

Supreme Court of India

K.S. Paripoornan (Ii) vs State Of Kerla on 20 October, 1994

Equivalent citations: 1995 AIR 581, 1995 SCC (1) 367

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

K.S. PARIPOORNAN (II)

Vs.

RESPONDENT:

STATE OF KERLA

DATE OF JUDGMENT 20/10/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

BHARUCHA S.P. (J)

MUKHERJEE M.K. (J)

CITATION:

1995 AIR 581

1995 SCC (1) 367

1994 SCALE (4) 951

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. Notification under Section 3(1) of the Kerala Land Acquisition Act, 1961 (Act 21 of 1962) was published in the State Gazette on 21-3-1979. The Collector under Section 11 thereof passed his award on 30-12-1980. Thereafter, possession of some land was taken on 15-1-1981 and the balance land on 13-3-1981. The compensation was deposited on 10-8-1981. On a reference under Section 18 the civil court enhanced the compensation at Rs 5000 per cent in its award and decree dated 28-2-1985. The enhanced compensation was deposited on 20-10-1986 and 3-12-1986 respectively. The High Court on appeal, while confirming the enhanced compensation granted by the civil court disallowed interest under Sections 28 and 23(1-A) of the Land Acquisition Act, as amended by the Land

Acquisition (Amendment) Act (68 of 1984), for short "the Amendment Act". By operation of the Amendment Act, which has come into force on 24-9-1984, the Kerala Act was repealed and thereby Central Act 1 of 1894 became applicable as amended by the Amendment Act. Section 15(b) and Section 18 of the Amendment Act amended Section 28 and Section 23(2) of the Central Act 1 of 1894. The High Court, relying upon sub-section (2) of Section 30 of the transitory provisions of the Amendment Act has held that since the Award was made prior to the date the Amendment Act had come into force, the appellant is entitled to the interest under Section 30 of the Kerala Act at the rate of 4%. The question, therefore, is whether the appellant is entitled to the enhanced interest as envisaged under Section 28 as amended under Section 18 of the Amendment Act.

3. It is contended for the State by Shri A.S. Nambiar, the learned Senior Counsel that in *Union of India v. Raghubir Singh*¹ this Court had given restricted interpretation to Section 30(2) of the transitory provisions holding that only if the award has been made between 30-4-1982 and 24-9-1984, would the claimant be entitled to the benefit of the enhanced solatium under Section 23(2) of the Principal Act. On the parity of the ratio therein by operation of sub-section (2) of Section 30 of the transitory provisions of the Amendment Act which includes Section 28 also, the ratio therein would equally be applicable to the facts of these cases. Since the award was made by the Court after the Amendment Act had come into force, the appellant is not entitled to the enhanced interest under the amended Section 28 of the Principal Act. We are unable to agree with the learned counsel. Section 30(2) reads :

" 30. (2) The provisions of sub-section (2) of Section 23 and Section 28 of the Principal Act, as amended by clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court on appeal against any such award under the provisions of the Principal Act 1 (1989) 2 SCC 754 after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act."

This Court while noticing the effect of the amendment in sub-section (2) of Section 30 in paragraph 31 considered the effect thereof thus: (SCC pp. 779-780) "31. In construing Section 30(2), it is just as well to be clear that the award made by the Collector referred to here is the award made by the Collector under Section 11 of the parent Act, and the award made by the Court is the award made by the Principal Civil Court of Original Jurisdiction under Section 23 of the parent Act on a reference made to it by the Collector under Section 19 of the parent Act. There can be no doubt that the benefit of the enhanced solatium is intended by Section 30(2) in respect of an award made by the Collector between April 30, 1982 and September 24, 1984. Likewise the benefit of the enhanced solatium is extended by Section 30(2) to the case of an award made by the Court between April 30, 1982 and September 24, 1984, even though it be upon reference from an award made before April 30, 1982."

4. This Court thereby clearly held that even in the pending reference made before 30-4-1982, if the civil court makes an award between 30-4-1982 and 24-9-1984, Section 30(2) gets attracted and thereby the enhanced solatium was available to the claimants. Since Section 30(2) deals with both

the amendments to Section 23(2) and Section 28 of the Principal Act by Section 15(b) and Section 18, respectively, of the Amendment Act by parity of the reasoning the same ratio applies to the awards made by the civil court between those dates. The conflict of decisions as to whether Section 23(2) as amended by Section 15(b) of the Amendment Act through Section 30(2) of the transitory provisions would be applicable to the pending appeals in the High Court and the Supreme Court was resolved in Raghubir Singh case 1 by the Constitution Bench holding that the award of the Collector or the court made between 13-4-1982 and 24-9-1984 would alone get attracted to Section 30(2) of the transitory provision. The restricted interpretation should not be understood to mean that Section 23(2) would not apply to the award of the civil court pending at the time when the Act came into force or thereafter. In this case, admittedly the award of the civil court was made after the Act had come into force, namely, 28-2-1985.

5. Therefore, if the sum which, in the opinion of the court, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the court shall direct the Collector to pay interest on such excess at the rate of 9% per annum from the date on which the Collector took possession of the land to the date of payment of such excess into the court. By operation of the proviso, if such excess or any part thereof is paid into the court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of 15% per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the court before the date of such expiry. Accordingly, the appellant is entitled to the enhanced interest @ 9% from the date of taking possession, namely, 15-1-1981 and 11-3-1981 respectively for one year and thereafter @ 15% till the date of the deposit made by the Collector. Admittedly, the deposit of the enhanced compensation was made on 20-10-1986 and 3-12-1986. Therefore, the interest shall be calculated at the enhanced rates for the aforesaid period.

6. The question relating to the payment of 12% additional compensation under Section 23(1-A) over the excess compensation has already been covered by the Constitution Bench judgment of this Court in K.S. Paripoornan (1) v. State of Kerala². Therefore, the appellant is not entitled to this benefit as the Collector made the award prior to the date of the Amendment Act came into force.

7. The appeals are accordingly allowed in part but in the circumstances, the parties are directed to bear their own costs.