

ARTICLE 142 CONSTITUTION OF INDIA DECISIONS OF SUPREME COURT - BINDING NATURE

By

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142. Enforcement of decree and orders of Supreme Court and orders as to discovery, etc. :—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

The conflicting decisions of Supreme Court on the same point of law has been creating confusion on the Subordinate Courts and High Courts. Ignoring such settled principles and passing judicial orders contrary to such settled position of law would be an act of judicial impropriety as held in AIR 1997 SC 2477 by the Division Bench of three Judges Justice *K.S. Paripoornan*, Justice *K. Venkata Swamy*, Justice *B.K. Kirpal* in *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works Ltd.*

The Land Acquisition Act provides payment of compensation to the owners whose properties are acquired for public purpose. The word “Compensation” appearing in Section 23 of the Land Acquisition Act is not defined anywhere. The grammatical meaning of compensation is

payment or remuneration. The legal meaning of compensation is in ordinary parlance means anything given to make things equivalent or to make amends for loss, as held by five Judges of Supreme Court in AIR 1969 SC 634 *State of Gujarat v. Shantilal Mangal Dass & others*.

The word compensation in Section 75 of the Indian Contract Act has been used in very wide sense.

Article 31 speaks of compensation and normally compensation means the full market value of the property acquired but it is settled law that the word “compensation” as now occurring in Article 31 has not been used in the sense of full market value. *Mohd. Amir Ahmad Khan v. Lucknow Nagar Mahpalitee*, AIR 1965 All. 599

Ordinary the word “compensation” connotes equivalency which adequately remunerates for a loss or deprivation. Section 23 of Land Acquisition Act must be reproduced in its entirety.

The key to the meaning of the word “compensation” is to be found in Section 23 and that consists (a) of the market value of the land and (b) the sum of Solatium or such market value which is stated to be the consideration for compulsory acquisition. Market value is therefore only one of the components in the determination of the amount of compensation. Therefore, it is apparent that Solatium also forms part of compensation.

The Supreme Court has held that compensation consists of market value plus solatium. These are two distinct expressions. “Market Value” has acquired definite connotations by Judicial Decisions. Throughout the Act, the Legislature has maintained a distinction between the “Market Value” and

the “compensation”. Market value is the price which a willing Vendor might reasonably expect from a willing purchaser as the Privy Council said in AIR 1939 PC 98. The word “compensation” is the genus of which market value is a species. This is clear from Section 23(1) of the Act itself. The distinction is further apparent from Sections 17, 25, 28 and 28-A of the Act.

Union of India v. Sri Ram Mehar, AIR 1973 SC 305 = 1973 (1) SCD 73.

Section 28 of Land Acquisition Act provides payment of interest on excess compensation. The grant of interest is discretionary, but when once the Court has exercised its discretion, the interest on such compensation as per the Act has to be allowed.

Section 34 of the Act provides payment of interest on compensation. If it is not paid or deposited in the Court within one year from the date of taking possession. Payment of interest under Section 34 is mandatory and interest is allowed on the entire compensation amount including market value, Solatium and Additional Market Value.

Triveni Devi v. State, AIR 1982 Patna 77 = 1981 (2) ALT 22 SN

The Patna High Court and Andhra Pradesh High Court have held that the word “compensation” includes solatium. The word used in the Act is “compensation” but not “market value” and market value and compensation were intended by the Legislature having the same meaning, it is difficult to comprehend why the word compensation in Sections 28 and 34 was used and why the market value was not used. It is significant to note that the word “compensation” is used in juxtaposition to the word “market value” - The Courts have given different opinions about the payment of interest on Solatium as well as additional market value. It is held by Justice *P. Ram Krishnam Raju* in *Special Deputy Collector MCH Unit 2 Hyderabad v. B. Anantha and others*, reported in 1993 (1) APLJ 209, that claimants are entitled to interest on Solatium as well as Additional Market Value under

Section 28 or Section 34 of Land Acquisition Act. Similar view has been expressed by Division Bench of Delhi High Court in the case of *Raghubir Singh v. Union of India*, reported in AIR 1985 Del. 228. But it is held by the Bench that Solatium is not payable on Additional Market Value. The case of *Raghubir Singh* has been carried to the Supreme Court on appeal by the Union of India and Reported in 1989 (2) SCC 754, wherein a Bench of 5 Judges of Supreme Court consisting of Chief Justice *R.S. Sabyasachi Pathak*, Justice *S. Venkatramayya*, Justice *Mukharji*, Justice *Ranganatha Mishra*, and Justice *Natarajan* have held the applicability of Amended Act, 1984 for the matters by way of appeals pending before the High Court and Supreme Court in respect of Awards which were made by the Collector or the Court prior to 30th April, 1982 and held that the Benefit of amended provisions cannot be given over ruling *Bhag Singh's* case, 1985 (3) SCC 737 and *Mohinder Singh's* case, 1986 (1) SCC 365. The Bench of five Judges did not over rule the finding given by a Division Bench of Delhi High Court about the payment of interest on solatium and additional market value. The Andhra Pradesh High Court has also held in the case of *Anjaneyulu v. Sub-Collector*, reported in 1986 (1) ALT 342, that solatium is not allowed on the Additional Market Value as 12% Additional Market Value does not form part of Market Value. The Andhra Pradesh High Court in another matter reported in 1983 (2) ALT 169, has held that interest is payable on Additional Market Value. The Division Bench of Supreme Court consisting of Justice *L.M. Sharma* and Justice *K. Rama Swamy* have held in the judgment reported in AIR 1990 SC 2192 *Periyar and Pareekann Rubbers Limited v. State of Kerala*, that the Interest on Solatium shall be allowed. In unreported decision in *LAO v. Meda Komuraiah*, in AS No.1360/1990 arising against the decree in OP No.869 of 1982 the High Court has held that the claimants are entitled to the Interest on Solatium as well as Additional Market Value.

The Full Bench of the Bombay High Court reported in AIR 1987 Bom. 214, has held that award of Interest described under the proviso to Section 28 of L.A. Act is in discretionary power of the Court. Therefore Section 28(2) empowers the Court to exercise its discretion to grant or not to grant interest and when once discretion is exercised, there is no further discretion as held in the Court of *Raghubans Narayan v. Government of U.P.*, reported in AIR 1967 SC 465. There is yet another judgment *Yadav Rao P. Pathad (Dead) per LRs. v. State of Maharashtra*, reported in ALT 1996 (1) 24 DN (SC) = 1996 (2) Supreme 223 (SC), the Supreme Court has held whether High Court holding that appellants are not entitlement of interest on Solatium is wrong in view of contrary holding by Supreme Court reported in AIR 1990 SC 2192 *Pariyar Pareekann Rubbers Ltd. v. State of Kerala*. The Bench held in the negative. The Supreme Court in a recent judgment consisting of Justice *K. Rama Swamy*, Justice *G.T. Nanavati* reported in 1997 (2) ALT SC 31 (SN) fully reported in 1997 (1) SCC 249 = 1997 (1) CCC 50 (SC) in the matter of *Tehri Hydro Development Corp. v. S.P. Singh and others* have held that the claimants are not entitled to interest on Solatium and Additional Market Value.

In another judgment reported in 1996 (2) SCC 71, in the matter of *Prem Nath Kapur v. National Fertilizer Corporation Ltd.*, the Supreme Court has said that the claimants are not entitled to Addl. Market Value and also interest on the Solatium.

On account of conflicting judgments being given by the Courts regarding payment of interest on Solatium and Addl. Market Value, the point arises whether the judgment of Supreme Court reported in 1997 (2) ALT SC 31 (SN) = 1997 (1) SCC 249 can be made applicable for the matters in which interest has been awarded by the Court and the decree has become final, and the LAO has got any right to withhold payment of interest, and whether the Court basing on the judgment of Supreme Court can deduct interest from the amount deposited. The

answer is in the negative. The same view has been taken by Justice *Soma Shekhara* reported in 1998 (1) ALD 375 and held that granting of interest is the discretion of the Court and when once the decree has become final, the Court has no power to revise the decree.

The Full Bench consisting of Justice *P. Venkat Ram Reddy* Justice *Krishna Saran Srivasthava* and Justice *Hanumanthu* in a citation reported in 1998 (1) APLJ 395 have held that the word compensation in Section 28 shall be confined to the element of compensation embodied in Section 23(1). There is no hesitation in concluding that interest under Section 28 cannot be awarded on the additional amounts payable under Section 23(1-A) and (2).

Thus, the controversy arises whether the Division Bench of two Judges of Supreme Court reported in AIR 1990 SC 2192, allowing interest on Solatium and Additional Market Value can be overruled by the Division Bench of two Judges reported in 1997 (2) ALD SC 31, fully reported in 1997 (1) SCC 244, wherein it was held that the claimants are not entitled to interest on Solatium and Addl. Market Value and also about the binding value of Supreme Court decisions under Article 141 of Constitution of India, and whether the Division Bench of three Judges Justice *K. Rama Swamy*, Justice *Saghir Ahmad* and Justice *G.B. Pattanaik* reported in 1996 (2) Supreme 223 *Yadav Rao P. Pathade (Dead) per LRs. v. State of Maharashtra*, can take a different view contrary to the settled view taken by two Judges in AIR 1990 SC 2192. Pronouncement of Law by a Division Bench of Supreme Court is binding on a Division Bench of the same or smaller number of Judges and in order that such decision be binding it is not necessary that it should be a decision rendered by the Full Court or Constitution Bench of the Court.

The issue about the effect and binding nature of the decision of Division Bench of Supreme Court has been dealt with and discussed by five Judges of Supreme Court

in the matter of *Union of India and another v. Raghubir Singh (dead) per LRs.*, reported in AIR 1989 SC 1933 and considered that then what should be the position in regard to the effect of the Law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? It is in order to guard against the possibility of inconsistent decisions on points of Law by different Division Benches that the rule has been evolved in order to promote consistency and certainty in the development of the law and its contemporary status that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges.

In *John Martin v. State of West Bengal*, AIR 1975 SC 775 = 1975 (3) SCR 211, a Division Bench of three Judges found it right to follow the law declared in *Haradhan Saha v. State of West Bengal*, AIR 1975 SC 2154 = 1975 (1) SCR 778, decided by a Division Bench of five Judges in preference to *Bhut Nath Marti v. State of West Bengal*, AIR 1974 SC 806, decided by a Division Bench of two Judges.

Again in *Smt. Indira Gandhi v. Raj Narain*, AIR 1975 SC 2299 = 1976 (2) SCR 347, Justice Beg, held that the Constitution Bench of five Judges was bound by the constitution Bench of thirteen Judges in *His Holiness Kesavananda Bharathi v. State of Kerala*, AIR 1973 SC 1461 = 1973 Supp. SCR 1.

The Supreme Court has laid down in *Acharya Maharaja Shri Narendra Prasadji, Anand Prasadji Maharaji v. State of Gujarat*, AIR 1974 SC 2098, that even where the strength of two differing Division Benches consisting of the same number of Judges, it was not open for the Division Bench to decide the correctness or otherwise of the views of the other.

This principles was re-affirmed in *Union of India v. Godfrey Philips India Ltd.*, AIR 1986 SC 806 = 1985 (4) SCC 369, which noted that a Divisional Bench of two Judges

of Supreme Court in *Jit Ram v. State of Haryana*, AIR 1980 SC 1285 = 1980 (3) SCR 689, had differed the view taken by an earlier Division Bench of two Judges in *Motilal Padampat Sugar Mills v. State of U.P.*, AIR 1979 SC 621 = 1979 (2) SCR 641, on the point whether doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity and holding that to do so was wholly unacceptable reference was made to the well unaccepted and desirable practice of the later Bench referring the case to a larger Bench when the learned Judges found that situation called for such reference. The five Judges in *Union of India v. Raghubir Singh* were of the opinion that a pronouncement of Law by a Division Bench of the Supreme Court is binding on a Division Bench of the same or smaller number of Judges, Justice O. Chinnappa Reddy has questioned the validity of observations made in *Sher Singh's* case, AIR 1983 SC 465 and went on to note whether a Division Bench of three Judges could purport to overrule the judgment of a Division Bench of two Judges, and it may be inappropriate to overrule. It may be otherwise where a Full Court or a Constitutional Bench does so.

In view of the principles decided by five Judges in AIR 1989 SC 1933, whether the law laid down by the Division Bench of two Judges of Supreme Court reported in 1997 (2) ALD SC 31, by Justice K. Rama Swamy, Justice G.T. Nanavati and another judgment delivered by Justice K. Rama Swamy, Justice Saghir Ahamd and Justice G.B. Pattanaik 1996 (2) Supreme 223 *Yadavrao P. Pathade (Dead) per LRs. v. State of Maharashtra*, has to be followed by the Lower Courts, so far as the payment of interest on Solatium and Addl. Market Value is concerned or the settled view taken by the Division Bench of two Judges reported in AIR 1990 SC 2192, Justice L.M. Sharma and Justice K. Rama Swamy has to be applied, is a matter of controversy.

The five Judges of Supreme Court in AIR 1989 SC 1933, have also stated the principles overruling of earlier decisions. A decision concerning questions of construction of

statute or other documents ought not to be overruled except in rare and exceptional cases.

The High Court of Australia, the Highest Court in the Common Wealth, has reserved to itself the power to reconsider its own decisions but has laid down that the power should not be exercised upon a mere suggestion that some or all the

members of the later Court would arrive at a different conclusion if the matter were *res integra*.

The three Judges of Supreme Court Justice *K. Rama Swamy*, Justice *Saghir Ahmad* and Justice *G.B. Pattanaik* ought to have referred the matter to the Full Court or Constitution Bench in order to evolve the matter in controversy.

HISTORICAL BACK GROUND AND DEVELOPMENT OF THE LEGAL PROFESSION IN SOUTH INDIA AND ITS PRESENT POSITION

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1. The Legal Profession is an important limb of the machinery for administration of Justice. A well organised legal profession is always supported by a well equipped and efficient bar which incidentally provides the Bench.

2. According to ancient Smrities, persons well versed in the Nyaya Sastra *i.e.*, Smrities and Dharma Sastras and who knew the procedures of the Nyaya Sthana were appointed to represent a party and plead his case before the Nyaya Sthana during the ancient Hindu period. During the Medieval Muslim period the Legal profession manned by Legal experts flourished. These legal experts were Vakils, or Quadirs who maintained a very high standard of learning.

3. South India never knew a legal practitioner till the advent of the British. With the advent of British Rule, the institution of "Vakils" came into existence first in the mofussils and later in the presidency towns, because English Barristers were not available there. The qualification to become a Vakil was having high character and fluency in English language.

4. Organisation of Legal profession began in 1774 when the Supreme Court was established at Calcutta under Regulation VII of 1773. This Supreme Court framed Rules

of Procedures for the administration of justice as also admit and enrol advocates and Attorneys-at-law. These Advocates and Attorneys were only from England or Ireland or Scotland.

5. After the British established the Company's courts, a regular legal profession was created for the first time under the Bengal Regulation, VII of 1793. It was this Regulation that gave powers to The Sadar Diwany Adalats to enrol pleaders for all company's Courts. This step was taken as the Vakils appearing before the Moghul's Courts and Company's Courts were found not only to be ignorant but began betraying their clients in several ways. It is to overcome this, the Bengal Regulation of 1793 created the institution of Legal Profession which allowed persons with good knowledge of Hindu Law and Mohammedan Law and also of good character to practise.

6. This Bengal Regulation is adopted in Madras State by passing Madras Regulation X of 1802. This went on till 1805, but during all these years there was no thought given to the education of Vakils. If a Vakil was not found upto the Standard, the Zilla Judge who had vast powers had the power to send the Vakil for a re-test. Then the system of first grade pleaders and second grade pleaders was brought about. While the first grade pleaders