

Dilawar Singh & Ors vs Union Of India & Ors on 26 October, 2010

Author: T.S. Thakur

Bench: T.S. Thakur, Markandey Katju

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS._9198-9202 OF 2010

Dilawar Singh & Ors. etc.

...Appellants

Versus

Union of India & Ors.

...Respondents

With

Civil Appeal Nos. 9203/2010, 9204/2010, 9205-9209/2010
9210-9215/2010, 9216-9217/2010 and 9218-9219/2010

JUDGMENT

T.S. THAKUR, J.

Two questions fall for determination in these appeals that arise out of orders passed by the High Court of Punjab & Haryana at Chandigarh. These are -

- 1) Whether award of solatium and interest is permissible even in cases where acquisition of land is made under Requisitioning and Acquisition of Immovable Property Act 1952; and
- 2) Whether the land owners were entitled to enhancement of compensation beyond Rs.200/- per marla determined by the learned Single Judge. The questions arise in the following backdrop.

A large extent of land situate in the outskirts of Pathankot in the State of Punjab and underlying different survey numbers was acquired for defence purposes under the provisions of Requisitioning and Acquisition of Immovable Property Act, 1952. Failure of the parties to arrive at an agreement as to the amount of compensation payable to the expropriated owners of the land in question led the owners to seek appointment of an Arbitrator for determination of the amount payable to them. The

Government did not respond to the said request for a long time which forced the land-owners to approach the High Court of Punjab and Haryana in a writ petition seeking a mandamus directing the Government to appoint an Arbitrator. It is only after the said petition was allowed and a mandamus issued that the Government appointed the District Judge, Gurdaspur as an Arbitrator, sixteen years after the lands had been acquired. The Arbitrator recorded evidence and after hearing the parties came to the conclusion that the owners were entitled to compensation that ranged between Rs.50/- per marla (Rs. 1000/- per kanal) for land relevant to Civil Appeal No.9216-9217/2010 to Rs.200/- per marla for lands relevant to Civil No. 9198- 9202/2010. Solatium @ 30% and interest @ 9% for the first year and 15% for the subsequent years till payment of the amount of compensation to them was also held payable to the landowners. Aggrieved by the said award the Union of India appealed to the High Court, inter alia, contending that the Arbitrator was not justified in awarding nor was there any provision for granting solatium and interest under the Act aforementioned. The land-owners also challenged the award made by the Arbitrator by filing cross-objections before the High Court in which they prayed for enhancement of compensation payable to them to Rs.500/- per marla. By a common judgment impugned in these appeals the High Court has dismissed the appeals filed by the Union of India. The cross-objections filed by the owners were also dismissed by separate orders unsupported by any reasons for denying the enhancement prayed for by them. Relying upon the decision in Jagdish Prasad v. The Competent Authority, the High Court held that award of compensation @ Rs.150/- per marla by the Arbitrator was justified on a uniform basis for all kinds of lands. The High Court overlooked the fact that in some cases the compensation awarded was Rs.50/- per marla while in some others the same was awarded @ Rs.200/- per marla. The High Court also noticed that compensation at the same rate had been granted to owners of land in village Nalunga which award had been affirmed by the High Court in LPA 721 of 1987 filed by the Union of India and decided on 3rd September, 1987.

The High Court also came to the conclusion that award of solatium and interest was justified having regard to the delay on the part of Government in appointing an Arbitrator. Reliance was placed by the High Court on the decision of this Court in Union of India v. Hari Krishan Khosla (Dead) by LR's. 1993 Supp. (2) SCC 149. The High Court, however, modified the order to the extent that instead of describing the amount as solatium and interest the same was described as compensation for the lands acquired by the Government. Both the parties have come up in appeal against the above order. While the appeals filed by the Union of India call in question the correctness of the view taken by the High Court in regard to solatium and interest, the cross appeals filed by the owners assail the correctness of the orders passed by the High Court whereby cross-objections seeking enhancement of the amount of compensation to Rs.500/- per marla have been rejected by non-speaking orders.

It is common ground that the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 do not make any provision for the grant of solatium or interest to the expropriated landowners. The absence of any such provision in the said Act was in fact made a basis for a challenge to the constitutional validity of the enactment which was repelled by this Court in Union of India v. Hari Krishan Khosla 1993 (Supp) 2 SCC 149. This Court pointed out that any comparison between acquisition made under the Requisitioning and Acquisition of Immovable Property Act, 1952 with that made under the Land Acquisition Act would be odious in view of the dissimilarities between the two enactments. That decision was followed in subsequent

pronouncements of this Court in *Union of India v. Chajju Ram* 2003 (5) SCC 568 where a similar attack was mounted against the constitutional validity of Defence of India Act, 1971 but repelled by this Court relying upon the decision in *Hari Krishan Khosla*. What is noteworthy is that in both these matters this Court had made a distinction between cases in which there was inordinate delay in the appointment of an Arbitrator and consequent delay in the determination of the amount of compensation payable to the owners and other case where there was no such delay. In paragraph 79 of the judgment of this Court in *Hari Krishan Khosla*, this Court observed:

"This is a case in which for 16 years no arbitrator was appointed. We think it is just and proper to apply the principle laid down in *Harbans Singh Shanni Devi v. Union of India* (Civil Appeal Nos. 470 and 471 of 1985, disposed of by this Court on February 11, 1985). The Court held as under:

"Having regard to the peculiar facts and circumstances of the present case and particularly in view of the fact that the appointment of the arbitrator was not made by the Union of India for a period of 16 years, we think this is a fit case in which solatium at the rate of 30 per cent of the amount of compensation and interest at the rate of 9 per cent per annum should be awarded to the appellants. We are making this order having regard to the fact that the law has in the meanwhile been amended with a view to providing solatium at the rate of 30 per cent and interest at the rate of 9 per cent per annum."

Even in *Union of India v. Chajju Ram* (supra), this Court noted the delay in the appointment of an Arbitrator and directed that the amount of interest and solatium paid to the land owners decades back shall not be recovered from the land owners. This Court observed:

"In these cases also, it is said that the arbitrators have not yet been appointed despite the demand made in this behalf by the respondents. The amount of solatium at the rate of 15% per annum and the interest thereupon had been paid in the early eighties when the Punjab and Haryana High Court declared the said Act ultra vires Article 14 of the Constitution of India.

In the peculiar fact situation obtaining in these cases and inasmuch as the amounts sought to be recovered are small which were paid to the respondents decades back, we are of the opinion that interest of justice shall be met if the appellants are directed not to recover the amount of compensation from the respondents pursuant to or in furtherance of this judgment. However, we hasten to add that this direction shall not be treated as a precedent."

The above decisions were then followed by this Court in *Prabhu Dayal and Others v. Union of India* 1995 (4) SCC 221. That was also a case where the appointment of Arbitrator was delayed by 22 years. This Court relying upon the decision in *Hari Krishan Khosla* and *Harbans Singh v. Union of India*, C.A. Nos. 470 & 471 of 1985 disposed of on 11th February 1985, observed:

"It is next contended that the appellants are entitled to the solatium though in law they are not entitled but in equity they are entitled to the solatium for the reason that for 22 years arbitrator was not appointed to determine the market value. In support they relied upon the judgment of this Court in Union of India v. Hari Krishan Khosla. Therein this Court relied upon another judgment in Harbans Singh v. Union of India. In that judgment this Court said that having regard to the peculiar facts and circumstances of the present case and in view of the fact that the appointment of the arbitrator was not made by the Union of India for period of 16 years, this Court considered in equity to give solatium at the rate of 30 per cent of the amount of compensation and interest at the rate of 9 per cent per annum should be awarded to the appellants therein. In this case, the question of appointing the arbitrator would arise only when the market value offered was rejected by the claimants. The offer was made and rejected on 13-10- 1961 and the arbitrator came to appoint on 22-9-1966 after five years. Under these circumstances, the claimants are entitled to solatium at the rate of 15 per cent on the market value. The appellants did not challenge the rate of interest granted at 6 per cent. Accordingly they are also entitled to the interest at the rate of 6 per cent per annum. The appeals are accordingly allowed. The appellants are entitled to the relief as stated above. No costs."

We may at this stage to refer to a recent decision of this Court in Union of India v. Parmal Singh and Others 2009 (1) SCC 618 where the question whether solatium and interest could be awarded to the expropriated land owners under the Requisitioning and Acquisition of Immovable Property Act, 1952 was once again examined. Relying upon the decision of this Court in Satinder Singh v. Umrao Singh AIR 1961 SC 908, Union of India v. Hari Krishan Khosla (supra) and Union of India v. Chajju Ram 2003 (5) SCC 568 and the English decision in Swift and Co. v. Board of Trade 1925 AC 520(HL) and Inglewood Pulp and Paper Co. v. New Brunswick Electric Power Commission 1928 AC 492, this Court upheld the award of interest in favour of the landowners. This Court said:

"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, the 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 landowner 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 recognised and applied by the courts consistently."

It is noteworthy that the High Court of Punjab and Haryana has in *Union of India v. Inder Singh and Anr.* in LPA No. 1918 of 1989 and connected matters upheld grant of solatium and interest in regard to a similar acquisition made in terms of a notification issued in January 1970. While doing so the High Court placed reliance upon its decision in *Shankar Singh and Others v. Union of India* 1988 (1) PLR 163 Mr. Subramaniam, learned Solicitor General fairly conceded that no appeal has been preferred by the Union of India against the decision in *Shankar Singh's* case (supra) or that delivered in *Union of India v. Inder Singh and Anr* (supra). In that view of the matter therefore and having regard to the fact that there was an inordinate delay of 16 years in the appointment of an Arbitrator in the present cases, we have no hesitation in holding that the principle laid down by this Court in the decisions referred to above would entitle the land owners to the benefit of solatium and interest especially when the owners who have lost land in similar circumstances and for the same purpose have been given such a benefit.

That brings us to the question whether the land-owners are entitled to claim any enhancement in the amount of compensation determined in these cases. In *Union of India etc. v. Inder Singh and Anr.* (LPA No.1918 of 1989) and connected matters to which we have referred earlier the High Court has upheld the enhancement of compensation to Rs.350/- per marla. The High Court was in that case dealing with a similar question arising out of the very same acquisition process. Relying upon its decision in *Shanker Singh and Ors. v. Union of India* 1988 (1) PLR 163, a Single Bench of the High Court in *Inder Singh's* case (supra) enhanced the compensation payable to the land- owners to Rs.350/- per marla. Five appeals were preferred before the Division Bench against the said order out of which two appeals were dismissed by separate orders of the Court while the third was dismissed for non-prosecution. The result was that out of five appeals challenging the order passed by the Single Judge awards in favour of the land-owners in the case of three dismissed appeals attained finality entitling the land-owners respondents in those appeals to compensation @ Rs.350/- per marla. The refusal of a similar relief in the remaining cases was not, therefore, considered just and equitable when there were no distinguishing features to justify such a refusal. The High Court also found that the decision in *Shanker Singh's* case (supra) was squarely applicable in the case before it on account of the proximity of the acquisitions in point of time. The notification in *Shanker Singh's* case (supra) was issued on 6th March, 1970 whereas that in *Inder Singh's* case (supra) was issued on 9th January, 1970. The amount of compensation determined in *Shanker Singh's* case (supra) was therefore found by the High Court to be relevant for award of compensation in *Inder Singh's* case (supra) also.

In the present batch of cases except the case the notification for acquisition was issued in February 1970 which is proximate in point of time to those issued in the *Shanker Singh* and *Inder Singh's* cases (supra). The notification in *Union of India v. Mohinder Singh* (Civil Appeal No. 9204/2010) was issued on 12.5.1964 and published on 12.6.1964. That apart the lands in question were all acquired for the very same purpose and are situated on the outskirts of a growing town like Pathankot. The growing non-agriculture potential of such lands is also not in serious dispute. The High Court has failed to notice all these aspects apparently because the decisions in *Shanker Singh's* case and that delivered in *Inder Singh's* case (supra) were handed down subsequent to the impugned order. Suffice it to say that on the material available before us we see no reason why the amount of compensation payable to the landowners appellants in these appeals should also not be

enhanced to Rs.350/- per marla with proportionate benefits towards solatium and interest as awarded by the Arbitrator and upheld by the High Court in those cases and in similar other cases to which we have referred in the earlier part of this order. In so far as Mohinder Singh's case (supra) is concerned, the appeal has been filed by the Union of India against grant of solatium and interest. No appeal has been filed by the owners in that case for enhancement of the amount of compensation. Even otherwise in the absence of any cogent evidence to justify any such enhancement, there is no room for directing payment of a large amount of compensation.

In the result, we allow Civil Appeals Nos.9198-9202/ 2010 and Civil Appeals Nos.9218-9219/2010 filed by the owners and modify the award made by the Arbitrator to the extent that instead of Rs.200/- per marla, the owners shall be entitled to 350/- per marla towards compensation with proportionate benefits like solatium and interest on the said amount. The appellants-owners shall also be entitled to proportionate costs in this Court and the Courts below.

Civil Appeals Nos.9203/2010, 9204/2010, 9205- 9209/2010, 9210-9215/2010 and 9216-9217/2010 filed by Union of India, however, fail and are dismissed leaving the parties to bear their own costs in these appeals.

.....J. (MARKANDEY KATJU)J. (T.S. THAKUR) New Delhi
October 26, 2010