

Supreme Court of India

Union Of India vs Kolluni Ramaiah on 16 November, 1993

Equivalent citations: 1994 AIR 1149, 1994 SCC (1) 367

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

UNION OF INDIA

Vs.

RESPONDENT:

KOLLUNI RAMAIAH

DATE OF JUDGMENT 16/11/1993

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

VENKATACHALLIAH, M.N. (CJ)

ANAND, A.S. (J)

CITATION:

1994 AIR 1149

1994 SCC (1) 367

JT 1993 (6) 465

1993 SCALE (4) 463

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by S.MOHAN, J.- Delay condoned. Permission to prefer special leave petitions granted.

2. Leave granted.

3. The facts leading to these appeals are as under : An extent of 6.50 acres of land in village Marripalam Taluk and District Visakhapatnam was requisitioned for defence purposes in the year 1942. Subsequently they were acquired under the Requisitioning and Acquisition of Immovable Property Act, 1952 (Central Act 30 of 1952) (hereinafter referred to as the Act) on January 11, 1972 along with adjoining land of an extent of 68.25 acres. The competent authority fixed compensation at the rate of Rs 10 per square yard under Section 8(3) read with Rule 9(1) of the Act. Being dissatisfied with the compensation, the owners of the property sought a reference to the arbitrator.

By an award dated March 28, 1981, the arbitrator (District Judge) awarded compensation at the rate of Rs 15 per square yard and solatium at 15 per cent and interest at 6 per cent from the date of publication of Form J. Notification. Accordingly, the enhanced amount was deposited in court through Special Petition LA (Defence) Visakhapatnam.

4. Still not being satisfied with the decision of the arbitrator, the respondent Kolluni Ramaiah and three sets of landowners went on appeal to High Court of Andhra Pradesh praying for the enhancement of the rate of compensation fixed by the arbitrator. The High Court of Andhra Pradesh granted Rs 20 per square yard and retained the award of arbitrator as regards payment of solatium at 15 per cent and interest at 6 per cent in all these cases. However, it requires to be stated that the appellant, Union of India was not a party to the proceedings either before the arbitrator or before the High Court. It is urged that since the enhanced compensation and the amount payable as solatium and interest are substantial, Union of India is the main party which has been affected by this enhancement. An application was filed before us for preferring the present petitions for special leave.

5. Mr C.V. Subba Rao, learned counsel for Union of India urges that the enhancement of compensation is unwarranted. Even otherwise, as on today, in view of the authoritative pronouncement of this Court in Union of India v. Hari Krishan Khosla the award of solatium and interest is not permissible, in a case of acquisition of property under the Act. Properly speaking, the Union of India ought to have been made a party both before the arbitrator and the High Court. In fact, when the first respondent (Kolluni Ramaiah) preferred C.M.A. No. 137 of 1982 before the Andhra Pradesh High Court, it was held that the non-inclusion of Union of India as a party would be sufficient ground to dismiss the case. On these grounds, it is prayed that not 1 1993 Supp (2) SCC 149 : JT (1992) 5 SC 574 only the permission to prefer the special leave petitions be granted but also the award be set aside.

6. To a pointed question as to how this Court could reach the award of arbitrator by which alone solatium and interest were granted and they were merely retained by the High Court, it was submitted that where the award of solatium and interest is illegal in view of the judgment of this Court, it would be unjust and can be set aside. Even otherwise, that part of the award gets merged with the judgment of the High Court and, therefore, this Court could always interfere. However, it is fairly conceded that Union of India would be satisfied if without interfering with the actual compensation, the part of the award relating to solatium and interest is only set aside.

7. The learned counsel for the respondents would submit that the award of arbitrator becomes final not having been appealed against. It is tendered that award that solatium and interest were granted. The finality of the award cannot be disturbed in an appeal filed by the owners in the High Court, unless and until Union of India had filed a separate appeal complaining of the grant of solatium and interest. The respondents (owners of land) cannot be worse off for having appealed to the High Court. Merely because of the subsequent decision of this Court holding that the grant of solatium and interest were impermissible to an acquisition under the Act, that will not permit the Union of India to reopen the proceedings. Therefore, the application to prefer special leave petitions will have to be dismissed.

8. We have given our careful consideration to the above arguments. In view of the categorical pronouncement of this Court in Hari Krishan Khosla case' the award granting solatium at the rate of 15 per cent and interest at the rate of 6 per cent under the case of acquisition is clearly bad in law.

9. From the narration of facts, it is clear that the arbitrator had awarded compensation at the rate of Rs 15 per square yard together with solatium at the rate of 15 per cent and interest at the rate of 6 per cent. In an appeal by the landowners, the amount of compensation was alone enhanced to Rs 20 per square yard and that part of the award relating to solatium and interest was affirmed. No doubt, in one sense, the principle of merger would apply. But that will cause immense prejudice to the respondents (landowners) if we are to interfere on the basis of that principle. They cannot be worse off for having preferred appeals to the High Court. If the present special leave petitions are directed against the ultimate 'Judgment of the High Court in which the award had merged, what would happen if the respondents were to withdraw the appeals before the High Court now'? And that is what the respondents want to do with tile leave of this Court.

10. It is not correct on the part of the respondents to contend that tile award of the arbitrator had become final and it cannot be reopened now because the matter is still kept alive by the Union of India. No doubt, there is a delay of 157 days which we are prepared to condone in the interests of justice. Once, there is patent illegality in the award, as pointed above, is this Court powerless as not to grant any relief to the Union of India which was neither impleaded before the arbitrator nor before the High Court?

11. Exercising our powers under Article 142 of the Constitution, we think that these special leave petitions must be treated as cross-objections before the High Court against the award of the arbitrator. Under Order 41, Rule 22 of the Code of Civil Procedure, cross-objections could be filed by a party who might have appealed from the decree of the court below but has not done so. No appeal was preferred by the Union of India since it was not a party before the arbitrator. If these special leave petitions are to be treated as cross-objections, in the appeal before the Andhra Pradesh High Court, normally, we should remit the matter to the High Court. In such an event, the enhancement of compensation from Rs 15 to Rs 20 per square yard and the award of solatium and interest will have to be redetermined. Of course, solatium and interest will go, in any event. Then remains only the actual quantum of compensation. Inasmuch as, Mr C.V. Subba Rao, learned counsel for the Union of India fairly concedes that the award of Rs 20 per square yard by the High Court may not be interfered with, we think it is unnecessary to remit the matter to the High Court. In our view, such a course will not only prolong the issue but also would amount to directing the High Court to do the obvious.

12. In the result, we treat these special leave petitions as cross-objections under Order 41, Rule, 22 of the Code of Civil Procedure against the award of the arbitrator for the limited purposes of setting aside that part of the award relating to solatium at the rate of 15 per cent and interest at the rate of 6 per cent. We make it clear that the enhancement of compensation from Rs 15 per square yard as awarded by the arbitrator to Rs 20 per square yard by the High Court, is not interfered with. The civil appeals are ordered accordingly. There shall be no order as to costs.