

Ranveer Singh vs State Of U.P. Through Secy. & Ors on 22 July, 2016

Equivalent citations: AIR 2016 SC 3753, 2016 (14) SCC 191, 2017 (1) ALJ 156, (2016) 3 RECCIVR 1015, (2016) 165 ALLINDCAS 268 (SC), (2017) 3 ALL WC 2566, (2016) 4 PAT LJR 63, (2016) 2 CLR 677 (SC), (2016) 118 ALL LR 474, (2016) 2 LANDLR 81, (2016) 133 REVDEC 338, (2016) 4 KCCR 574, (2016) 118 ALL LR 240, (2016) 3 JLJR 441, (2016) 3 CURCC 232, (2016) 4 JCR 55 (SC), (2016) 7 SCALE 347, (2016) 3 UC 2242, AIR 2016 SUPREME COURT 3753, 2017 (1) ALJ 156 AIR 2016 SC (CIVIL) 2485, AIR 2016 SC (CIVIL) 2485

Author: Shiva Kirti Singh

Bench: A.M. Khanwilkar, Shiva Kirti Singh

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13324 OF 2015

Ranveer Singh

...Appellant

Versus

State of U.P. Through Secy. & Ors.

...Respondents

J U D G M E N T

SHIVA KIRTI SINGH, J.

1. This appeal arising out of special leave has been preferred by the original writ petitioner whose land was acquired by the authorities of the State of Uttar Pradesh under the provisions of Land Acquisitions Act, 1894 (hereinafter referred as ‘the Act’) on the basis of an agreement for compensation dated 27.2.2003 followed by instant payment of such compensation. The appellant subsequently claimed interest under Section 34 of the Act from the date 15.2.2001 when admittedly the possession of the land was taken over by the State Authorities and till 27.2.2003, the date of payment. The claim was rejected by the concerned District Magistrate of Gautam Budh Nagar vide an order dated 6.8.2005 passed pursuant to order of High Court dated 12.04.2005 in appellant’s

earlier writ petition No.38951 of 2002. That claim again made through subsequent writ petition bearing No. 60992 of 2005 has been rejected on merits by the judgment and order under appeal passed by the Division Bench of the High Court of Judicature at Allahabad on 22.5.2014.

2. There is no material dispute over facts and hence it would suffice to notice that as per pleadings of the parties, appellant's land in Plot No. 203, area 30 bigha 12 biswa and plot No. 209, area 1 biswa in village Parthala, Khanjarpur District Gautam Budh Nagar (U.P.) was acquired by issuing notification under Section 4 read with Section 17 dated 1.6.2000 and a declaration under Section 6 dated 30.12.2000 of the Act. The possession of the land was taken on 15.2.2001. After taking possession, proceedings for determination of payment of compensation on the basis of agreement was initiated. On account of information received by the Additional District Magistrate Land Acquisition Noida, Gautam Budh Nagar from DGC (Civil) that appellant had land in excess of the ceiling limit, inquiries and opinion for entering into an agreement became necessary. Ultimately on 7.2.2003 it became clear that appellant had no land in excess of the ceiling area and that cleared the path for signing the agreement on 27.2.2003 for payment of compensation in terms of agreement as per Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997 (hereinafter referred to as the "Rules of 1997"). As agreed, the entire compensation of Rs.1,37,58,350/- was paid on the same date. The appellant accepted the said amount without any demur or protest. At that time the earlier writ petition No.38951 of 2002 for claiming compensation was pending. Claim for interest under Section 34 was subsequently added in that writ petition through an amendment. The writ petition was disposed of with liberty to the petitioner to file a representation and as noticed earlier the same was rejected by the District Magistrate by a speaking order dated 6.8.2005.

3. In the aforesaid facts the sole issue for determination remains as to whether, after entering into an agreement under the Rules of 1997 and accepting the agreed amount without any protest or demand for further interest, the appellant can claim interest on the ground of Section 34 of the Act for the period that had already lapsed between taking of possession and signing of the agreement/payment of compensation. Section 34 of the Land Acquisition Act, 1894 reads as under:-

“ 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.]”

4. The appellant relied heavily upon the aforesaid provision of law to support his claim for interest. In addition, learned senior counsel has raised a plea based on equity that there is no good reason why the appellant should not be compensated for loss of possession when there is a considerable

delay in entering into agreement and payment of compensation. It has been further urged that the District Magistrate has erred in rejecting the representation of the appellant. On the other hand, learned counsel for the respondent has defended the judgment of the High Court by submitting that it suffers from no error of fact or law. He pointed out that as per the agreement, the appellant accepted to receive the consolidated amount which included components of additional amount at the rate of 12% and solatium at the rate of 30% contemplated under various sub-sections of Section 23 of the Act and thereafter in the same agreement, as an owner he agreed that he shall not claim any amount in addition to the amount agreed upon as disclosed in the agreement as compensation and accepted the amount without any protest. The relevant clause 3 in the agreement is as follows:

“Clause 3.- That the owner and the interested party shall not claim any amount in addition to the amount agreed upon as aforesaid as compensation and accept it without any protest.”

5. It has been also urged by the learned counsel for the State that the appellant was free to take benefit of all provisions of the Act including Section 34 by opting for an usual award under Section 11(1) of the Act but instead he chose to accept the expeditious route of entering into an agreement and getting the payment immediately as per the Rules of 1997. Thereafter, as per agreement he is debarred from claiming any further amount or to raise any protest before any forum on any basis, including on account of interest.

6. Learned senior counsel for the appellant has placed reliance upon the judgment in the case of *Shree Vijay Cotton & Oil Mills Ltd. vs. State of Gujarat*[1], particularly Paragraph 14 thereof. In paragraph 14 this court pointed out the failure of the high Court in not appreciating the mandatory provisions of Section 34 of the Act. That was a case of ordinary acquisition as per provisions of the Act wherein amount of compensation was determined in regular manner and not by any agreement. Further, there was no resort to urgency clause in terms of Section 17 of the Act nor there was any issue as to entitlement of interest under Section 34. The claim had been wrongly denied by the District Judge on a reference under Section 18 and the High Court also rejected the same by dismissing the cross objections as barred by limitation and on principle of *res judicata*. This Court, in the facts of that case held that the land owner was entitled for interest as per mandatory provisions of Section 34 of the Act. But the defence in the present case is entirely different and is not affected by the aforesaid judgment.

7. On behalf of the respondent-State reliance has been placed upon the following two judgments (1) *State of Gujarat and Ors. Vs. Daya Shamji Bhai and Ors.*[2] and (2) *State of Karnataka and Anr. vs. Sangappa Dyavappa Biradar and Ors.* [3].

8. In *Daya Shamji Bhai* after the notification for acquisition under Section 4(1), the land owners agreed in writing to accept the compensation determined by the Land Acquisition Officer along with 25% enhancement. With such consent they also agreed that they will not go to any court under Section 18 of the Act. Accordingly the land owners were paid in terms of the agreement. In spite of such agreement the land owners sought a reference to which the State objected. The reference court rejected the contention of the State on the ground that the agreements were not registered under the

Registration Act and the land owners could not contract out from statute. In the background facts noted above this Court held in favour of the State that the agreement was permitted under sub-section 2 of Section 11 which gives right to the parties to enter into an agreement to receive compensation under Section 11 in terms of the contract. Such contract was held to be conclusive and binding on the parties and therefore the land owners were not entitled to seek any reference for enhancement of the compensation. It was clarified that when compensation is received under protest only then Section 18 gets attracted. In paragraph 8 of the report the issue of awarding interest and statutory benefits was also decided against the land owners in following terms:-

“8. The question of awarding interest and statutory benefits arises when the civil court finds that the amount of compensation awarded to the landowners by the Collector is not adequate and the prevailing market value is higher than the market value determined by the Land Acquisition Officer under Section 23(1). For entitlement to solatium under Section 23(2) “in addition to” market value the court shall award solatium. Under Section 28, if the court gets power to award interest, when court opines that the Collector “ought to have awarded compensation in excess of the sum which the Collector did award (sic) the compensation”. In other words, valid reference under Section 18 confers jurisdiction on the civil court to consider whether the compensation awarded by the Collector is just and fair. Thereafter, when it finds that the Collector ought to have awarded higher compensation, the civil court gets jurisdiction to award statutory benefits on higher compensation from the date of taking possession only. In view of the specific contract made by the respondents in terms of Section 11(2), they are not entitled to seek a reference. Consequently, the civil court is devoid of jurisdiction to go into the adequacy of compensation awarded by the Collector or prevailing market value as on the date of notification under Section 4(1) to determine the compensation under Section 23(1) and to grant statutory benefits.” (emphasis added)

9. In Sangappa Dyavappa Biradar reliance was placed upon Daya Shamji Bhai and the same principles were reiterated by holding that an application for reference to civil court is maintainable only if there is non- acceptance of the award by the awardee. Once parties agree to the compensation payable and consent award is passed, the same would bind the parties unless it is set aside in appropriate proceedings by a court of competent jurisdiction. The consent award accepted without protest extinguishes the legal right to maintain a reference for enhancement of compensation, more so when the land owners agreed not to seek any enhancement. In that case also the land owners had agreed that they would not approach any court for enhancement of compensation and had received the amount of compensation in terms of the consent award in full satisfaction of their claim. After being unsuccessful before the reference court and in writ petition before the Single Judge, the land owners got relief by the Division Bench of the High Court on the ground that in any event they could not be deprived of their statutory right of obtaining solatium and interest in terms of the Act. The High Court’s direction for payment on the basis of such statutory provisions was set aside by this Court by holding that applications under Section 18 were not maintainable. The land owners having accepted the award, were estopped from maintaining the applications. This Court further held that the High Court also had no jurisdiction under Article 226 to substitute the consent award by

directing payment of statutory solatium and interest. It flows from this judgment that by virtue of the agreement, right to receive solatium and interest can be waived. Further, when the land owners agreed that they would not seek enhancement of compensation by claiming any amount in addition to the amount agreed upon and that they would accept the agreed amount without any protest, the High Court could not have substituted the award by permitting further enhancement on any ground.

10. The main thrust of arguments advanced on the behalf of the appellant, particularly to get rid of the difficulty in his way on account of the aforesaid two judgments is that the land owner agreed not to claim any amount beyond the agreed amount as compensation and therefore the appellant is free to claim any further amount as interest under Section 34 of the Act because such interest is not and cannot be included as a component of compensation which is determined by the Collector under Section 11 of the Act while making the award. Further submission on behalf of the appellant is that various matters which require consideration in determining compensation by court under Section 23 of the Act do not include interest contemplated by the Section 34 of the Act which is payable when the compensation is not paid or deposited on or before taking the possession to the land.

11. On its face the aforesaid contentions appears to be attractive but on a closer analysis of Section 11 as well as Section 23 it is found to have no merits. Section 23 is for guidance of the court which gets jurisdiction to determine compensation afresh only if there is a protest against the award and the payment is received with protest. This section does not control the determination of just compensation by the Collector under Section 11 which requires the Collector to enquire into objections (if any) on different issues such as measurement and interests of the person claiming compensation and then further requires the collector to make an award which is required to reflect, inter alia, "the compensation which in his opinion should be allowed for the land." But it is more appropriate and relevant to notice sub-section 2 of Section 11 which is as follows:

"Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement." This sub-section begins with a non-obstante clause which makes it free of the requirements of sub-section (1) if all the persons interested in the land agree in writing as to what matters should be included in the award of the Collector. Thereupon the Collector is competent to make an award as per agreement without making further enquiry. In view of such clear provision that permits agreement to determine all the matters to be included in the award, all the inclusions and omissions in the consent award must be treated as based upon agreement of the parties and the final amount determined by way of agreement must be taken as a completely just compensation inclusive of the statutory interest payable to the claimant for the concerned land at least on the date of agreement. Since the agreed compensation amount is accepted without protest with a clear stipulation not to claim any additional amount, it has to be deemed that the compensation reflected in the consent award has taken into account all relevant factors including interest till

the date of agreement. Moreover the right to seek reference for enhancement itself gets lost by accepting the compensation without protest especially when there is an agreement that the land owner shall not claim any amount in addition to the amount agreed upon as compensation and shall accept the compensation without any protest. In such circumstances agreed amount has to be treated as a just compensation permitting no addition or substitution whatsoever. In other words, not only the remedy under the Act of seeking enhancement is lost but the substantive cause of action also vanishes when the land owner agrees for a consent award and the amount of compensation is accepted without any protest.

12. Equitable considerations also cannot help the appellant because the agreed amount was paid without any delay, on the date of agreement itself. Notably, the award passed on the basis of agreement with the appellant stipulates the amount of compensation at Rs. 329.76 per Sq.Yd. However, in the case of other claimants under the same Notification who had not entered into such agreement, the rate was fixed at Rs. 50.57 per Sq.Yd. with 30% solatium and 12% interest from the date of taking possession. Thus, the agreement with the appellant was a package with regard to the compensation amount voluntarily accepted by the appellant without any demur. The argument of equitable consideration is, therefore, misplaced and ill- advised.

13. In view of aforesaid discussion and particularly in view of judgments of this Court in the case of Daya Shamji Bhai and in Sangappa Dyavappa Biradar, we find no error in the order of the High Court rejecting the claim of the appellant. As a result the appeal must fail. It is therefore dismissed but without costs.

.....J. [SHIVA KIRTI SINGH]J. [A.M. KHANWILKAR] New Delhi.

July 22, 2016.

- [1] 1991 (1) SCC 262
- [2] 1995 (5) SCC 746
- [3] 2005 (4) SCC 264
