

Panna Lal Ghosh & Ors vs Land Acquisition Collector & Ors on 12 December, 2003

Equivalent citations: AIR 2004 SUPREME COURT 1179, 2004 (1) SCC 467, 2004 AIR SCW 66, 2004 (1) ALL CJ 687, 2004 (1) SLT 296, (2004) 13 ALLINDCAS 29 (SC), 2003 (10) SCALE 725, (2003) 10 SCALE 725, (2004) 1 LANDLR 718, (2003) 8 SUPREME 821, (2004) 1 RECCIVR 517, (2004) 2 ICC 52, (2004) 1 JLJR 297, (2004) 1 GAU LT 16, (2004) 14 INDLD 13, (2004) 54 ALL LR 169, (2004) 1 CIVLJ 838, (2004) 1 CURCC 210

Bench: S. Rajendra Babu, Ruma Pal

CASE NO.:

Appeal (civil) 9734 of 2003

PETITIONER:

Panna Lal Ghosh & Ors.

RESPONDENT:

Land Acquisition Collector & Ors.

DATE OF JUDGMENT: 12/12/2003

BENCH:

S. RAJENDRA BABU & RUMA PAL.

JUDGMENT:

J U D G M E N T [Arising out of SLP(C) No. 15758 of 2000] **RAJENDRA BABU, J. :**

Leave granted.

The case relates to acquisition of land measuring 3.37 acres in Mouja Pabiacheura in Kailashahar, State of Tripura. The notification under Section 4(1) of the Land Acquisition Act, 1894 [hereinafter, 'the Act'] was issued on 24th December 1968 and on 13th October, 1969, declaration under Section 6 of the Act was published. The Land Acquisition Collector made his award in October 1974 awarding Rs.12,000/- per acre for 'nal land' and Rs.9,000/- per acre for 'chara land'.

On 21.10.1974, the appellants filed an application for reference under Section 18 of the Act for enhancement of compensation. On reference, the learned L.A. Judge passed an award enhancing compensation, allowing Rs.36,000/- per acre and also granted 15% solatium, and interest under Section 23(2) of the Act in 1985.

On appeal to the High Court, the claim for enhancement was dismissed. The High Court also denied the appellants benefits under Section 23(2) of the Act by relying on the decision of this Court in K.S. Paripoornan vs. State of Kerala, AIR 1995 SC 1012.

Before this Court, the main issues are as follows:

- (1) Was the High Court justified in not awarding enhanced compensation?
- (2) Are the appellants entitled to solatium and interest @ 30% under Section 23(2) of the Act?

Compensation payable on a piece of land acquired under the Act is determined by taking into account the market value of the land so acquired. The most reliable way to determine the market value is to rely on the instances of sale of portions of the same land as has been acquired or adjacent lands made shortly before or the after the Section 4 notification .

Accordingly, the appellants had produced before the High Court a certified copy of an award passed by the learned L.A. Judge in another acquisition proceedings. In this case, the land was 150 ft. away from the lands involved in the present proceedings. In those proceedings, the learned L.A. Judge had awarded Rs.1 lakh per acre as compensation. This was sought to be relied on by the appellants. The High Court chose not to rely on this document as no evidence was led to show that both lands are similar in nature having similar potentiality.

While determining the market value of land, it must be with reference to a piece of land which is comparable to the present lands being acquired. It must be similar in potentiality and nature. The document which the appellants seek to rely on relates to land which was acquired for the purpose of Assam- Agartala Road. It was 3 feet higher than the acquired land. Further, the two lands were not proved to be comparable in nature and potentiality. Therefore, the High Court is right in not relying on the said document and disallowing the claim for enhancement for compensation.

The second issue relates to the payment of solatium @ 30% under Section 23(2) of the Act.

Solatium is 'money comfort' quantified by the statute and given as a conciliatory measure for the compulsory acquisition of land of the citizen, by a welfare state such as India ". Thus the statutory amount of solatium is intended to compensate the owner for his disinclination to part with his property.

The main aspect that arises for consideration is the issue of the rate of solatium. By an amendment in 1984, the rate was increased to 30% from the original 15% by virtue of Section 30(2) of the Amending Act.

This increase was given a limited retrospectivity, in the sense that, the Amending Act, under Section 30(2) provided that the increased solatium is applicable to those awards passed by the Collector or the Court between 30.4.1982 and 29.9.1984. Can it be said that the present case would be entitled to

this additional benefit?

The award was made by the L.A. Collector way before the said period i.e. in 1974. However, the reference Court passed its award after the said period, i.e. in 1985. Therefore, the issue is whether the amendment would apply to a case pending during the period of 2 years from 30.4.1982 to 29.9.1984.

This precise issue has come up for consideration a number of times before this Court. In *Union of India v. Raghubir Singh*, (1989) 2 SCC 754, it was held that the benefit of enhanced solatium would apply only in cases where the award by the Collector or Court is made between 30.4.1982 and 24.9.1984 or appeals against such awards decided by the High Courts or this Court, whether rendered before 24.9.1984 or after that date. This Court found that the language of the Section ruled out the applicability of the benefit to all pending proceedings.

In *Union of India v. Filip Tiago De Gama*, AIR 1990 SC 981, the issue was whether the amendment would apply to an award made subsequent to 24.9.1984 even though the acquisition proceedings had commenced prior to the date. This Court looked at the intention behind giving retrospective effect to the amending Section. If the literal interpretation is taken, it was held, it will result in an anomaly. In order to avoid it, regard must be had to the purpose of Section 30(2). Consequently, this Court awarded higher solatium even though the Reference Court made the award in 1985.

Again in *K.S. Paripoornan's case* [supra], this Court widened the restricted interpretation given in *Raghubir Singh's case*. It held that the enhanced solatium would apply even to a case pending at the time the Act came into force.

Following this train of thought, the benefit of enhanced solatium would extend to the present case. During the period between 30.4.1982 and 29.9.1984, the reference was pending in the Reference Court.

The court's award was passed in 1985. Following the above interpretation, the appellants are thus entitled to enhanced solatium @ 30% and interest under Section 23(2) of the Act.

The High Court in considering the case under Section 23(1-A) of the Act has committed an error.

The appellants are entitled to solatium under Section 23(2) of the Act and, therefore, the reference by the High Court to Section 23(1-A) is irrelevant in the present case.

The learned counsel for respondents has contended that solatium is not applicable because the West Bengal Land Development and Planning Act, 1948, under which this present area falls, does not contemplate it. The provision of solatium is mandatory and cannot be done away with. It has been held in a number of cases that the deprivation of solatium by the West Bengal Land Development and Planning Act is violative of Article 14 and Section 8(2) of the Act is held to be invalid. (See : *Monoranjan Routh v. State of W.B.*, AIR 1972 Cal 487 and *Ramendranath v. State of W.B.*, AIR 1975 Cal

325). Therefore, the contention that Section 8(2) of the Act excludes compensation by way of solatium does not hold good.

In the light of the above, the compensation @ 36,000/- per acre as awarded by the L.A. Judge is upheld. The solatium is to be paid @ 30% under Section 23(2) of the Act and an interest @ 9% per annum is also payable under Section 28 of the Act.

The award made by the Reference Court as affirmed by the High Court shall stand modified accordingly and the appeal is allowed to that extent. No orders as to costs.

L.....T.....R.
 Appeal (civil)#Appeal (civil) 4051 of 1996#1996#M/s Pepsi Foods Limited#Collector of Central
 Excise, Chandigarh#2003-11-25#25622#4051#P. VENKATARAMA REDDI### Appeal
 (crl.)#Appeal (crl.) 104-106 of 2003#2003#Bikau Pandey and Ors.#State of
 Bihar#2003-11-25#25623#104-106#DORAISWAMY RAJU### Appeal (civil)#Appeal (civil) 10906
 of 1996#1996#Shanti Kumar Panda#Shakutala Devi#2003-11-03#25624#10906#R.C.
 LAHOTI### Appeal (civil)#Appeal (civil) 11483 of 1996#1996#Amrendra Pratap Singh#Tej
 Bahadur Prajapati & Ors.#2003-11-21#25625#11483#R.C. LAHOTI### Appeal (civil)#Appeal
 (civil) 9130 of 2003#2003#Ameer Trading Corporation Ltd.#Shapoorji Data Processing
 Ltd.#2003-11-18#25626#9130#CJI### Appeal (civil)#Appeal (civil) 14178-14184 of
 1996#1996#Brij Behari Sahai (Dead) through L.Rs., etc. etc.#State of Uttar
 Pradesh#2003-11-28#25627#14178-14184#Doraiswamy Raju### Appeal (crl.)#Appeal (crl.) 1968
 of 1996#1996#Goa Plast (P) Ltd.#Chico Ursula D'Souza#2003-11-20#25628#1968#B.P. Singh###
 Writ Petition (crl.)#Writ Petition (crl.) 199 of 2003#2003#Ashok Kumar Pandey#The State of West
 Bengal#2003-11-18#25629#199#DORAISWAMY RAJU### Appeal (crl.)#Appeal (crl.) 20 of
 2003#2003#Surendra Paswan#State of Jharkhand#2003-11-28#25630#20#DORAISWAMY
 RAJU### Appeal (crl.)#Appeal (crl.) 278 of 1997#1997#Vidyadharan#State of
 Kerala#2003-11-14#25631#278#DORAISWAMY RAJU### Appeal (crl.)#Appeal (crl.) 292 of
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 Ors.#2003-11-18#25632#292#DORAISWAMY RAJU### ###State of Punjab & Anr.#M/s Devans
 Modern Breweries Ltd. & Anr.#2003-11-20#25633###CJI.### Appeal (crl.)#Appeal (crl.) 331 of
 1997#1997#Shriram#State of Madhya Pradesh#2003-11-24#25634#331#DORAISWAMY
 RAJU### Appeal (civil)#Appeal (civil) 3630-3631 of 2003#2003#The Prohibition & Excise Supdt.,
 A. P. & Ors.#Toddy Tappers Coop. Society, Marredpally &
 Ors.#2003-11-17#25635#3630-3631#CJI.### Appeal (crl.)#Appeal (crl.) 371-372 of
 2003#2003#Ram Dular Rai & Ors.#State of Bihar#2003-11-27#25636#371-372#S.B. Sinha.###
 Appeal (civil)#Appeal (civil) 4075-4081 of 1998#1998#Nair Service Society#Dist. Officer, Kerala
 Public Service Commission & Ors.#2003-11-17#25637#4075-4081#CJI.### Appeal (civil)#Appeal
 (civil) 4698-4700 of 1994#1994#State of U.P. & Ors.#Lalji Tandon
 (Dead)#2003-11-03#25638#4698-4700#R.C. LAHOTI### Appeal (crl.)#Appeal (crl.) 506 of
 1997#1997#State of Karnataka#Puttaraja#2003-11-27#25639#506#DORAISWAMY RAJU###
 Appeal (crl.)#Appeal (crl.) 519-521 of 2003#2003#Goura Venkata Reddy Vs.#State of Andhra
 Pradesh#2003-11-19#25640#519-521#DORAISWAMY RAJU### Appeal (crl.)#Appeal (crl.)
 530-531 of 2003#2003#Bhargavan & Ors.#State of Kerala

#2003-11-17#25641#530-531#DORAISWAMY RAJU### Appeal (civil)#Appeal (civil) 7371 of 2002#2002#N.D. Thandani (Dead) By Lrs. #Arnavaz Rustom Printer & Anr. #2003-11-24#25642#7371#R.C. LAHOTI### Appeal (civil)#Appeal (civil) 9205-07 of 2003#2003#The Land Acquisition Officer, Nizamabad, District, Andhra Pradesh #Nookala Rajamallu and Ors. #2003-11-21#25643#9205-07#DORAISWAMY RAJU### Transfer Petition (crl.)#Transfer Petition (crl.) 77-78 of 2003#2003#K. Anbazhagan #The Superintendent of Police & ors.#2003-11-18#25644#77-78#S.N. VARIAVA### Appeal (civil)#Appeal (civil) 7868 of 1995#1995#ITW Signode India Ltd. #Collector of Central Excise #2003-11-19#25645#7868#CJI###