

(1994) 12 SC CK 0033

In the Supreme Court Of India

Case No : Civil Appeal No. 8502-24 of 1994 (Arising out of S.L.Ps. (C) No. 11056-78 of 1994)

Union of India (UOI)

APPELLANT

Vs

Gurbachan Singh and Others

RESPONDENT

Date of Decision : 01-12-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 28A

Citation : (1994) 5 SCALE 62 : (1995) 1 SCC 292

Hon'ble Judges : A. M. Ahmadii, C.J;S. P. Bharucha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Bharucha J.

1. It is stated on affidavit filed by respondent No. 50 in SLP (C) No. 11070 of 1994 that the respondents stated below have died. Their legal representatives have not been brought on record. The special leave petitions abate insofar as these respondents are concerned:

- i) Respondent No. 6 in SLP(C) No. 11058 of 1994;
- ii) Respondent Nos. 12, 18, 19 & 21 in SLP(C) No. 11059 of 1994;
- iii) Respondent No. 30 in SLP(C) No. 11061 of 1994;
- iv) Respondent No. 31 in SLP(C) No. 11062 of 1994;
- v) Respondent No. 33 in SLP(C) No. 11064 of 1994;
- vi) Respondent Nos. 45 & 47 in SLP(C) No. 11069 of 1994;
- vii) Respondent No. 57 in SLP(C) No. 11072 of 1994;
- viii) Respondent Nos. 59 and 61 in SLP(C) Nos. 11073 of 1994; and
- ix) Respondent No. 51 in SLP(C) No. 11078 of 1994.

2. Delay condoned.

3. Special leave granted.

4. The lands belonging to the respondents at Bhatinda were requisitioned in or about the year 1972 by the Union of India, the appellant, under the provisions of the Defence of India Act, 1971, for the purpose of setting up a military cantonment. The said lands were, in the year 1975, acquired under the provisions of the Defence of India Act, 1975. The Defence of India Act was repealed and residual matters following upon the requisition or acquisition of land thereunder were brought under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as 'the said Act'). The award in respect of the lands was made in 1975. While other land owners similarly placed did so, the respondents did not make any claim for enhancement of the compensation awarded. Upon the application of the other land owners the compensation was enhanced.

5. In 1984 the Land Acquisition Act, 1984, was amended and Section 28A was introduced therein. So far as it is relevant, it reads thus:

28-A Re-determination of the amount of compensation on the basis of the award of the Court. - (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, Sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18 by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court.

6. The respondents moved the Special Land Acquisition Collector to redetermine the compensation payable to them having regard to the provisions of Section 28A. The Collector dismissed the applications, finding that Section 28A of the Land Acquisition Act was inapplicable to the acquisition of the said lands. The respondents filed writ petitions in the Punjab and Haryana High Court impugning the order of the Collector. The writ petitions were allowed, following the decision of a Full Bench of the High Court in Hari Krishan Khosla (decd.) and Others Vs. The Union of India (UOI) and Another, The appeals preferred by the Union of India against the orders on the learned single Judge were dismissed in limine on the ground of delay and on merits, having regard to the said Full Bench decision.

7. The judgment of the Full Bench of the Punjab & Haryana High Court in Hari Krishan Khosla's case (supra) was the subject of an appeal before this Court and the said view was referred Union of India (UOI) Vs. Hari Krishan Khosla (Dead) by Lrs., . This Court noted that the only point that was agitated before the Full Bench was that no provision had been made in Section 8(3)(a) of the said Act for payment of solatium at the rate of fifteen per cent of the compensation amount

to the land owner as was available under the provisions of Section 23 of the Land Acquisition Act, 1894. There was no provision under the said Act for payment of interest at the rate of six per cent per annum as was provided u/s 34 of the Land Acquisition Act. There was no justification for depriving the land owner of the amount of solatium and interest simply because the land had been acquired under the provisions of Section 7 of the said Act. The provisions of Section 8(3) of the said Act were discriminatory in so far as they denied the land owner solatium and Interest and offended the provisions of Article 14 of the Constitution of India. The Full Bench had held, inter alia, that there was nothing under the said Act to suggest that requisitioned property could not be acquired under the Land Acquisition Act. The result was that the said Act left it to the arbitrary and unguided discretion of the Government to acquire the requisitioned land of the owner by resort to Section 7(1) of the said Act while the requisitioned land of another similarly situated could be acquired under the Land Acquisition Act. The classification between requisitioned and non-requisitioned lands for the purpose of paying less compensation to one and more to the other was not founded on any intelligible differential, nor was there any rational nexus to the object of acquisition of property for a public purpose. The Full Bench, therefore, had struck down the provisions of Section 8(3)(a) of the said Act. This Court came to the conclusion that cases of acquisition of land stood on a different footing than those where the property was subject to a prior requisition before acquisition. The comparison of acquisition under the said Act to acquisition under the Land Acquisition Act seemed to be odious in view of the dissimilarities between the two Acts, which the court indicated. It was true that, originally in some cases the requisition was under the provisions of the Defence of India Act, 1962. Even then, the property could be acquired in view of Section 25(1) of the said Act. It was held, after consideration of the provisions of the statutes and various decisions of this Court, that failure to provide solatium at fifteen per cent or interest at six per cent u/s 8(3)(a) of the said Act did not make it discriminatory.

8. The learned single Judge of the High Court and the Division Bench in appeal relied, so far as the merits were concerned, only upon the Full Bench judgment aforementioned, which now stands reversed.

9. Learned Counsel for the respondents drew our attention to an order of this Court whereby, in similar circumstances, this Court upheld the decision of the High Court. We find that two learned Judges of this Court had passed the following order:

Special Leave granted.

Heard learned Counsel for the parties. The decision of the additional District Judge as upheld by the High Court is affirmed subject to deletion of the direction that interest of 9% shall be payable on the solatium amount. The appeal is disposed of accordingly. No costs.

In the first place, the order does not discuss the Full Bench judgment aforementioned as was done in the judgment of this Court referred to above. In the second place, that judgment is of a bench of three learned Judges.

10. The respondents sought to read the provisions of the Land Acquisition Act into the statute under which their lands were requisitioned. It is very difficult to see how, in the absence of any express or implied provisions, this could be done.

11. We have examined the aspect of delay which weighed with the Division Bench in passing the orders under appeal. In the facts and circumstances of these cases, we do not think that the delays were so gross as to merit dismissal of the writ appeals.

12. In the result, the appeals are allowed. The orders under appeal are set aside. The writ petitions filed by the respondents are dismissed. There shall be no order as to costs.