Union Of India & Ors vs Dhanwanti Devi & Ors on 21 August, 1996

Author: K. Ramaswamy

Bench: K. Ramaswamy, S. Saghir Ahmad

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
DHANWANTI DEVI & ORS.

DATE OF JUDGMENT: 21/08/1996

BENCH:
K. RAMASWAMY, S. SAGHIR AHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. Ramaswamy, J.

Application for impleadment allowed.

Leave granted.

This appeal by special leave arises form the judgment and order dated September 29, 1992 passed by the High Court of Jammu & Kashmir CIMA No.72 of 1988.

The only question that arises for decision in this appeal is: whether the respondents are entitled to solatium and interest under the Jammu & Kashmir Requisition and Acquisition of Immovable Property Act, 1968 [hereinafter referred to as the "Act"]?

The facts in nutshell are that land admeasuring 399 kanals and 4 marlas situated in Villages Rampur, Talwal and Goverdhan Pain was acquired for public purposes, viz., defence, by publication of notification under Section 7 of the Act on his award dated November 3, 1986 awarded compensation @ Rs.21,000/- in respect of lands situated in villages Rampur and Talwal and Rs.10.000/- per kanal in respect of land situated in village Goverdhan Pain with 10% escalation on accordingly paid but feeling dissatisfied therewith, the claimants-landowners sought reference under Section of the Act to the arbitrator who by his award dated March 8, 1987 enhanced the compensation to Rs.60,000/- per kanal in respect of lands in villages Rampur and Talwal and Rs. 40.000/- per kanal in respect of land in village Goverdhan Pain; he also awarded 15% solatium and 4% interest per annum on the enhanced compensation. When the High Court, it by impugned judgment and order dated September 29, 1992 confirmed the same and dismissed the appeal holding that no discrimination could be made between the owners whose lands are acquired under the Land Acquisition Act, 1894 and owners whose lands are acquired under the Act and hence the arbitrator was justified in awarding solatium and interest to the land-owner-respondents. Hence this appeal by special leave.

The admitted position is that prior to the acquisition properties were under requisition under Section 3 of the Act. Shri Nambiar, learned senior counsel for the appellant contended that the Act did not confer power upon the arbitrator or the court to award solatium and interest. The controversy is no longer res integra as a two-Judge, Udhampur & Ors. [JT 1994 (3) SC 629] has held that the claimants are not entitled to solatium and interest under the Act. The ratio in Union of India v. Hari Krishna Khosla [1993 Supp. (2) SCC 149] was applied wherein the Requisition and Acquisition of Immovable Property Act, 1952 [for short, the "Central Act"] similarly did not provide for payment of solatium and interest. Thus, it is contended, a three-Judge Bench of this Court had held that the arbitrator and the court have no power to award solatium and interest on the enhanced compensation under the Act.

On the other hand, argument of Shri Vaidyanathan, learned senior counsel for the second respondent, is that the Act is a measure of appropriation of the private property of citizens though for public purpose. When the owner is deprived of his possession and enjoyment of his property payment of solatium and interest for compulsory acquisition. In equity, the owner is entitled with interest in lieu thereof. This Court had held in Satinder Singh & Ors. v. Amrao Singh & Ors. [(1961) 3 SCC 676] that from the date of dispossession till the date of receipt of compensation it is an implied agreement to pay interest on the value of the property. The right to receive interest is in place of right to retain possession. Unless the statute specifically and expressly excludes payment of interest and solatium the land-holder towards compensation and solatium; denial thereof would amount to unjust enrichment by the State depriving the land-holder of his land as well as right to receive compensation for the intervening period. The denial also is arbitrary and most unjust. In the State of Jammu & Kashmir, the right to property is still a fundamental right; hence, deprivation of the property without payment of solatium and interest violates an individual's fundamental right to property and, therefore, it would be arbitrary offending Article 14 of the Constitution. When an acquisition under Land Acquisition Act, 1894 is resorted to, the claimant-owner is entitled to solatium under Section 23 [2], interest under Section 34 and 28 and additional amount under Section 23 [1-A]. The denial of payment of solatium and interest, therefore, is discriminatory

violating Article 14 of the Constitution. The very concept of market value is a price which is agreed upon by a willing purchaser as consideration for purchase of the property from a willing seller. Compulsory purchase is a hypothetical sale. Based on the above premises, it is contended, a purchaser on taking possession of the property has to pay the entire consideration forthwith but the quantification of compensation under the "Acquisition Act, 1894 [for short, the "Acquisition Act"] takes place at hierarchical stages. Until quantification is done, the claimant-owner is entitled to interest for the interregnum between the date of taking possession and the date of determination and deposit of the compensation so determined. Applying the above principles, this Court repeatedly has held that payment of solatium and interest is an integral part of the compensation. In support thereof, Shri Vaidyanathan placed reliance on the ratio decidendi in R.B. Lala Narsingh Das vs. Secy. of State for India [AIR 1925 PC 91 at 92], Raghubans Narain Singh v. The Uttar Pradesh Government through Collector of Bijnor [(1967) 2 SCR 489 at 497], Prithvi Raj Taneja v. State of Madhya Pradesh & Ors. [(1977) 2 SCR 682 at 684-85], Birminghan City Corporation. v. West Midland Baptis [Trust] Association (Incorporated] [1969 (682 at 684-85], Birminghan City Corporation. v. West Midland Baptis [Trust] Association [Trust] Association (Incorporated] [1969 (3) All ER 172], Commissioner of Sales Tax, J&K & ors. v. pine chemicals Led. & Ors. [(1995) 1 SCC 58], Prabhu Dayal & Ors. v. Union of India [(1995) Supp 4 SCC 2211, Yanamadala Co-operative Labour Contract Society Ltd., v. Assistant Director of Mines & Geology, Guntur [AIR 1984 AP 271], Periyar & Pareekanni Rubbers Ltd.. v. State of Kerala [(1991) 4 SCC 195], Nagpur Improvement Trust & Anr. v. Vithal Rao & Ors. [(1973) 1 SCC 500), P.C. Goswami v. Collector of Darrang [(1982) 1 SCC 439], State of Kerala & Ors. v. T.M. Peter & Ors. [(1980) 3 SCC 554]. He further contended that in Union of India v. Hari Kishan Khosla [(1993) Supp 2 SCC 149] a three-Judge Bench did not consider the ration in Satinder Singh's case [supra] which is a decision of co-ordinate Bench of three Judges. There is no ratio in Hari Kishan Khosla's case; it is only a conclusion. A conclusion does not constitute precedent. If it is considered to be ratio, it is inconsistent with the ratio in Satinder Singh's case does not have the effect of being over-ruled in Hari Kishan Khosla's case. It is per se per incuriam. If a co-ordinate Bench disagrees with the view of an earlier co-ordinate Bench disagrees with the view of an earlier co-ordinate Bench, the only course open to the former is to refer the matter to the larger Bench. Therefore, the decision in Hari Kishan Khosla's case requires reconsideration by a Constitution Bench.

Having considered and given anxious consideration to the respective contentions, the question arises: whether the respondents are entitled to solatium and interest under the Act? It is not necessary to Burden the judgment with copious references made by Shri Vaidyanathan. Suffice it to state that the State exercising the power of eminent domain is empowered to acquire, for public purposes, the property of citizen. The compensation for the acquired property is determined according to the principles laid down in the Act under which the property came to be acquired. It is true that by process of compulsory acquisition, the owner is deprived of his possession and enjoyment and in lieu thereof compensation be awarded as per the principles laid down in the Act. The determination of the compensation is done at hierarchical stages as per law.

Before adverting to and considering whither solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Kishan Khosla's case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent

and per se per incuriam. It is not everything said by a Judge who giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contain three basic postulates - [i] findings of material facts, is the inference which the Judge draws from the direct, or perceptible facts; [ii] statements of the principles of law applicable to the legal problems disclosed by the facts; and [iii] judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

Therefore, in order to understand and appreciate the binding force of a decision is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent in the use of precedents. It would, therefore, be necessary to see whether Hari Kishan Khosla's case would form a binding precedent. Therein, admittedly the question that had arisen and was decided by the Bench of three Judges was whether solatium and interest are payable to an owner whose land was acquired under the provisions of the Central Act? On consideration of the facts, the relevant provisions in the Central Act and the previous precedents bearing on the topic the Court had held that solatium and interest are not a part of compensation. It is a facet of the principle in the statute. The Central Act omitted to provide for payment of solatium and interest since preceding the acquisition the property was under was under requisition during which period compensation was under requisition during which period compensation was paid to the owner. The position obtained and enjoyed by the Government during the period of requisition continued after acquisition. The same principle was applied without further elaboration on entitlement to payment of interest of an owner. It is true that the decisions relied on by Shri Vaidyanathan on the principle of payment of interest as part of compensation in respect of land acquired were brought to the attention of this Court for discussion. What would be considered a little later. Suffice it to say for the present that the finding that solatium and interest are not payable for the lands acquired under the Central Act as part of compensation is a binding precedent.

Obviously, therefore, this Court followed the ratio therein in District Judge, Udhampur case [supra]. The contention, therefore, that Hari Kishan Khosla's case cannot be treated as a binding precedent since therein there is no ratio but a conclusion without discussion, is not tenable and devoid of force. In that view, it is not necessary to discuss in extenso the effect of the decisions cited by Shri Vaidyanathan. Equally, the contention of Shri Vaidyanathan that the ratio in Hari Kishan Khosla's case is in conflict with the ratio in Satinder Singh's case which was neither distinguished nor overruled and that the decision of a co- ordinate Bench cannot have the effect of overruling decision of another co-ordinate Bench, cannot be given countenance. The effect of the ratio in Satinder Singh's case will be considered a little later; suffice it to state that there is no conflict in the ratio of these two cases if the facts in Satinder Singh's case are closely analysed and the principle laid down therein is understood in its proper perspective. Therefore, Hari Kishan Khosla's case cannot be held to be per incuriam not has it the effect of overruling the ratio decidendi of Satinder Singh`s case.

Taking the question of entitlement to interest as a first question, as vehemently argued by vaidyanathan, broadly speaking. The act of taking possession of immovable properties generally implies an agreement to pay interest on its consideration for deferred payment. In a court of equity, when the seller parts with possession of immovable property, the purchaser becomes its owner while the seller receives money as consideration in lieu of the property. The seller, therefore, is entitled to claim interest in place of his retaining possession of the property till date of payment. On this premise, claim for interest is sought against the State when it exercises its power of eminent domain and acquires the property of a citizen or public purpose. This principle was extended in equity to recompensate the owner for deprivation of his possession and enjoyment thereof in accordance with law. It was, therefore, held in equity that the owner is entitled to interest on the principal amount of award from the date of taking possession unless the statute under which the land was acquired expresses its contrary intention. It is on this premise that the right to receive interest takes the place of right to retain possession and its enjoyment. It is equally settled law that equity operates where statute does not occupy the field. Conversely, when the statute occupies the field the equity yields place to the statute.

The question, therefore, is whether the Act expresses any intention to exclude payment of interest and solatium in respect of the property acquired thereunder? It is not in dispute that the property was initially under requisition whereunder possession thereof was taken from the respondents. During the period of requisition the respondents received compensation. The quantum thereof was sought to be put in issue but since that question was neither relevant nor in issue in the courts below, we desist from going into that aspect. Under section 7(1) of the Act. where property is subject to requisition, if the Government is of the opinion that it is necessary to acquire the property for a public purpose, it is empowered tho acquire such property by making publication to that effect in the State Gazette. Preceding thereto, a prior notice of show cause should be given to the owner claimants as to why the property should not be acquired; their objections, if any, should be considered after giving an opportunity and before deciding the same. Such an order in substance is like a declaration under section 6 of the Acquisition Act after enquiry under Section 5-a . By operation of sub section(2), the property comes to an end. Sub section(3) enumerates the circumstances in which the property cannot be acquired. Section 8 prescribes principles on which compensation shall be determined and given to the owner, in the manner and in accordance with

the principles set out therein. Clause (a) thereof gives right to fix compensation by an agreement between the Government and the owner indication thus: "where the compensation can be fixed by agreement. it shall be given in accordance with such agreement". Clause(b) gives alternative mode to the government and provides that in the absence of such an agreement reached between the owner and the government, "the Government shall appoint as arbitrator, a person, who is a District Judge or Additional District Judge". Clause (c) provides assistance to the arbitrator in the form of a person to be nominated by the Government who has expert knowledge as to the nature of the property acquired, to assist the arbitrator as assessor in determining compensation. The principle of determination of compensation found in Clause(e), the arbitrator shall, after hearing the disputes, obviously wherein Government is party, make an award determining the amount of compensation which appears to him to be "just" and specify the person or persons to whom such compensation shall be paid. In making the award, the arbitrator shall have regard to the circumstances of each case and the provisions of sub sections (2) deals with payment of compensation for the property requisitioned. Sub section (3) contemplates compensation payable for the property acquired under Section

7. It envisages that the compensation payable "shall, in the absence of an agreement, be the price which the requisitioned property would have fetched in open market, if it had remained in the same condition as it was at the time of its requisition and been sold on the date of acquisition".

It would thus be seen that in determining compensation in respect of the acquired property, which is the subject matter of prior requisition and was in possession of the Government, the principle for determination of compensation is as per the bi-lateral agreement between the owner and the Government. Where it was not effectuated and no agreement was reached, the arbitrator is empowered tho determine the compensation which the requisitioned property would have fetched in open market, if it had remained in the same condition as it was at the time of its requisition but the prevailing price should be as on the date of acquisition. Had it been sold in the open market to a willing purchaser by a willing vendor, the price offered by a willing purchaser in the open market would be the yardstick. The arbitrator, therefore, is kept in the arm chair of a willing purchaser and should consider the circumstances attending the requisitioned property. Had it remained with the owner in the same condition as it was at the time of its requisition and if it were to be sold on the date of acquisition in that condition, the price a willing purchaser would offer would be just and fair compensation under the Act. The Acquisition Act provides for payment of interest under Section 34 by the Land Acquisition Officer and by the Court under Section 23. Similarly, Section 23(2) provides for payment of solatium, in addition to compensation, in consideration of compulsory acquisition. The presumptive evidence furnishes that the Jammu & kashmir Legislature was aware of the above provisions and principles of determination of the compensation under the Acquisition Act. Yet, the Legislature departed from those principles; instead, it set down under the Act its own principles to determine the compensation. The Act did not expressly provide for payment of interest and solatium as components of compensation under the Act.

The question, therefore, emerges: whether it is necessary for the State Legislature to expressly specify that interest or solatium shall not be payable for the lands or property acquired under Section 7(1) of the Act. Sub silentio is eloquent. It would further be seen that Section 8 of the Central

Act equally does not provide for payment of solatium and interest. The act was passed in the year 1968 while the Central Act was passed in 1952 . It would, therefore, be reasonable to conclude that the State Legislature was cognizant to the express provisions for payment of interest and solatium available in the Acquisition act. The Act omitted similar provisions for payment of interest and solatium as part or component of compensation, obviously to fall in line with the Central Act.

In satinder singh's case [supra] East Punjab Acquisition and Requisition of Immovable Property(Temporary) Powers Act, 1948 did not provide for any principle on which the compensation in respect of the property acquired thereunder was to be determined. Section 5(e) of that Act makes Section 23(1) of the Land Acquisition Act, 1894 specifically applicable for determination of compensation. Contention raised therein was that sections 23(2), 28 and 34 by necessary implication stood excluded. Considering the said contention, the general principle of law as regards the right to interest on the compensation of immovable property was discussed and it was held that when possession of immovable property is taken form an owner, there is a general implied agreement to pay interest on the value of the property. On this premise, the claim for interest was made against the state. Accordingly. it was held that Sections 28 and 34 providing for payment of interest and Sections 23(2) for payment of solatium. were not excluded. The ratio, therefore, must be understood in the light of the facts found there n . Thus considered, we find that the ratio in Harikishan Khosla's case and in Satinder Singh's case are not in mutual conflict nor the former has the effect of overruling the latter. the difficulty arises in understanding the ratio in proper perspective.

In National Insurance co. Ltd., Calcutta vs. Life Insurance Corporation of India [1963 Supp.(2) SCR 9711 the business of insurance carried on by the appellant was nationalised under Life Insurance Corporation Act, 1956 and stood vested in the Life Insurance Corporation of India on and from September 1, 1956, The appointed day. The dispute between the parties related to the compensation payable to the appellant corporation of n such vesting and one of the issues was whether interest was payable on such compensation. There was no express provision for payment of interest as the life insurance business vested in the life Insurance corporation. The Tribunal had held that it had no jurisdiction to award interest since there was no express provision in the act. It was conceded during the hearing in this Court that the corporation agreed to pay interest awardable but the dispute was about the rate of interest, the amount on which it is payable and the date from which it should be given. Considering the contentions in that background, this Court had held that the property remained just where it was. The purchaser has the money in his pocket and the seller has the estate vested in him but the character changes in a court of equity; the seller becomes the owner of the money and the purchaser becomes the owner f the estate. On entering possession, the purchaser becomes entitled to the rent but if he has not paid the price, interest in equity is payable by him on the purchase price which belongs to the seller. On this principle, this court referred with approval the ratio in satinder Singh's case. In this background, it would be seen that there is no dispute as regards the principle of law on the right to receive interest on the value of the property from the date of taking possession by the purchaser from the seller when the purchase price was not paid. The question whether the land holder would be entitled to interest when the Act omitted payment thereof did not arise therein since the Life Insurance Corporation had agreed to pay interest on the value of the life insurance business of the appellant therein which vested in the Life Insurance

corporation, Therefore, the ration in this case is also of little assistance to the facts in this case. The facts in Prabhu Dayal & ors. vs. Union of India [1995 Supp. (4) 221] were that the property of the appellants was acquired under the Central Act but the appellants received the compensation under protest. The arbitrator was not appointed for a long period by the Government as enjoined under Section 8 of that Act to determine the market value. In Harbans Singh Shanni Devi V Union of India [Civil] Appeal Nos 470-71 of 1985] decided on February 11. 1985 which was followed in Harikishan Khosla's case, solatium and interest were awarded to the claimants. The question which arose for decision in these cases was as to the laches on the part of the Union of India in appointing an arbitrator to determine compensation and whether the owner was disentitled to interest and solatium. This court applied the principle of equity and directed payment of solatium and interest to recompensate loss of enjoyment of the money payable towards compensation. The ratio, therefore, is of no avail to the appellants.

All the decisions cited by Mr. Vaidyanathan in support of his contention on solatium were considered in Harikishan Khosla's case. His repeated attempts failed to persuade us to have that decision referred to a larger Bench of five Judges, we are unable to persuade ourselves to doubt the correctness of the judgment in Harikishan Khosla's case. All the decisions cited by the counsel were considered in extenso bu the Bench in Hari Krishna Khosla's case we are, therefore, of the opinion that it is not necessary to reexamine all the decisions once over,. We are in respectful agreement with the ratio in Harikishan Khosla's case. It would be seen that sub section(2) of Section 23 of the Acquisition Act expressly states that solatium is "in addition" to the compensation as consideration for compulsory nature of acquisition. This distinction was pointed out n catena of decisions including the one referred by a Bench of three Judges in Prem Nath Kapur & Anr. v. National Fertilizers Corporation of India Ltd. & ors.[(1996)2 SCC 71] . For parity of reasons, without further discussion it was held that interest also was not payable. We, therefore, respectfully agree with the ratio in Harikishan khosla's case that the Act omitted to pay solatium and interest , in addition to compensation. The omission by the legislature, as stated earlier, is deliberate. In district Judge Udhampur's case, a Bench of two judges of this court had held that the claimant is not entitled to solatium and interest. Accordingly, we hold that the respondents are not entitled to solatium and interest.

It is then contended by Mr. Vaidyanathan that citizens in jammu & Kashmir have fundamental right to property under the J & K constitution. The State Act was not incorporated in Schedule IX of the Constitution. The omission to pay solatium and interest is unconstitutional, arbitrary offending Article 14 of the constitution. The similar contention raised in Harikishan Khosla's case was considered and rejected. It was held that it is not violative of Article 14. We are in respectful agreement with the same. The Act is not violative of even Article 31 of the constitution as application to Jammu & Kashmir.

The contention that the denial of solatium and interest in respect of the property acquired under the Act would be an unjust enrichment of the State, is devoid of substance. The public money is credited to the Consolidated Fund which is expended in accordance with the Appropriation Bill passed by the Parliament or the State legislature in accordance with the provisions of the Constitution. The amount collected would be expended for the purposes of appropriation and for implementation of

the Directive principles of the state policy and the law made by the appropriate legislature or the executive policy in furtherance thereof . Therefore, the non-payment of solatium and interest does not independently get into the coffers of the public exchequer nor does the State enrich itself. The public money is expended only for public purpose. The concept of unjust enrichment by the state is alien to and in derogation of the constitutional scheme and public policy. The general principal is that one should not be permitted to unjustly enrich himself at the expense of other. Unjust enrichment of a person occurs when he has and retains money or benefits which injustice and equity belongs to another. Three elements must be established in order to sustain a claim based on unjust enrichment, the benefit conferred upon the defendant by the plaintiff; appreciation of knowledge by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without payment of its value. These principles specifically absent in the case of omission by a statute, are made by the competent Legislature to award interest or solatium, in addition to compensation. So it cannot be to characterised as unjust enrichment where such action does not involve violation of law or is not opposed to public policy either directly or indirectly when the statute prescribes the principle for payment of compensation and omits as its policy to provide for the payment of interest and solatium as component of compensation. It is the legislative public policy to provide for acquisition of the private property for a public purpose. The state pays compensation for the acquired land in accordance with the principle laid down in the statute. It would, therefore, be illogical to contend that by legislative omission to pay solatium and interest the State enriches itself unjustly at the expense of the private person. The contention, therefore, is unsustainable in law.

Accordingly, we hold that the High court and the arbitrator committed manifest grave error of law in awarding solatium and interest on the compensation determined under Section 8 of the Act.

The appeal is accordingly allowed. The award of solatium and interest on the compensation awarded stands set aside. The compensation stands upheld, but, in the circumstances, without costs.