

Sunder vs Union Of India on 19 September, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3516, 2001 (3) LRI 136

Bench: Chief Justice, K.T. Thomas, R.C. Lahoti, N. Santosh Hegde, S.N. Variava

CASE NO.:

Appeal (civil) 6271 of 1998

PETITIONER:

SUNDER

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT: 19/09/2001

BENCH:

CJI, K.T. Thomas, R.C. Lahoti, N. Santosh Hegde & S.N. Variava

JUDGMENT:

WITH Civil Appeal Nos.6272/1998, 6273/1998, 6274/1998, 1032/1999, 1185/1999, 1186/1999, 1187/1999, 1188/1999, 1189/1999, 1190/1999, 1191/1999, 1192/1999, 1193/1999, 2705/1999, 2437 to 2445 of 2000.

J U D G M E N T THOMAS, J.

The question referred to this Bench of five Judges is a simple one. Is the State liable to pay interest on the amount envisaged under Section 23(2) of the Land Acquisition Act, 1894 (for short 'the Act')? The sum contemplated in the aforesaid sub-section can conveniently be called "solatium" as that expression has been used plentifully in almost all land acquisition proceedings in India. The reference of the aforesaid question to this larger Bench was necessitated on account of a seeming conflict as between the decision of a three Judge Bench of this Court in Union of India vs. Shri Ram Mehar and ors. {1973(1) SCC 109} on the one hand and a few later decisions of co-equal Benches of this Court on the other hand.

The power of granting interest on the sums involved in land acquisition proceedings is endowed in two provisions of the Act. Section 34 enjoins on the Collector to pay interest at two tier rates. For the

first stage, from the date of taking possession until disbursement of the awarded amount the rate is 9% per annum. If such disbursement is delayed beyond one year the rate of interest would escalate to 15% per annum from the date of expiry of the said period of one year. Section 28 of the Act contains the same postulates and it is supplementary to the above provision. It empowers the court to direct the Collector to pay interest at the above two tier rates on the excess sum awarded by the court. The real question is whether in calculating the interest, as mentioned in the said provisions, the amount of solatium envisaged in Section 23(2) of the Act should be included in or excluded from the sum on which interest is liable to be paid.

In Union of India vs. Shri Ram Mehar and ors. (supra) the three Judge Bench considered the scope of the expression "market value" in Section 4(3) of the Land Acquisition (Amendment and Validation) Act, 1967. By the said Amendment Act certain changes were effected in the principal Act. Section 4(3) of the Amendment Act provided that simple interest shall be paid at the rate of 6% per annum "on the market value of such land as determined under Section 23 of the principal Act" from the date of expiry of three years to the date of notification under Section 4(1) of the principal Act. Learned Judges held that solatium cannot form part of the market value of the land. It was also held that "market value" is only one of the components to be reckoned in the determination of the amount of compensation. The following observations made by the Bench is highlighted to be the ratio of the decision:

"If market value and compensation were intended by the legislature to have the same meaning it is difficult to comprehend why the word 'compensation' in Section 28 and 34 and not 'market value' was used. The key to the meaning of the word 'compensation' is to be found in Section 23(1) and that consists

(a) of the market value of the land and (b) the sum of 15% on such market value which is stated to be the consideration for the compulsory nature of the acquisition.

Market value is therefore only one of the components in the determination of the amount of compensation. If the Legislature has used the word 'market value' in Section 4(3) of the Amending Act of 1967 it must be held that it was done deliberately and what was intended was that interest should be payable on the market value of the land and not on the amount of compensation otherwise there was no reason why the Parliament should not have employed the word 'compensation' in the aforesaid provision of the Amending Act."

That decision was followed by a two Judge Bench of this Court in Periyar & Pareekanni Rubbers Ltd. vs. State of Kerala {1991(4) SCC 195}. Learned Judges (L.M. Sharma, J, as he then was, and K. Ramaswamy, J) in the concluding part of that decision said as follows:

"Therefore, we have no hesitation to hold that Section 25(3) contemplates payment of interests on solatium to re-compensate the owner of the land for loss of user of the land from the date of taking possession till date of payment into court. The word compensation has been advisedly used by the legislature. Accordingly we hold that the appellant is entitled to interest on solatium."

The turn of the tide in the reverse direction commenced when a three Judge Bench adopted the contrary view in *Mir Fazeelath Hussain & ors. vs. Special Deputy Collector* {1995 (3) SCC 208} wherein learned Judges held that solatium is not a part of the award and hence interest is not claimable thereon. We may point out that the decision of the three Judge Bench in *Union of India vs. Shri Ram Mehar and ors.* (supra) was not referred to in *Mir Fazeelath Hussain*, presumably because it would not have been brought to the notice of the learned Judges. Another three Judge Bench in *Prem Nath Kapur & anr. vs. National Fertilizers Corporation of India Ltd. & ors.* {1996 (2) SCC 71}, while considering the question whether an awardee is entitled to appropriate amount of compensation first towards cost and then towards interest etc., made the observation that "the liability to pay interest is only on the excess amount of compensation determined under Section 23(1) and not on the amount already determined by the Land Acquisition Officer under Section 11 and paid to the party or deposited into the court or determined under Section 26 or Section 54 and deposited into the court or on solatium under Section 23(2) and the additional amount under Section 23(1-A)". But the question whether solatium is part of the compensation did not positively arise in the said decision nor has it been gone into by the learned Judges.

However, such a question has been considered directly by another three Judge Bench (K. Ramaswamy, S. Saghir Ahmad and G.B. Pattanaik, JJ) in *Yadavrao P. Pathade vs. State of Maharashtra* {1996 (2) SCC 570}. Learned Judges made a reference to the observation of the two Judge Bench in *Periyar & Pareekanni Rubbers Ltd.* (supra) to the effect that solatium is the component forming the compensation mentioned in Section 23 of the Act and hence interest would accrue on it. Nonetheless learned Judges dissented from the view in *Periyar & Pareekanni Rubbers Ltd.* by stating that "unfortunately neither the provisions of the Act were considered nor the distinction of the provisions had been brought to the notice of the court at that time." The Bench referred to Section 23(1) of the Act and laid emphasis on the words "in addition to the market value" in sub-section (2) of Section 23. Hence it was held thus:

"The legislature, therefore, made a distinction between compensation under Section 23(1) and the additional amount on such market value as solatium in consideration of compulsory nature of acquisition. In other words, Section 28 does not comprehend payment of interest on solatium when it expressly mentions payment of interest on compensation under Section 28 referable to Section 23(1) of the Act."

The Bench upheld the view of the High Court that there is no legal warrant for awarding interest on solatium.

In the light of the above divergent views even as between Benches of co-equal strength Mr. Sunil Gupta and the rest of the learned counsel who argued for the claimants endeavoured to sustain the view that solatium is part of the compensation. According to them the interest envisaged in Section 28 as well as Section 34 of the Act would accrue on the aggregate amount which envelopes the solatium as well. The opposite view was projected by Shri Harish N. Salve, learned Solicitor General of India and Shri Rakesh Dwivedi, learned Senior Advocate for one of the instrumentalities which may have to bear the burden if the plea of the claimant is upheld.

Shri Harish N. Salve, learned Solicitor General submitted that since the expression "compensation" has not been defined in the Act, but was used in different places in different contexts it could contain more than one meaning. He cited Section 35 of the Act as an example (which contains the provisions for procuring occupation of waste or arable lands for temporary use) wherein the word "compensation" is used ostensibly in a different connotation. He further submitted that there is distinction between the compensation awarded for the land acquired as indicated in Section 23(1) of the Act and the aggregate compensation which comprises the former plus the solatium and the additional amount payable under sub-section (1-A) thereof. The two sums in the latter category are payable merely as consequential to the determination of the compensation mentioned in the first sub-section, according to learned Solicitor General. Alternatively he contended that the actual loss sustained by the landowner is the enjoyment of the property and hence the real compensation is the just equivalent of it which represents only the amount covered by the different clauses incorporated in the first sub-section of Section 23 of the Act. In that view also, according to the Solicitor General, the interest need be payable only on the said compensation.

Mr. Rakesh Dwivedi, learned senior counsel while supporting the arguments of the Solicitor General invited our attention to Section 15 and Section 26(1) of the Act to contend that the real compensation which is countable for the purpose of interest cannot encompass the solatium.

Shri Sunil Gupta, learned counsel who argued for the claimants in this appeal laid emphasis to the title words of Section 23 i.e. "Matters to be considered for determining compensation". He contended that the entire section is intended to contain different heads for determining the total amount of compensation and the person interested to whom the said amount is payable, when he is deprived of the possession of the land, must get the said compensation and hence interest thereon shall accrue till payment of it without delinking any sum therefrom.

Section 11 of the Act enjoins on the Collector the statutory duty to conduct an inquiry into the value of the land on the date of publication of the notification under Section 4(1) of the Act and to make an award for the "compensation" which in his opinion should be allowed for the land. Section 31 of the Act casts obligation on the Collector that after making the award under Section 11 he shall tender payment of "the compensation awarded by him"

to the persons entitled to it according to the award. This means that law does not relish any delay in making the payment once the award is made. Thus, making the award shall normally follow payment of compensation as expeditiously as possible.

Section 16 empowers the Collector to take possession of the land after making the award under Section 11. When possession is so taken the land shall vest absolutely in the Government free from all encumbrances. This is the statutory operation which is clearly envisaged in Section 16 itself. But in the absence of a legal insistence that the amount awarded should necessarily be paid before taking possession of the land it could happen, perhaps quite often, that there would be some interregnum between the date of taking possession and making payment of the awarded sum.

Question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession of the land. It is inequitable that the person who is deprived of the possession of the land, on account of acquisition proceedings is not given the amount which law demands to be paid to him, any delay thereafter would only be to his detriment. There must be a provision to buffet such iniquity. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made in Section 34 of the Act. That section is extracted below:

"34. Payment of Interest.- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

When the court is of opinion that Collector should have awarded a larger sum as compensation the court has to direct the Collector to pay interest on such excess amount. The rate of interest is on a par with the rate indicated in Section 34. This is so provided in Section 28 of the Act which is extracted below:

"If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into court.

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry."

Thus interest has to accrue as per Section 34 and Section 28 of the Act on the compensation awarded, whether it is as per the award initially passed by the Collector or by the Court later. What is meant by "the compensation"

awarded? Both sides cited different definitions for the word "compensation" as contained in different lexicographys. In "Words and Phrases" (Permanent Edn.)

different connotations of the word "compensation" have been delineated. One of them relates to the law of eminent domain, where compensation means recompense in value, a quid pro quo, and must be in money. Another is relating to the property taken for public use. Then it is the fair market value at the time of taking it. From the Constitutional perspective the word 'compensation' for the property taken was understood as the just equivalent of the value of the property. But when compensation is regarded as a statutory obligation the afore-cited definitions need not detract the courts in fathoming the real import of it. The exercise can be done with the aid of the provisions in the statutes. So what the Court, in the context of land acquisition, has to decide is how the Act has designed the compensation vis-à-vis the liability to pay interest. In this context we have to read Section 23 of the Act. It is extracted below:

"23. Matters to be considered in determining compensation. - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration-

first, the market value of the land at the date of the publication of the notification under section 4, sub-section (1), secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any, sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

(2) In addition to the market-value of the land, as above provided, the court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition."

Mr. Rakesh Dwivedi, learned senior counsel while contending that the sum envisaged in sub-section (2) cannot form part of the compensation, as the same is a payment only by way of solace on account of the compulsory nature of the acquisition, sought to seek assistance from Section 15 of the Act. It reads thus:

"In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24."

Section 24 of the Act consists of a catalogue of matters which shall not be taken into account while determining compensation. The title of the section is "Matters to be neglected in determining compensation". The key words are "but the court shall not take into consideration" the matters enumerated thereunder. The argument is that whatever items have been mentioned therein even if included in the award would not partake of the character of compensation as the legislature has imposed a ban against reckoning them to be so treated. Any amount paid on account of "any disinclination of the person interested to part with the land acquired" (vide clause "secondly" in Section 24) would thus be kept outside the ambit of the compensation for land, and those excluded items, even if payable, have different shades or character, according to the counsel. In further support of the said contention reference was made to Section 26 of the Act which reads as follows:

"26. Form of Awards. - (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908."

Section 26 does not say that the award would contain only the amounts granted under sub-section (1) of Section 23. The special mention of that sub-section in Section 26 is only for the purpose of directing that the grounds or reasons for awarding the amount under each of the clauses in the sub-section shall be specified in the award. It is unnecessary to mention any reason or ground in any award as to why the sums indicated in sub-section (1-A) and sub-section (2) of Section 23 of the Act were granted, because they are only the sequels or concomitant adjuncts of the determination of the total amount indicated in sub-section (1). No judicial exercise is required to quantify the sums mentioned in sub-section (1-A) or sub-section (2) because the section itself specifies the percentage to be worked out for the purpose of adding to the total amount arrived at under sub-section (1). Otherwise Section 26 is not intended to show that the compensation awarded would be bereft of the additional amount and the solatium envisaged under sub-section (1-A) or sub-section (2). This can

be clearly discerned from the commencing words of Section 26 itself. They are: "Every award under this Part shall be in writing signed by the Judge". What is referred to therein is Part III of the Act which comprises of a fasciculus of twelve provisions starting with Section 18 and ending with Section 28A of the Act. There can be no doubt that all the three heads specified in the three sub-sections in Section 23 are the sums to be "awarded by the court". Hence the words "every award under this Part" cannot be treated as the award after delinking the amounts awarded under sub-section (1-A) or sub-section (2) of Section 23.

We may now see whether exclusion of the factor "any disinclination of the person interested to part with the land acquired" from being considered as part of the compensation indicated in Section 24 of the Act would be of any aid for excluding solatium from the purview of interest accrual process. No doubt what is intended under Section 23(2) is additional to the market value of the land and "in consideration of the compulsory nature of the acquisition". But it cannot be equated with any damage caused on account of "any disinclination of the person to part with the land acquired."

It is apposite in this context to point out that during the enquiry contemplated under Section 11 of the Act the Collector has to consider the objections which any person interested has stated pursuant to the notice given to him. It may be possible that a person so interested would advance objections for highlighting their disinclination to part with the land acquired on account of a variety of grounds, such as sentimental or religious or psychological or traditional etc. Section 24 emphasises that no amount on account of any disinclination of the person interested to part with the land shall be granted as compensation. That aspect is qualitatively different from the solatium which the legislature wanted to provide "in consideration of the compulsory nature of the acquisition".

Compulsory nature of acquisition is to be distinguished from voluntary sale or transfer. In the latter, the landowner has the widest advantage in finding out a would-be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time when he would be receiving consideration and parting with his title and possession over the land. But in the compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the Court fixes as per the provisions of the Act. The solatium envisaged in sub-section (2) "in consideration of the compulsory nature of the acquisition"

is thus not the same as damages on account of the disinclination to part with the land acquired.

In deciding the question as to what amount would bear interest under Section 34 of the Act a peep into Section 31(1) of the Act would be advantageous. That sub-section says: "On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or

more of the contingencies mentioned in the next sub- section." The remaining sub-sections in that provision only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per sub- section (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof.

The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted.

We may also point out that different High Courts have taken the same view in the following decisions:

G. Venkatesh vs. Special Land Acquisition Officer (AIR 1975 Karnataka 95), B. Ravinder Reddy vs. Special Deputy Collector, Land Acquisition (Industries), Hyderabad (AIR 1981 A.P. 381), State of Haryana vs. Smt. Kailashwati & ors. (AIR 1980 P & H 117) and Hindustan Aeronautics Ltd. vs. Muniswamy Reddy (AIR 1993 Karnataka 77) We think it useful to quote the reasoning advanced by Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana vs. Smt. Kailashwati and ors. (supra).

"Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of section 28 of the act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto.

The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well."

In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly.

.....CJIJ [K.T. Thomas]
.....J [R.C. Lahoti]J [N. Santosh Hegde]J [S.N. Variava] September 19, 2001.