
(2008) 11 SC CK 0119

In the Supreme Court Of India

Case No : Civil Appeal No"s. 2319-2327 of 2001, CA No"s. 332-336 of 2008, CA No"s. 354-359 of 2008, CA No"s. 6789-6790 of 2008 (Arising out SLP (C) No"s. 4505-4506 of 2008) , CA No"s. 6792-6796 of 2008 (Arising out SLP (C) No"s. 4632-4636 of 2008) , CA No"s

Union of India (UOI)

APPELLANT

Vs

Parmal Singh and Others

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14
Defence of India Act, 1962 — Section 29, 36, 37, 37(1), 37(2)
Defence of India Act, 1971 — Section 30, 31
East Punjab Requisitioning of Immovable Property (Temporary Po

Citation : (2009) 1 ALD 86 : (2008) 12 JT 611 : (2009) 1 SCC 618

Hon'ble Judges : R. V. Raveendran, J; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : S.P. Singh, Sunil Gupta, Rekha Pandey, Rajni Ohri Lal, Raj Kumar Tanwar, S.W.A. Qadri, B.K. Prasad, Shreekanth Ahmed, Devendra Kumar, K.K. Mohan, T.N. Singh, Manoj Dwivedi, G.V. Rao and Kamalendra Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—The lands of respondents in village Mola Agri (now district Ghaziabad) were requisitioned by the Central Government in 1963 u/s 29 of the Defence of India Act, 1962 (for short the 'Act'). The said requisitioned lands were subsequently acquired u/s 36 of the Act in the year 1965. The Special Land Acquisition officer, Meerut, determined the compensation payable to the respondents in the year 1966 (varying between Rs. 2400 and Rs. 3625 per bigha by adopting belting method of valuation). Not being satisfied with the compensation determined by him, the respondents sought reference to arbitration u/s 37(2) of the Act, for determination of proper compensation. The Central Government appointed different Arbitrators to decide their claims. In one arbitration, an award dated 16.3.1979, was made awarding compensation at the

rate of Rs. 2.60 per sq.yd with interest at 6% per annum from the date of acquisition till date of deposit. In another arbitration, an award dated 8.9.1986 was made awarding compensation at Rs. 2.60 per sq. yd. with solatium at the rate of 30% and interest at 9% per annum on the additional amount from the date of acquisition till date of payment. Not being satisfied with the compensation, respondents filed writ petitions challenging the awards of the arbitrators before the Allahabad High Court. The High Court by its orders dated 1.4.1999 increased the compensation to Rs. 3.60 per sq. yd. Wherever solatium had been awarded, the High Court set aside the same. Wherever interest had been awarded at a rate in excess of six percent per annum, the High Court reduced the rate and awarded a uniform interest at the rate of 6% per annum from the date of acquisition till the date of payment/deposit.

2. Union of India has filed these appeals by special leave against the said orders of the High Court, challenging the award of interest at 6% per annum. It has not challenged the enhancement of compensation from Rs. 2.60 to Rs. 3.60 per sq. yd. Appellant contends that as the Act provides for payment of only compensation and does not provide for either solatium or interest, interest could not have been awarded. Reliance is placed on the decisions of this Court in Union of India (UOI) Vs. Hari Krishan Khosla (Dead) by Lrs., and Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others, .

3. The learned Counsel for respondents submitted that there has been enormous delay at every stage. He pointed out that the acquisition was of the year 1965; that there was delay in appointing arbitrator; that only the amount awarded by the arbitrator has been paid; and that neither the enhancement in compensation (from Rs. 2.60 to Rs. 3.60 per sq. yd.) made by the High Court, nor the interest has been paid. Learned Counsel for the respondents submitted that the decisions in Chajju Ram and Hari Krishan Khosla did not prohibit award of interest on equitable grounds when there was inordinate delay. He drew attention to the fact that ultimately in the said two decisions, the amount already paid as interest was directed not to be recovered. He also placed reliance on two other decisions of this Court namely Prabhu Dayal and Others Vs. Union of India, and Girdhari and Others Vs. Union of India (UOI) and Others, relating to acquisitions under the Requisitioning and Acquisition of Immovable Property Act, 1952 ('RAIP Act' for short, provisions of which, relating to acquisition and compensation are in pari materia with the provisions of the Act), to show that interest can be awarded from the date of acquisition till the date of payment.

4. On the contentions urged, the only question that arises for consideration is whether award of interest by the High Court on the compensation for acquisition of requisitioned property under Defence of India Act, 1962 is impermissible.

5. Section 36 of the Act provides for the manner of acquisition of requisitioned property. Section 37 of the Act deals with determination of compensation for acquisition of requisitioned property. Sub-section (1) thereof which is relevant is extracted below :

37. (1) 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 the requisition, whichever is less.

Sub-section (2) of Section 37 provides for reference of applications for enhancement of compensation filed by a persons interested, to an Arbitrator appointed by the Central Government. Sections 36 and 37 of the Act correspond to Sections 30 and 31 of Defence of India Act, 1971 ('DI Act of 1971' for short) which replaced the Act. Section 37(1) of the Act is also in pari materia with Section 8(3) of the RAIP Act. One significant common feature of these enactments is that they provide for acquisition of requisitioned land and do not contain any provisions similar to Sections 23(2) and 28/34 of the Land Acquisition Act, 1894 ('LA Act' for short) providing for payment of solatium or interest.

6. The validity of Section 8(3) of RAIP Act came up for consideration in Union of India (UOI) Vs. Hari Krishan Khosla (Dead) by Lrs., . This Court held that absence of any provision for payment of solatium and interest, similar to Sections 23 and 34 of Land Acquisition Act, 1894, in regard to acquisition of requisitioned land u/s 8(3)(a) of the RAIP Act did not render the said provisions invalid. This Court held that acquisition of land under the RAIP Act stood on a different footing when compared to an acquisition under the LA Act as the property acquired under RAIP Act was subject to a prior requisition, which was not the case in regard to acquisitions under the LA Act. The decision in Hari Krishan Khosla (supra) was followed in Union of India (UOI) and Others Vs. Dhanwanti Devi and Others,

7. The decision in Hari Krishan Khosla was also followed by a Constitution Bench of this Court in Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others, dealing with the challenge to the validity of Sections 30 and 31 of the Defence of India Act, 1971 (which replaced the Act) on a ground similar to what was urged in Hari Krishan Khosla with reference to Section 8(3)(a) of RAIP Act. Accepting the challenge, the High Court had held that Section 31 of the DI Act of 1971 was violative of Article 14 of the Constitution of India and the land owners were entitled to claim solatium at 15% and interest at 6% per annum on the lines of what was provided under the LA Act. This Court reversed the decision of the High Court and upheld the validity of Sections 30 and 31 of the DI Act of 1971. This Court held that the DI Act of 1971 was a self-contained Code and that adoption of different classifications for determination of compensation for acquisition of requisitioned land under the Defence of India Act, 1971 and acquisition of non-requisitioned land under the Land Acquisition Act, 1894, was reasonable and

valid.

8. But what is relevant for our purpose is that both in Hari Krishan Khosla and Chajju Ram, the question considered was whether the provisions relating to acquisition of requisitioned land under the provisions of the RAIP Act and DI Act of 1971, were invalid for not providing for payment of solatium and interest, similar to the LA Act. In neither of those two cases, this Court considered whether interest could be awarded or not, on belated payment of compensation amount for acquisitions under the relevant Acts, on equitable grounds. In fact, in both Hari Krishan Khosla and Chajju Ram, this Court after upholding the validity of provisions relating to acquisition and determination of compensation, directed the Union of India not to recover back the interest which had already been paid to the land owners. This direction was on equitable grounds. In Prabhu Dayal and Girdhari, this Court awarded interest on equitable grounds, though the RAIP Act did not contain any provision for award of interest.

9. When a property is acquired, and law provides for payment of compensation to be determined in the manner specified, ordinarily compensation shall have to be paid at the time of taking possession in pursuance of acquisition. By applying equitable principles, courts have always awarded interest on the delayed payment of compensation in regard to acquisition of any property. When a requisitioned property is acquired, as possession had already been taken from the landholder, the compensation becomes payable from the date of acquisition. When a property is requisitioned, the land owner is compensated for the denial of possession by paying compensation based on the rent it would have fetched had it not been requisitioned. But once the property is acquired, the rent is stopped, as compensation based on open market value becomes payable against acquisition. Therefore while interest is payable, it is not awarded from the date of requisition (taking over of possession) but only from the date of acquisition. This principle has been recognized and applied by courts consistently. Whenever the Arbitrator or High Court increases the compensation for the acquired land, the increase relates back to the date of acquisition as they are merely doing what the Special Land Acquisition Officer ought to have done in the first instance. Therefore, interest is awardable on the increased amount also from the date of acquisition. The said general principle will not apply in two circumstances. One is where a statute specifies or regulates the interest. In that event, interest will be payable in terms of the provisions of the statute. The second is where a statute or contract dealing with the acquisition specifically bars or prohibits payment of interest on the compensation amount. In that event, interest will not be awarded. Where the statute is silent about interest, and there is no express bar about payment of interest, any delay in paying the compensation or enhanced compensation for acquisition would require award of interest at a reasonable rate on equitable grounds. We are fortified in this view by the enunciation in *Satinder Singh and Others Vs. Amrao Singh and Others*, , which has been reiterated in *Hirachand Kothari v. State of Rajasthan* 1985 (Supp.) SCC 17.

10. In *Satinder Singh*, this Court while considering acquisition of land under the East Punjab Requisition of Immovable Property (Temporary Powers) Act, 1948, held that interest can be awarded on equitable grounds. The following observations throw light on the issue :

(17) What then is the contention raised by the claimants? They contend that their immovable property has been acquired by the State and the State has taken possession of it. Thus they have been deprived of the right to receive the income from the property and there is a time lag between the taking of the possession by the State and the payment of compensation by it to the claimants. During this period they have been deprived of the income of the property and they have not been able to receive interest from the amount of compensation. Stated broadly the act of taking possession of immovable property generally implies 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. This question has been considered on several occasions and the general principle on which the contention is raised by the claimants has been upheld. In *Swift and Co. v. Board of Trade* (1925) A C 520 at p. 532, it has been held by the House of Lords that "on a contract for the sale and purchase of land it is the practice of the Court of Chancery to require the purchaser to pay interest on his purchase money from the date when he took, or might safely have taken, possession of the land....

(18) In *Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission* 1928 A.C. 429, it was held by the Privy Council that "upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest upon the principal sum awarded from the date when possession was taken, unless the statute clearly shows a contrary intention." Dealing with the argument that the expropriation with which the Privy Council was concerned was not effected for private gain, but for the good of the public at large, it observed "but for all that, the owner is deprived of his property in this case as much as in the other, and the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. The right to receive the interest takes the place of the right to retain possession and is within the rule." 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.

(19) It is, however, urged by Mr. Gopal Singh for respondent 2 that what the claimants are entitled to receive is compensation and since the word "compensation" is used by Section 5(1) both in respect of requisition as well as acquisition it would not be fair to import the general rule about the payment of interest where property is acquired. Compensation, it is urged, should represent the price of the property and there is no justification for adding to the said price any amount by way of damages. We are not impressed by this argument. 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. In our opinion, therefore, the fact that Section 5(1) deals with compensation both for requisition and acquisition cannot serve to exclude the application of the general rule to which we have just referred.

[emphasis supplied]

Proviso to Section 1 of Interest Act, 1839 and Section 4(1) of Interest Act, 1978 also recognize and preserve the power of court to grant interest in such circumstances.

11. In this case the acquisition is of the year 1965. Though more than four decades have elapsed, the land owners are yet to get the compensation in entirety. It is also relevant to note that when the Arbitrator awarded interest, it was not challenged by the appellant. It accepted the award of interest. Only when the High Court increased the amount of compensation in the appeals filed by the landowners, the appellant chose to challenge, not the increase in compensation, but the award of interest. Be that as it may.

12. For the reasons aforesaid, we uphold the award of interest at 6% per annum on the compensation amount. The appeals are therefore dismissed.

C.A. Nos. 332-336/2008 and CA Nos. 354 to 359/2008

These appeals involve the same issue. Following the decision in C.A. Nos. 2319-2327/2001, these appeals are dismissed.

SLP (C) Nos. 4505-4506/2008, SLP (C) Nos. 4632-4636/2008), SLP (C) No. 4637/2008, SLP (C) Nos. 7110-7112/2008, SLP (C) Nos. 9132- 9145/2008, SLP (C) Nos. 11266-11271/2008, and SLP (C) Nos. 19273- 19289/2003

Delay condoned. Leave granted. These matters are covered by the decision rendered in C.A. Nos. 2319-2327/2001. Following the said decision, we uphold the award of interest and dismiss these appeals.