Immovable Property Act, 1953 (for short, "the Act") in the year 1970 by the Deputy Commissioner Kamrup. The Deputy Commissioner assessed the market value at Rs. 4000/- to 5300/- per bighas and annual recurring compensation at Rs. 45/- to 50/- per bigha on account of dispute as to the amount of compensation, an arbitrator was appointed under the Act to determine compensation. The Arbitrator awarded compensation at Rs. 7500/- per bigha and recurring compensation at Rs. 175/- per bigha, at a uniform rate. The Arbitrator further awarded solatium a. 15% of the market price as additional compensation and interest @ 6% per annum on the principal amount of compensation from the date of acquisition till the final payment.

3. Mr. R.P. Kakati, learned Additional Central Government Standing Counsel, has

contended that under the Act there is no provision for awarding interest as well as solatium and, therefore the claimants are not entitled to interest and solatium.

4. The first question which arises for consideration is whether the claimants are entitled to interest. In *Abhay Singh Surana and Others Vs. Secretary, Ministry of Communication and Others*, the Supreme Court has held that the owner of the land is entitled to interest on the compensation awarded under the Act. This Court also in a series of cases has held that the owner is entitled to interest on the principal amount of compensation under the Act. In that view of the matter, the contention of Mr. Kakati cannot be accepted.

5. The next question is whether the claimants are entitled to solatium. In *Mawahedduddin v. Collector Hyderabad* AIR 1984 217 (DB), it has been held that, where property is acquired under the Act, the Arbitrator is competent to award solatium, In *The Competent Authority, Special Deputy Collector, Land Acquisition (Defence), Hyderabad Vs. Thota Penta Reddy and Others*, the Andhra Pradesh High Court doubted the view taken in *Mawahedduddins Case* (supra) and intended to refer to a Larger Bench, however, considering the decision of the Supreme Court in *Prakash Amichand v. State of Gujarat* AIR 1956 SC 468, the Andhra Pradesh High Court affirmed rejection of claim for solatium by the Arbitrator.

6. In *Prakash Amichand Shah Vs. State of Gujarat and Others*, a question arose whether denial of solatium in addition to the compensation payable for lands acquired by the local authority under the Bombay Town Planning Act, 1954 for the purpose of the scheme made the Bombay Act discriminatory. In that case, the decisions of the Supreme Court in *Nagpur Improvement Trust v. Vithal Rao* AIR 1973 SC 689 , *State of Kerala and Others Vs. T.M. Peter and Others*, and *P.C. Goswami Vs. Collector of Darrang*, were considered.

In *Nagpur Improvement Trust's case* AIR 1973 SC 689 , it has been held that the different terms of compensation of land acquired under two Acts would be discriminatory. In *State of Kerala and Others Vs. T.M. Peter and Others*, the decision in *Nagpur Improvement Trust's case* AIR 1973 SC 689 was followed. The decision in *P.C. Goswami Vs. Collector of Darrang*, is also similar to that of *State of Kerala and Others Vs. T.M. Peter and Others*,

7. In *Prakash Amichand Shah Vs. State of Gujarat and Others*, the Supreme Court observed:

We do not understand the decision in *Nagpur Improvement Trust's case* (AIR 1973 SC 689) (supra) as laying down generally that wherever land is taken away by the Government under a separate statute compensation should be paid under the Land Acquisition Act, 1894 only and if there is any difference between the compensation payable under the Land Acquisition Act. 1894 and the compensation payable under the statute concerned the acquisition under the statute would be discriminatory.

Thereafter, the Supreme Court has held that the case before the Supreme Court in *Prakash Amichand (supra)* was distinguishable from earlier decisions referred to above and in the context of the Bombay Act came to the following conclusion:

It cannot also be said as a rule that the State which has got to supply and Maintain large public services at great cost should always pay in addition to a reasonable compensation some amount by way of solatium. The interest of the public is equally important. In any event it is not shown that the compensation payable in this case is illusory and unreal.

(Emphasis added)

It may be stated here that the above quoted observations of the Supreme Court indicate that, where there is no reasonable compensation, solatium may be granted.

8. In FA 10 of 1975 between, *Saifuddin v. Collector Sibsagar* of this Court (to which one of us was a party), it has been held that the owner is not entitled to solatium in case of awarding just compensation. In that case this Court was satisfied that the compensation awarded was reasonable and, therefore, the owner was not entitled to solatium, in the context of the case, basing on the observations of the Supreme Court above (last quotation).

9. Let us now examine the case on hand. u/s 8(1) of the Act, there are two principles and/or methods for determination of compensation. First, u/s 8(1)(a), where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement. Secondly, u/s 8(1)(e), where no such agreement can be reached, an Arbitrator appointed under the provisions of Section 8(1) is empowered to determine "the amount of compensation which appears to him to be just". However, Section 8(3) provides that the compensation payable for the acquisition of any property shall be the price which the requisitioned property would have fetched in 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

10. Section 8(1)(e) authorises the Arbitrator to determine "Just compensation", The word "just" has been used in Section 8(1)(e)(sic) mean full, adequate, or due, and to intensify the meaning of the word "compensation". Generally, a full compensation for the property acquired is to be paid to the owner. Therefore, the determination of "just compensation" would depend upon varieties of factors, and the arbitrator has to determine what it thinks to be "just" between the parties having regard to the particular facts of the case,(sic) u/s 8(3) the word "compensation" has been used to Mean open market price whereas u/s 8(1)(e) "Just compensations" is to be determined. As already stated, the word "just" has been used in Section 8(1)(e) to intensify the meaning of the word "compensation" and, therefore, if the meaning of the word "compensations" u/s 8(3) is intensified, open market price alone would not be "Just compensation". The construction we are putting will harmonise the two provisions of the Act,

namely Section 8(1)(e) and 8(3) in that view of the matter the decisions referred to above are distinguishable from the present case.

11. The word "solatium" means a sum paid to a person as compensation or consolation for the injury to the feelings. When a property is acquired compulsorily it injures or hurts owner's feelings Therefore, "solatium" is to be one of the factors to be considered while determining "Just compensation". In such a situation, the principle underlying the Land Acquisition Act should be extended in the interest of administration of justice. In that view of the matter, the Arbitrator could award solatium. For these reasons, the contentions of Mr. R.P. Kakati cannot be accepted.

12. In the result, the appeal is dismissed. We leave the parties to bear their respective costs.