

Abhay Singh Surana & Ors vs Secretary Ministry Of Communication & ... on 19 August, 1987

Equivalent citations: 1987 AIR 2177, 1987 SCR (3)1045, AIR 1987 SUPREME COURT 2177, (1987) 2 LS 28, 1987 4 JT 444, 1988 ALL CJ 92, (1987) 3 JT 444 (SC), (1987) MAHLR 986, (1987) 3 SCJ 224, 1987 (4) SCC 273

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, G.L. Oza

PETITIONER:

ABHAY SINGH SURANA & ORS

Vs.

RESPONDENT:

SECRETARY MINISTRY OF COMMUNICATION & ORS.

DATE OF JUDGMENT19/08/1987

BENCH:

MUKHARJI, SABYASACHI (J)

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MUKHARJI, SABYASACHI (J)

OZA, G.L. (J)

CITATION:

1987 AIR 2177 1987 SCR (3)1045

1987 SCC (4) 273 JT 1987 (3) 444

1987 SCALE (2)400

ACT:

Interest on the amount awarded by Arbitrator for requisition of premises under Requisitioning and Acquisition of Immovable Property Act, 1952--Entitlement of.

HEADNOTE:

This appeal by special leave was confined solely to the question of entitlement of interest on the amount awarded by the Arbitrator for the requisition of the premises under the Requisitioning and Acquisition of Immovable Property Act, 1952.

Disposing of the appeal, the Court,

HELD: The principles upon which the compensation on this aspect is payable are by now well-settled. This Court reit-

erated the principles in *Satinder Singh and Ors. v. Amrao Singh and Ors.*, [1961] 3 SCR 676 at 694; *National Insurance Co. Ltd. Calcutta v. Life Insurance Corporation of India*-- [1963] Supp. 2 SCR 971 at 992 and *Hirachand Kothari (dead) through Lrs. v. State of Rajasthan & Anr.*, [1985] Suppl.1 SCR 644 at 655. [1046F; 1048C]

In the light of the aforesaid decisions, the Court was of the opinion that the appellants herein were entitled to the interest for the period from March 1975 to the 31st July, 1987, when the principal amount of compensation had been paid and/or when the premises in question had been de-requisitioned and handed back to the owner, on the amount awarded. The Court was of the opinion that for the period from March 7, 1975 to February 28, 1985 being the date on which the judgment of the High Court was pronounced in this case, the appellants were entitled to the interest on the amount awarded at the rate of 6 per cent per annum, and for the period from August 8, 1985 to July 31, 1987--for that period only--at the rate of 12 per cent per annum. The interest would be payable only on the balance amount which remained to be paid to the appellants i.e. the amount due minus what had been paid from the respective dates. The Court directed that the amount be paid by the respondents within three months from the date of this judgment, and that in case there was any difficulty in calculating the amount, the

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parties would be at liberty to apply to the High Court. [1048C-H]

Satinder Singh & Ors. v. Amrao Singh & Ors., [1961] 3 S.C.R. 676; *National Insurance Co. Ltd. Calcutta v. Life Insurance Corporation of India*, [1963] Supp. 2 S.C.R. 971 at 992; *Hirachand Kothari (dead) through Lrs. v. State of Rajasthan & Ors.*, [1985] Supp. 1 S.C.R. 644 and *Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission*, A.I.R. 1928 Privy Council 287, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 859 of 1987.

Shankar Ghosh and L.P. Aggarwal for the Appellants From the Judgment and order dated 8.8. 1985 of the Calcutta High Court in Appeal No. 329 of 1982. V.C. Mahajan, B. Parthasarthi and C.V. Subba Rao for the Respondents.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. This appeal by special leave is confined solely to the question of interest. In other words, the entitlement of interest on the amount awarded by Arbitrator for the requisition of the premises under the Requisitioning and Acquisition of Immovable Property Act 1952 is the issue. The principles upon which the

compensation on this aspect is payable are by now well settled. In *Satinder Singh & Ors. v. Amrao Singh & Ors.*, [1961] 3 SCR 676 this Court reiterated the principles at page 694 of the report as follows:

"In *Inglewood Pulp and Paper Co. Ltd. v. New Burnswick 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. The question which we have to consider is whether the application of this rule is intended to be excluded by the Act of 1948, and as we have already observed, the mere fact that section 5(3) of the Act makes s. 23(1) of the Land Acquisition Act, 1894 applicable we cannot reasonably infer that the Act intends to exclude the application of this general rule in the matter of the payment of interest. That is the view which the Punjab High Court has taken in *Surjan Singh v. The East Punjab Government*, (AIR 1957 Punj. 265) and we think rightly."

The same principle was reaffirmed not in the context of Acquisition of Immovable Property, which Mr. Mahajan, learned counsel for the respondents tried to make a point before us, was highlighted in *National Insurance Co. Ltd. Calcutta v. Life Insurance Corporation of India*, [1963] Supp. 2 SCR 971. at 992 where speaking for the court Mr. Justice Hidayatullah, as learned Chief Justice of India then was observed:

"The reason of the rule was stated a long time ago by Lord St. Leonard L.C. *Birch v. Joy*, [1852] III H.L.C. 565:10 E.R. 222 as follows:

"The parties change characters, the property remains at law just where it was, the purchaser has the money in his pocket, and the seller still has the estate vested in him; but they exchange characters in a Court of Equity, the seller becomes the owner of the money and the purchaser becomes the owner of the estate."

On entering possession the purchaser becomes entitled to the rents but if he has not paid the price, interest in equity is deemed payable by him on the purchase price which belongs to the seller. This principle was applied by the House of Lords in cases of compulsory purchases. In *Swift & Co. v.*

Board of Trade, [1925] A.C. 520 Viscount Cave L.C. gave the reason that the practice rests upon the principle that the taking of possession is an implied agreement to pay interest which was stated by Sir William Grant M.R. in *Fludyer v. Cocker*, [1805] 33 E.R. 10. This principle was further extended by the Privy Council to the compulsory taking over of a business as a going concern in *International Railway Co. v. Niagara Parks Commission*, [1944] A.C. 328. It was noted by Justice Hidayatullah that this principle has also been accepted by this Court in *Satinder Singh v. Amrao Singh* (supra). The principle stated was followed in *Hirachand Kothari (dead) through Lrs. v. State of Rajasthan & Anr.*, [1985] Suppl. 1 SCR 644 where this court noted the principle at page 655 of the report.

In the light of the aforesaid decision we are of the opinion that the appellants herein are entitled to the interest for the period from March 1975 to 31st July, 1987 when principal amount of compensation had been paid and or when the premises in question had been de-requisitioned and handed back to the owner, on the amount awarded. As to how the interest would vary, but the right of interest was well avered and also should have been considered in the light of the observations of Privy Council in *Inglewood Pulp and Paper Co. Ltd. v. New Burnswick Electric Power Commission*, AIR 1928 Privy Council 287. We are of the opinion that from the period from March 7, 1975 to February 28, 1985 being the date on which the judgment of the High Court was pronounced in this case the appellants are entitled to the interest on the amount awarded at the rate of 6% per annum and from the period from August 87 1985 to July 31, 1987 and for that period only at the rate of 12% per annum. Interest will be payable only on the balance amount which remained to be payable to the appellants i.e. the amount due minus what has been paid from the respective dates. The appellants are entitled to the costs of this appeal.

The amount is directed to be paid within three months from this date by the respondents. In case, there is any difficulty in calculating the amount, the parties will be at liberty to apply to the High Court of Calcutta. The appellants are entitled to costs of this appeal. The appeal is thus disposed of.

S.L.
posed of.

Appeal dis-