(2005) 01 JH CK 0054

In the Jharkhand High Court

Case No : LPA No''s. 330, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 436, 437, 438, 439, 440, 441, 442 and 443 of 2004

Union of India (UOI) APPELLANT

Vs

Haria Devi and Others RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 14(2), 7(1), 9(1)

Citation : (2005) 1 BLJR 542 : (2005) 1 JCR 395

Hon'ble Judges : M.Y. Eqbal, J;Hari Shankar Prasad, J

Bench : Division Bench

Advocate : P.K. Prasad and A.K. Das, for the Appellant; N. Ram, B.N. Dey, V. Shivnath and S.K. Dey, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—All these appeals are directed against the common judgment passed by the learned Single Judge in Misc. Appeal Nos. 8 to 45 of 1997(R). By the said judgment all the aforementioned appeals filed by the appellant Union of India through Central Coalfields Ltd. has been allowed in part.

2. The sole question that arises for consideration in these appeals is whether the Tribunal constituted u/s 14 of the Coal Bearing Area (Acquisition & Development) Act, 1957 was justified in awarding interest and solatium in absence of any such provision in the said Act of 1957 :

3. The facts of the case lie in a narrow compass.

A Notification dated 9.1.1978 was issued u/s 4(1) of the Coal Bearing Area (Acquisition and Development) Act, 1957 (in short the Act, of 1957) for acquisition of Coal Bearing lands in village Govindpur and Armo within the

Nawadah Police Station in the district of Giridih. Thereafter, on 17.8.1979 and 1.9.1979 notification u/s 7(1) of the said Act was issued and finally declaration u/s 9(1) was made on 10.11.1980. The award was finally made on 27.11.1980. The authority under the said Act determined the following rate of compensation payable in respect of the different categories of lands :

(i) Dhan I, - Rs. 16,842/- per acre.

(ii) Dhan II - Rs. 10,526/- per acre.

(iii) Dhan III - Rs. 8,421/- per acre.

(iv) Tanr I - Rs. 16,842/- - per acre.

(v) Tanr II - Rs. 2,105/- per acre.

(vi) Tanr III - Rs. 1,053/- per acre.

4. The claimant/awardees filed several reference cases u/s 14(2) of the said Act of 1957 for payment of enhanced compensation. According to the claimants the sale rate of the lands similar to the acquired lands was from Rs. 3000/- to Rs. 5000/- per decimal. According to their case village Govindpur was surrounded by all sorts of commercial and industrial activities, such as, thermal power station, pitch road, collieries, daily market, colleges, cinema etc., though it was shown as agricultural lands, it ought to have been treated as urban land and their price should be in higher side. The awardees claimed compensation of Rs. 3000/- to Rs. 5000/- per decimal. The tribunal so constituted u/s 14(2) of the said Act of 1957, after hearing the parties passed judgment dated 30th March, 1996 enhancing the rate of compensation at flat rate of Rs. 70,000/- per acre and also allowed the benefits as provided u/s 23(1)-A, 23(2) and 28 of the Land Acquisition Act and thereby allowed solatium at the rate of 30% of market value and interest at the rate of 9% per annum for the first year and 15% per annum for the subsequent year. Against the aforesaid judgment of the Tribunal present appellant filed miscellaneous appeals before this Court. Learned Single Judge by the impugned judgment allowed the appeal in part by reducing market rate of the land from Rs. 700 per decimal to Rs. 500/- per decimal and accordingly judgment of the tribunal was modified to that extent only. Hence these Letter Patent Appeals.

5. Mr. P.K. Prasad, learned counsel appearing for the appellant/Union of India assailed the impugned judgment passed by the tribunal under the said Act and also judgment passed by the learned Single Judge as being contrary to law and against the provisions of Act of 1957. Learned counsel mainly assailed the judgment so far as it awarded solatium by applying amended provisions of Land Acquisition Act. Learned counsel submitted that the land was acquired under the provisions of Coal Bearing Act of 1957 and under the said Act there is no provision for payment of solatium or interest. Learned counsel submitted that u/s 16 of the said Act of 1957 interest at the rate of 5% per annum only is admissible. In this connection, learned counsel relied upon the decision of the

Supreme Court in the case of Dayal Singh and Others Vs. Union of India (UOI) and Others, in the case of Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others, and in the case of Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others,

6. Learned counsel submitted that the appellant/Central Coalfields Ltd, is not bound by Central Government letter whereby decision was taken for payment of solatium and interest as provided in the amended provisions of Land Acquisition Act.

7. Mr. B.N. Dey, learned counsel for the claimants/respondents on the other hand submitted that the land was being acquired by the Central Government for the company namely Central Coalfields Ltd and therefore Central Government decision for payment of interest and solatium cannot be refused. Learned counsel further submitted that solatium and interest have been paid to the other claimants whose lands have been acquired under the said Act of 1957. Learned counsel relied upon the decision of the Supreme Court in the cases of National Coal Development Corporation Ltd. Vs. Manmohan Mathur, in the case of Savitri Cairae Vs. U.P. Avas Evam Vikas Parishad and Another, and in the case of Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others,

8. For better appreciation of the facts of the case and the submissions made by the learned counsel appearing for the appellants, it would be useful to first consider the object of the enactment of Coal Bearing Areas (Acquisition and Development) Act, 1957.

9. With the acquisition of zamindari rights by the Government, the rights in minerals are now vested in all areas in the State Governments. It was, therefore, felt necessary for legislation for the acquisition of mineral rights, particularly because the Central Government does not intend to acquire the proprietary rights vested in the States. There was no other existing Central or State legislation under which the Government has the power to acquire immediately the lessee''s rights over the Coal Bearing Areas acquired by the Government for additional coal production. Moreover, the Land Acquisition Act, 1894, was not appropriate legislation. It was, therefore, the Coal Bearing Act, 1957 was enacted. Before the enactment of the said Act, the proceeding for acquisition of land for the purpose of prospecting of coal seams for the development of collieries to be owned and worked by the Central Government used to be taken under Part-II of the Land Acquisition Act.

10. The said Act of 1957 provides, inter alia, for the acquisition by the Central Government of virgin lands including underground minerals, or rights in and over such land. Section 3 of the Act empowers the Central Government to appoint by notification any person to be the competent authority for the purpose of the Act. Section 4, provides that the Central Government by notification will give notice of its intention to acquire Coal Bearing Land. Section 11 of the Act, is relevant for the purpose of deciding the question that is involved in the instant appeals.

Section 11 reads as under :

"11. Power of Central Government to direct vesting of land or rights in a Government company.-(1) Notwithstanding anything contained in Section 10, the Central Government may, if it is satisfied that a Government Company is willing to comply, or has complied, with such terms and conditions as the Central Government may think fit to impose, direct, by order in writing, that the land or the rights in or over the land, as the case may be, shall, instead of vesting in the Central Government u/s 10 or continuing to so vest, vest in the Government company either on the date of publication of the declaration or on such other date as may be specified in the direction.

(2) Where the rights under any mining lease acquired under this Act, vest in a Government company under Sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the lessee of the State Government as if a mining lease under the Mineral Concession Rules had been granted by the State Government to the Government company, the period thereof being the entire period for which such a lease could have been granted by the State Government under those rules; and all the rights and liabilities of the Central Government in relation to the lease or the land covered by it shall, on and from the date of such vesting, be deemed to have become the rights and liabilities of the Government company."

11. From reading the aforesaid provision, it is manifestly clear that if the Coal Bearing Land is acquired by the Coal Companies then before initiating acquisition proceeding the Central Government may impose such terms and conditions which it thinks fit and proper and direct by order in writing that the land or the rights in and over the land shall vest in the Government Company.

12. In exercise of that power the Government of India, Department of Coal, Ministry of Energy by a letter No. 43026-88- LSW, addressed to the Chairman, Coal India Ltd. communicated the decision and direction for payment of solatium, interest, and additional compensation. A copy of the said order was proved and marked as Ext. H, in the said proceeding. The direction given by the Central Government in the said letter has been considered by the Tribunal and quoted in his judgment which reads as under :

"(a) Solatium, in addition to market value of the land d at the rate of 30 per cent of the market value for all acquisitions made under the C.B.A. Act.

(b) An interest at the rate of 9 per cent per annum for the first year and 15 per cent per annum for the subsequent years on the amount of compensation, including solatium, so calculated for payment of the land owner.

It would thus appear that so far payment of solatium and interest at the enhanced rates is concerned, the same is without any ''its'' or ''but'' and are made admissible in respect of all acquisition made under the C.B.A. Act. But so far payment of additional compensation at the rate of 12 per cent per annum is concerned, it is stated in Ext. H that the same would be admissible in cases of acquisitions made under the C.B.A. Act, only where the notification u/s 9(1) of the said Act has been issued on or after 30.4.82."

13. The main thrust of arguments of the learned counsel appearing for the appellants is that since the Act of 1957, is a self-contained Act compensation has to be determined on the basis of the provisions contained in the Act and the provisions of Land Acquisition Act cannot be read along with the said Act for the purpose of awarding solatium and interest.

14. In the case of Dayal Singh and Others Vs. Union of India (UOI) and Others, the question" which fell for consideration before the Supreme Court was whether the benefit of Section 28A of the Land Acquisition Act, 1894 was applicable in a proceeding under Requisitioning and Acquisition of Immovable Property Act, 1952. Answering the question Their Lordships observed :

''The provisions of the Land Acquisition Act are, ex facie not applicable for determination of compensation under the 1952 Act. The provisions of the Land Acquisition Act and the 1952 Act are, thus, part materia. Section 23 of the Land Acquisition Act, 1894, on the hand, lays down the factors which are required to be taken into consideration in determining the amount of compensation. The mode and manner which the compensation payable for acquisition of land under the 1952 Act and Land Acquisition Act. 1894 are, thus distinct and different. We fail to see as to how the provisions of Section 28A of the Land Acquisition Act can be made applicable in relation to a proceeding under the 1952 Acts."

Their Lordships further observed :

"The parties herein entered into agreements in terms of Clause (a) of Sub-section (1) 8 and, thus, the same falls within the realm of a contract, and parties thereto would ordinarily be bound thereby unless the same is vitiated by fraud, misrepresentation etc.

Once the matter is concluded by a contract, a novation of contract would also fall within the realm of contract only. If the contention of Mr. Narasimha is accepted, a contract can be reopened only with the agreement of both the parties. The parties must be ad-item therefor.

The person whose lands were acquired, thus, having entered into an agreement cannot be said to have any legal right which can be enforced in a Court of law so as to enable him to obtain on order from the Court directing the Union of India to reopen the agreement; only because by reason of a subsequent award an enhanced amount of compensation has been paid for similar class of lands. If a right to get the amount of compensation re-determined is held to be implicit in the Act, the same for all intent and purport would amount to invoking the provisions of Section 28A of the Land Acquisition Act indirectly which cannot be done directly. It is a well-settled principle of law that what cannot be done directly cannot be done indirectly."

15. Similarly in the case of Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others, the question that fell for consideration was that whether the land owner was entitled to interest and solatium for the land acquired under the Defence of India Act, 1971. Their Lordships observed :

''The said Act, is a self-contained Code, it lays down the procedure as well as machinery for determining the amount of compensation. It is not in dispute that the provisions for payment of compensation under the Land Acquisition Act would not ipso facto apply to the acquisition made under the said Act. The provisions of the two Acts, do not also provide for the same scheme for acquisition.

Here it is not a case where existence of the Acquisition Act enables the State to give one owner different treatment from another equally situated owner on which ground Article 14, was sought to be invoked in First Nagpur Improvement Trust case. The purposes for which the provisions of the said Act can be invoked are absolutely different and distinct from which the provision of the Land Acquisition Act can be involved for acquisition of land. In terms of the provisions of the said Act the requisition of the land was made. During the period of requisition the owner of the land is to be compensated therefor. Section 30 of the said Act as referred to hereinbefore, clearly postulates the circumstances which would be attracted for acquisitioning of the requisitioned land.

The purposes for which the requisitioning and consequent acquisition of land under the said Act can be made, are limited. Such acquisition, inter alia, can be made only when works have been constructed during the period of. requisition or where the costs to any Government of restoring the property to its condition at the time of its requisition would be excessive having regard to the value of the property at the relevant time.

16. In the instant case, the facts of the case is quite different. The Tribunal constituted u/s 14(2) of the said Act on the basis of evidence came to a finding that land owners are entitled to interest and solatium. Paras 34, 35 and 36 of the judgment of the Tribunal is quoted here-in-below :

"34. As already stated, the claimants have also demanded the other statutory benefits as provided under Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act. It is also stated in the claim petition (Para 6) that the Central Government has also directed the C.C.L. to provide the aforesaid benefits. The opposite party in its rejoinder (Para 8) has, on the other hand, stated that the aforesaid benefits provided under the Land Acquisition Act, are not admissible to the owners of the lands whose lands have been acquired under the Coal Bearing (Acquisition and Development) Act, 1957. It is also stated that the enhanced rate of solatium and interest are not admissible for the reason that the lands in these cases were acquired before 30.4.82.

35. In that regard, the opposite party has filed the letter No. 43026-88-LSW, dated 12.5.89 of the Government of India, Deptt. of Coal, Ministry of Energy,

addressed to the Chairman, Coal India Ltd. (Ext. H). The said letter contains a decision in respect of payment of solatium, interest and additional compensation. As regards payment of the solatium and interest it is stated as follows :

(a) Solatium, in addition to market value of the land at the rate of 30 per cent of the market value for all acquisitions made under the C.B.A. Act.

(b) An interest at the rate of 9 per cent per annum for the first year and 15 per cent per annum for the subsequent years on the amount of compensation, including solatium, so calculated for payment of the land owner.

It would thus appear that so far payment of solatium and interest at the enhanced rates is concerned, the same is without any ''ifs'' or ''but'' and are made admissible in respect of all acquisition made under the C.B.A. Act. But so far payment of additional compensation at the rate of 12 per cent per annum is concerned, it is stated in Ext. H that the same would be admissible in cases of acquisitions made under the C.B.A. Act, only where the notification u/s 9(1) of the said Act, has been issued on or after 30.4.82.

36. From the aforesaid letter of the Central Government (Ext. H) it is, in my view, evident that solatium and interest at the enhanced rate are admissible in cases of all acquisitions made under the CBA Act, irrespective of the date of notification u/s 9(1) of the Act. But, additional compensation at the rate of 12 per cent per annum is admissible only in respect of those acquisitions in respect of which notification u/s 9(1) of the Act, was made on or after 30.4.1982. In the present cases, notification u/s 9(1) of the Act, was made prior to 30.4.82 and as such so far the claim for additional compensation is concerned the same is clearly not admissible."

17. Similar question arose for consideration before the Division Bench of this Court in the case of Union of India v. Hari Mahto 2002 (2) JCR 130 (Jhr) : (2002) 2 JLJR 372. In that case also land was acquired under the Coal Bearing Area (Acquisition and Development) Act, 1957, for the coal companies namely, Central Coalfields Limited. In that case also the letter issued by the Joint Secretary to the Government of India addressed to the Chairman, Coal India Limited to the effect that the Central Government took a decision taking into consideration the amendment made in the Land Acquisition Act, to pay additional compensation, solatium and interest was proved and exhibited. Relying upon the said decision of the Central Government, the learned Single Judge held that land owners are entitled to interest and solatium as per the decision taken by the Central Government. The said judgment was affirmed by the Division Bench in letters patent appeal filed by the Union of India. The Division Bench observed :

"14. Next question falls for consideration is as to whether the learned Single Judge was correct in law in holding that the amount of solatium and interest granted by the tribunal was justified. For better appreciation, I would like to refer paragraph 25 of the judgment passed by the Tribunal, which is quoted hereinabove :

"Ext. G/5, and Ext. 11 (both are same) show that the amount of compensation payable under C.B.A. Act is much less as compared to the entitlement under the L.A. Act, therefore (a) solatium in addition to market value of the land at the rate of 30% of the market value for all acquisitions made under C.B.A. Act, (b) an interest at the rate of 9% per annum for the first year and 15% per annum for the subsequent years on the amount of compensation including solatium so calculated for payment to the land owner should be paid, In addition to that the Coal Companies will pay an additional amount to compensate for escalation is cost of the land at the rate of 12% per annum of the market value of the land in cases of all acquisitions made under the C.B.A. Act where notification u/s 9(i) of the said Act is issued on or after 30.4.1982 on perusal of awards (Ext. 9 series) it appears that C.C.L. granted to some of the claimants, (Ext. D, 9/G, 9/c, 9/F, 9/g at for instance) solatium at the rate of 30% and interest at the rate of 9% for the first year and 15% for the subsequent years but to some of the claimants it has not granted either solatium or interest (Ext. 9/e, 9/c 9/m, 9/n etc. for instance). No explanation has been given by the opposite party for this discissination."

15. It is therefore, clear that by Ext. 11, which is letter dated 12.5.1989 issued by the Joint Secretary to the Government of India addressed to the Chairman, Coal India Ltd., the Central Government admitted that the amount of compensation determined under the said Act, is much less as compared to the compensation awarded under the Land Acquisition Act. The Central Government therefore taking into consideration the amended provisions of the Land Acquisition Act, has decided to pay additional compensation. The relevant portion of the letter dated 12.5.89 is quoted herein below :

The Department of Rural Development (Ministry of Agriculture) Govt. of India have been putting pressure on us ever after the aforesaid amendments were carried out in the L.A. Act in 1984 to effect corresponding amendment in the Coal Bearing Areas (Acquisition & Development) Act, 1957, also so that all the disparities between the two Acts, inasmuch as they relate to payment of compensation were removed and land loosers were not put to any discrimination. The Central Government has since taken a decision in principle to amend the C.B.A. Act, in line with the L.A. Act, and necessary consultation in this regard are already on with the concern ministries of the Govt. of India. It will however, will take some time before the proposed amendments are inacted after completion of all formalities. Till then decisions already exit to pay :

(a) Solatium in addition to market value of the land at the rate of 30% of the market value or all acquisitions made under the C.B.A. Act.

(b) An interest at the rate of 9% per annum for the first year and 15% per annum for the subsequent years on the amount of compensation including solatium so calculated for payment of the land owner."

18. Learned counsel appearing for the appellant has not disputed the fact that

after the claim for payment of interest and solatium decided by this Court, the land owners in other reference cases have been paid interest and solatium. In the instant case, therefore, in our opinion, there is no reason why the land owners of these cases shall not be paid interest and solatium in respect of the land acquired for the same coal companies namely, Central Coalfields Limited. In our considered opinion also, in view of the decision of the Central Government, Ministry of Coal referred to herein above, the respondents are entitled to interest and solatium as held by the Tribunal and by the learned Single Judge.

19. For the aforesaid reasons, the impugned judgment and order passed by the Tribunal and learned Single Judge needs no interference by this Court. These appeals are, therefore, dismissed. However, in the facts of the case, there shall be no order as to costs.

