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BRIJ BEHARI SAHAI
v.
STATE OF UTTAR PRADESH

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AUGUST 5, 1986

[E.S. VENKATARAMIAH AND RANGANATH MISRA, JJ.]

C

Land Acquisition Act, 1894: ss. 23 & 35—Temporary occupation of land—Statutory solatium on the compensation decreed—Whether admissible.

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The appeals raise the question whether in a case where the Land Acquisition Officer takes temporary occupation, the person interested in the land was entitled to solatium on the compensation decreed in a proceeding under s. 35 of the Land Acquisition Act. The High Court refused to allow it.

Dismissing the appeals, the Court

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HELD: 1. The provisions of s. 23(2) of the Land Acquisition Act providing for payment of statutory solatium are not attracted to a case of compensation under s. 35 of that Act. [470H]

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2. Temporary occupation of land, provided in Part VI of the Act, is distinct from, and is not included in, acquisition of land under Part II of the Act because in acquisition in exercise of the right of *eminent domain* title of the owner is extinguished and the property vests in the State, whereas when temporary occupation is taken the title of the owner remains untouched. [470C-D]

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Tan Bug Taim v. Collector of Bombay, AIR 1946 Bom. 216 referred to.

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3. Clause “secondly” in s. 23(1) of the Act is not applicable to temporary occupation covered by s. 35 of the Act. Statutory solatium as provided in s. 23(2) of the Act does not apply to a case of damage covered by clause “secondly” in s. 23(1) itself. “Market value” occurs in the first clause of s. 23(1) of the Act and sub-s. (2) of s. 23 refers to market value. Solatium has reference to market value and the

mandate to pay solatium is only in respect of market value. Compensation under s. 35 of the Act has no reference to market value and the actual loss sustained by the persons interested in the land only is intended to be compensated. [470F-H]

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1041 of 1972 and 578 of 1975

B

From the Judgment and Order dated 28.3.1970 of the Allahabad High Court in First Appeal No. 141 of 1958.

Manoj Swarup and Pramod Swarup for the Appellant.

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Prithvi Raj and Mrs. Shobha Dikshit for the Respondent.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. Both these appeals are by certificate from the High Court of Allahabad and are directed against its modifying common judgment in a proceeding under Section 35 of the Land Acquisition Act, 1894 ('Act' for short).

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Appellant Brij Behari Sahai held on lease little more than 42 acres of agricultural land out of Military Estates at Allahabad near the confluence of the Ganges and the Yamuna. For the purposes of Kumbh Mela in 1954 possession of the said land was taken from November 1953 till March 1954. The Land Acquisition Officer made an Award of compensation and there being difference as to the adequacy of the compensation, the matter was referred to the Court for decision. Against the decision of the Court enhancing the compensation, the State of Uttar Pradesh carried an appeal to the High Court of Allahabad. Brij Behari Sahai preferred a cross-objection asking for further enhancement of the compensation. The High Court dealt with the appeal and the cross-objection and enhanced the compensation on five heads as indicated in the penultimate paragraph of its judgment but refused to allow statutory solatium of 15%. Against this judgment of the High Court two separate appeals—one by Brij Behari Sahai and the other by the State of Uttar Pradesh have been brought before this Court.

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Claimant's counsel asked for enhancement of the compensation on the basis of evidence but in the course of hearing we declined to

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A entertain such a contention. Similarly, on behalf of the State challenge was made to the quantum of compensation decreed in the High Court and we did not agree to go into that aspect. The appeal of the State has, therefore, to be dismissed. One contention raised by the claimant relates to entitlement of solatium on the compensation decreed. That question requires to be examined.

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It is a fact that the High Court referred to Section 23 (2) of the Act while fixing the quantum of compensation. We are of the view that Part VI of the Land Acquisition Act contains a complete code by itself so far as temporary occupation is concerned and provisions of s. 23 are not attracted. Parts III, IV and V of the Act are connected with acquisition covered by Part II. Part VI on the other hand deals with temporary occupation of the land. In acquisition in exercise of the right of *eminent domain* title of the owner is extinguished and the property vests in the State. On the other hand, when temporary occupation is taken under Part VI of the Act the title remains untouched. It is the possession of the property which alone is taken over. Reference may be made to the proviso in s. 36(2) of the Act which contemplates that in a case where possession alone has been taken under s. 35 but the land becomes permanently unfit to be used for the purposes for which it was used immediately before possession was taken, it is open to the owner of the property to require the appropriate Government to take steps for acquisition of the land. This itself is indicative of the position that when possession had been taken under s. 35 of the Act it was not a case of acquisition under Part II thereof.

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We agree with the view indicated in *Tan Bug Taim v. Collector of Bombay*, A.I.R. 1946 Bom. 216. that temporary occupation of land provided in Part VI is distinct from, and is not included in, acquisition of land. We have already pointed out that clause 'secondly' in s. 23(1) of the Act is not applicable to temporary occupation covered by s. 35 of the Act. Statutory solatium as provided in s. 23(2) of the Act does not apply to a case of damage covered by clause 'secondly' in s. 23(1) itself. 'Market value' occurs in the first clause of s. 23(1) of the Act and sub-s. (2) of s. 23 refers to market value. Solatium has reference to market value and the mandate to pay solatium is only in respect of market value. Compensation under s. 35 of the Act has no reference to market value and the actual loss sustained by the persons interested in the land is intended to be compensated. In that view of the matter, to a case of compensation under s. 35 of the Act the provisions of s. 23(2) of the Act cannot be applied. The claimant is thus not entitled to any

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→ solatium on the compensation determined by the High Court in this case. A

The net result is that both the appeals are dismissed. Parties are directed to bear their own costs throughout.

P.S.S.

Appeals dismissed.