

Union Of India vs Budh Singh And Others on 27 July, 1995

Equivalent citations: 1995 SCC (6) 233, 1995 SCALE (4)816, AIRONLINE 1995 SC 14, 1995 (6) SCC 233, (1995) 2 LAND LR 443, (1995) 3 SCJ 559, (1995) 3 CUR CC 292, (1995) 2 RENT LR 447, 1998 ALL CJ 1 347

Author: K. Ramaswamy

Bench: K. Ramaswamy, K.S. Paripoornan

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
BUDH SINGH AND OTHERS

DATE OF JUDGMENT 27/07/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
PARIPOORNAN, K.S. (J)

CITATION:
1995 SCC (6) 233 1995 SCALE (4)816

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

This appeal by special leave arises from the order of the High Court of Punjab & Haryana dated July 21, 1993 made in Civil Revision No. 3389/90. The facts are that possession of land measuring 81 kanals 3 merlas 10 acres and 1 kanals 3 marlas was taken over by the Punjab Armed Police on March 15, 1963 for construction of its head quarters at Ajnala. Initially an amount of Rs.14,719.79 was paid to the owner as compensation on March 9, 1965 as determined by the Revenue Authorities. Later, he laid the suit in the court of the Addl. Judge, Amritsar for recovery of its possession pleading that

since the land was not acquired under the Land Acquisition Act, 1894 [for short, 'the Act'], it was illegal. The suit was decreed on April 30, 1969. In execution thereof, the court passed an order directing the respondents to refund the amount of Rs.14,719.79 received on March 9, 1965. The State carried the matter in appeal which was dismissed. The second appeal also ended in dismissal. Then they initiated the proceedings for the acquisition of the said land and the notification u/s 4 (1) of the Act was published on November 16, 1984 and an award thereunder has been passed. We are not concerned in this case regarding the legality of the award made by the reference court since, it had become final. But in execution of the decree, High Court passed an order that in the event of default in payment within the stipulated time, payment of interest at 18% per annum from the date of taking possession be made. Since that amount has not been paid with interest, the court has proceeded with execution and the High Court in the impugned order has affirmed the same. Thus this appeal by special leave.

The only question that arises for decision is whether the respondents-owners of the lands are entitled to interest at 18% per annum from March 15, 1963, the date on which possession was initially taken, till November 15, 1984, preceding the date on which the notification under s.4(1) was published. It is a jurisdictional issue and the finding in this behalf touches and trenches into the jurisdictional power of the court, acting under the Act regarding award of interest. The payment of interest under the Act is squarely covered by the provisions of the Act. The Government, while exercising its power of eminent domain, are entitled to have the notification under s.4 (1) published in the State Gazette. They are also entitled, in case of urgency, to exercise the power under s.17(4) of the Act and thereon declaration under s.6 published and would issue notice to the owner of the land under s.9. On expiry of 15 days thereof, the Government is entitled to take possession from the owner. The award would be made under s.11 thereafter. In case urgency clause under s.17(4) was not invoked, the procedure of inquiry under s.5A shall be gone through and thereafter declaration under s.6 be made. The declaration gives conclusiveness to the public purpose. After conducting an inquiry in Chapter III of the Act, the Land Acquisition officer makes the award under s.11 and gives notice to owner under s.12(2) and he is entitled to take possession from the owner of the land under s.16 and on deposit of the compensation makes payment thereof under s.31 of the Act. In case, after taking possession, if the amount is not paid, the provision is made for payment of interest under s.34 of the Act which reads thus:

"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."

Under the proviso after the Amendment Act, if the amount is not paid before 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.

The other provision relevant for this purpose is s.28 of the Act, which empowers the reference court or the High Court for awarding interest on the enhanced compensation from the date of taking

possession till date of payment as referred to hereinbefore. Thus, it could be seen that the statute covers the entire field of operation of the liability of the State to make payment of interest and entitlement thereof by the owner when land has been taken over and possession in consequence thereof, the land owner was deprived of the enjoyment thereof, the land owner was deprived of the enjoyment thereof. Thus, it could be seen that the Court has no power to impose any condition to pay interest in excess of the rate and manner prescribed by the statute as well as for a period anterior to the publication of s.4(1) notification under the Act. The parameter for initiation of the proceedings is the publication of the notification under s. 4(1) of the Act in the State Gazette or in an appropriate cases in District Gazette as per the local amendments. But the condition precedent is publication of the notification under s.4(1) in the appropriate gazette. That would give legitimacy to the State to take possession of the land in accordance with the provisions of the Act. Any possession otherwise would not be considered to be possession taken under the Act. In fact, a situation has been envisaged under s.48(2) of the Act, namely, that when proceedings under the Act were initiated and in the mid- stream the proceedings were dropped, the owner who has been deprived of the enjoyment of the property, the statute prescribes the remedy of determination of the amount of compensation due to the owner for the damages suffered by the owner in consequence of the notice of the proceedings under the Act. The statute also imposes liability on the state to reimburse the costs incurred by the owner to defend the proceedings under the Act. The Act is a self contained code and common law principles of justice, equity and good conscience cannot be extended in awarding interest, contrary to the provisions of the statute.

Sri Rajeev Dhavan the learned senior counsel fairly concluded that in Vallabhdas Naranji vs. Development Officer, Bandra, [Indian Appeals (Vol. LVI) 259], the Judicial Committee of the Privy Council had not decided the liability to pay interest by the Government for the period when possession of the land was taken prior to the publication of the notification under s.4(1) of the Act. But, unfortunately, on the head note it was so stated that the State was liable to pay interest for the period prior to notification. This decision is of no assistance since there was no decision to pay interest for a period anterior to the issuance of the notification under s. 4(1). In The Revenue Divisional Officer, Trichinopoly vs. Venkatarama Ayyar & Anr., [ILR 49 Madras, 433 = AIR 1936 Mad. 199], the facts were that initially the railway station at Trichonopoly was established but due to floods it was washed away. Consequently, notification under s.4(1) was issued and possession was taken. The question was from what date the claimants would be entitled to the payment of interest. The learned judges on those facts assumed the exercise of power under s.17(1) and (4) and resumption of possession was co- related to the exercise of power under s.17(4) of the Act. Accordingly the Court directed payment of interest from the date of taking possession. The facts are clearly distinguishable. The ratio is consistent with the scheme of the Act.

In State of Punjab vs. Smt. Raminder Kaur, [1988 LACC 610], notification under s.4(1) was initially issued in 1968 and possession was taken which was struck down by the Court and thereafter, fresh notification was issued in 1973 and compensation was determined. The question therein was whether the claimants would be entitled to the payment of interest from the date of taking possession pursuant to the first notification. Since the possession was taken in exercise of the power pursuant to the notification under s.4(1), directed for payment of interest from the date of taking possession is also consistent with the scheme of the Act. Thus considered, we are of the opinion, that

the High Court was clearly in error in directing payment of interest at 18% per annum and that too, from the date of taking possession. The respondents are entitled to interest at 9% interest on enhanced compensation from 16th October, 1984. The appeal is accordingly allowed. However, since the period of limitation for filing and suit for damages for use and occupation by the State from March 15, 1963 to November 15, 1984 is barred, though legally we cannot give any direction for payment, it is open to the appropriate Government to consider the same and do the needful to the claimants. No costs.