

VIJAY COTTON AND OIL MILLS (P) LTD.

v.

STATE OF GUJARAT

DECEMBER 6, 1990

[KULDIP SINGH AND N.M. KASLIWAL, JJ.]

Land Acquisition Act, 1894—Section 6(1), 23 & 26—Costs and interest can be awarded by higher courts if not awarded by lower court.

The appellant owned land in Kutch District and the Government of Gujarat took its possession on a specific understanding that in exchange the Government would give to it land of equal value but the Government resiled and issued a notification under section 6(1) of the Land Acquisition Act, 1894 straightaway declaring that the land in question was needed for public purpose. The collector awarded Rs.5,075/44 as compensation. At the instance of the appellant, a reference to the Court was made under Section 18 of the Act and the District Judge determined the compensation at the rate of Rs.3 per sq. yard on the basis of the market value of the land on the date of the notification and paid solatium and interest from that date. The State preferred an appeal against the award of the District Judge before the High Court but the appellant did not appeal against that part of the award which went against him but filed Cross-objections which being time-barred were dismissed. In the Cross-objections the appellant had *inter alia* claimed interest from November 19, 1949 the date when the land in question was taken over by the Government and not from February 1, 1955, the date when the notification under the Land Acquisition Act was issued. The High Court ruled that the compensation could only be determined on the basis of the market value of the land on the date of the notification issued under 4(1) of the Land Acquisition Act and since such a notification had not been issued in the case, it was not possible to determine the amount of compensation payable to the appellant. The claimant appellant appealed to this Court on the strength of a certificate and this court held that the notification dated February 1, 1955 issued under Section 6 of the Act could be treated as a composite notification both under Section 4(1) as also under Section 6(1) of the Act and the district Judge could lawfully award the market value of the land. So holding, the Court remanded the matter to the High Court for disposal on merit. The High Court on remand reduced the price of the acquired land from Rs.3 per sq. yard to 1.35 sq. yard and rejected the claim of the claimant to interest from November 19, 1949 instead of

A February 1, 1955, as the Cross-objections failed by it were treated to be time-barred. Hence this appeal raising both the contentions re: price of the land and the award of interest., w.e.f. Feb. 1, 1955.

Partly allowing the appeal this Court;

B HELD: (1) On a reference under Section 18 of the Act the parties go to trial before the Court primarily on the issue of determination of market value of the land. So far as award of interest is concerned it is never an issue between the parties. Once the conditions under Section 28 or Section 34 of the Act are satisfied the award of interest is consequential and automatic. [454G-H]

C (2) The payment of interest is not dependent on any claim by the person whose land has been acquired. There can be no controversy or any lis between the parties regarding payment of interest. When once the provision of section 34 are attracted it is obligatory for the collector to pay the interest. If he fails to do so the same can be claimed from the Court in proceedings under section 18 of the Act or even from the appellate court/courts thereafter. [455B]

E Reading section 23 with section 26 of the Act, it is clear that the award, which is deemed to be a decree, is the sum total of conclusions reached by the courts in determining compensation under Section 23 on appreciation of the evidence between the parties. The costs under Section 27 and the interest under Section 28 and 34 are added to the compensation amount to make it a consolidated award. The costs and interest under the Act if not awarded by the lower court can always be awarded by the higher courts in any proceedings under the Act and to any party entitled to the same under the Act. [455D-E]

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3(N) of 1972.

Appeal by Certificate from the Judgment and Decree dated 9/10.2.70 of the Gujarat High Court in First Appeal No. 718 of 1960.

G Harish N. Salve (N.P.), Mrs. A.K. Verma and Mrs. S. Sukumaran for the appellants.

R.N. Sachthey and M.N. Shroff for the respondent.

H The Judgment of the Court was delivered by

KULDIP SINGH, J. The Vijay Cotton & Oil Mills Ltd. was the owner of 6 acres 38/1/2 Gunthas of land situated on the Bhachau-Rahapar Road in Kutch District. On November 19, 1949 the Government of Kutch took possession of the said land under an arrangement that the Government would give to the owner in exchange suitable land of equal value. The Government constructed on the land, a State Guest House and a Court-House. Thereafter the Government did not give any other land in exchange and instead decided to acquire the same. On February 1, 1955 the Government issued a notification under Section 6(1) of the Land Acquisition Act, 1894 (hereinafter called 'the Act') declaring that the land was needed for public purpose. The Collector awarded Rs.5,075.44np as compensation. Feeling dissatisfied the claimant asked the Collector to make a reference to the Court under Section 18 of the Act which was done. The learned District Judge found that the claimant was entitled to compensation on the basis of the market value of the land on the date of notification under Section 6 of the Act. He determined the same at the rate of Rs.3 per square yard. He also awarded solatium at the rate of 15% and interest at 6% from February 1, 1955. The State preferred an appeal against the award of the District Judge before the High Court.

The High Court came to the conclusion that the compensation under the Act could only be determined on the basis of the market value of the land on the date of the notification under Section 4(1) of the Act and since no such notification was issued it was not possible to determine the amount of compensation payable under the Act. The claimant, after obtaining a certificate from the High Court, filed civil appeal in this Court. Taking into consideration the scheme of the Act this Court held that the notification dated February 1, 1955 issued under Section 6 of the Act could be treated as a composite notification under Section 4(1) and Section 6(1) of the Act and the District Judge could lawfully award the market value of the land on that day. The matter was, thus, remanded to the High Court for disposal on merit.

There were two questions for consideration before the High Court. Whether the compensation awarded by the learned District Judge at the rate of Rs.3 per square yard was wrong and if so to what extent. The second question was raised by the claimant wherein he claimed interest on the compensation amount from November 19, 1949 instead of February 1, 1955 as awarded by the District Judge. He contended that under Sections 34 and 28 of the Act he was entitled to interest from the date the possession of the land was taken-over from him.

A The High Court accepted the State-appeal and reduced the price of acquired land from Rs.3 per square yard to Rs.1.35 per square yard. The High Court rejected the claim of the claimant to interest from November 19, 1949 instead of February 1, 1955. This appeal by the claimant via special leave petition is against the judgment of the High Court.

B We may take-up the first question. While determining the value of the land the learned District Judge relied upon his inspection-note Exhibit 39 and two instances of sale Exhibit 12 and Exhibit 13. The High Court ruled-out the inspection-note from consideration on the ground that the same was based on extraneous material and was not an evidence on the record of the case. So far as the instances Exhibits 12 and 13 are concerned, the High Court came to the conclusion that these were comparable instances both in point of time and quality but keeping in view the smallness of the size of the plots, comprising these instances, as compared to the acquired land the High Court fixed the price of the acquired land at 40% of the average price of the plots. C Since the District Judge found Rs.3 per square yard as price of the acquired land, the High Court reduced the same by 60% and allowed the price at Rs.1.35 per square yard. D

E According to the High Court while fixing the price of a large chunk of land on the basis of comparable instances of small plots some allowance has to be made and for doing so there is no hard and fast rule and mathematical accuracy can hardly be achieved. That may be so but in the facts of this case one gets the impression that the High Court has given higher allowance than was warranted. Be that as it may the High Court, on appreciation of evidence and taking into consideration all the facts and circumstances before it has come to the conclusion that the reasonable market price of the acquired land would be Rs.1.35 per square yard and we, in our jurisdiction under Article 136 of the Constitution, do not wish to interfere with the same. F

G Before we deal with the second question we may give some more facts in that context. As mentioned above, the possession of the land was taken from the appellant by the Government on November 19, 1949. The notification under Section 6 was issued on February 1, 1955. The learned District Judge in his award granted interest on the compensation amount from February 1, 1955. The State filed an appeal before the High Court against the award of compensation at Rs.3 per square yard but the appellant-claimant did not file any appeal H against that part of the award which by implication went against him

and restricted the amount of interest from February 1, 1955, instead of November 19, 1949. The appellant, however, filed cross-objections under Order 41 rule 22 of the Civil Procedure Code. Since the objections were barred by limitation an application for condonation of delay was also filed alongwith the objections. The said application was dismissed with the result that the cross-objections stood rejected as time barred. The appellant filed some other applications in the High Court but it is not necessary to mention the same. The fact remains that the cross-objections though filed by the appellant stood rejected as time barred.

The High Court posed various questions for its consideration in the following terms:

In view of these rival contentions, it would be necessary first to determine as to whether the claim of interest is a part of compensation to be awarded under a decree that may be passed under section 26 and appealable under section 54 of the Act. The further question that would arise to be determined would be whether the claimant was required to either file an appeal or file cross-objections in respect of the rejection of any such claim by the Trial Court. Then there would arise a question as to the effect of the cross-objections being rejected as time-barred by this Court and it is only then that everything is found in favour of the claimant that the question may arise as to the applicability of provisions contained in Order XLI rule 33 of the Civil Procedure Code. Even if they were to apply and the Court was entitled to invoke those powers, it would be further essential to consider whether this is a fit case in which such exercise of powers should be made."

While answering the above quoted questions, the High Court, on the interpretation of Section 23(1), 26, 27 and 28, came to the conclusion that the interest, payable to the claimants under the Act, has to be part of the award-decree alongwith the compensation amount and as such is subject to rules of procedure and limitation. In this respect High Court observed as under:

"In our view, much though interest can be treated as not a part of compensation as such under section 23(1) of the Act, it has to be made a part of the award to be passed under section 26 of the Act. It is that award which includes

A the order relating to costs and interest contemplated under sections 27 and 28 respectively alongwith the amount of compensation awarded under section 23(1) of the Act that makes a complete award. It is that award or a part of that award which becomes appealable as the case may be under section 54 of the Act as that award is deemed to be a decree under section 2 clause (2) and section 2 clause (9) respectively of the Civil Procedure Code”;

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The High Court rejected the claim of the appellant regarding interest on the ground that his cross-objections having been rejected as time-barred he had no right to claim the same in the state appeal. The High Court held as under:

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“In the present case, the respondent had actually filed the cross-objections after the period of limitation was over and since his request for condoning the delay caused in filing the same came to be rejected, the cross-objections stood rejected as time-barred, in view of section 3 of the Indian Limitation Act. The effect thereof would be that the relief now sought for cannot be re-agitated in this appeal between the same parties. The relief is barred by reason of the principle of res-judicata inasmuch as the claim can be taken to have been rejected by the Trial Court on merits.” Is2. Im10

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The High Court further held that the appellant could not invoke the provisions of Order 41 rule 33. The reasoning in that respect is as under:

“The powers of the appellate court under Order XLI, rule 33, cannot override the other provisions relating to the appeal and the cross-objections and in any case when they have come to be dismissed or rejected as done in the present case so as to give an effect to res-judicata in regard to the point involved in the case.”

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Before we take-up for discussion the findings of the High Court we may have a look at Sections 23(1), 26, 27, 28 and 34 of the Act (as at the time of acquisition). which are re-produced hereinafter:

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“23. Matters to be considered in determining compensation, ---(1) In determining the amount of compensation to

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be awarded for land acquired under this Act, the Court shall take into consideration-

first, the market value of the land at the date of the publication of the notification under section 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) *bona fide* resulting from the diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land."

"26. Form of awards. ---(1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section 1 of Section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2), and

A section 2, clause (9), respectively of the Code of Civil Procedure, 1908.”

B “27. Costs. ---(1) Every such award shall also state the amount of costs incurred in the proceedings under this part, and by what person and in what proportions they are to be paid.

C (2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be on opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector’s costs.”

D “28. Collector may be directed to pay interest on excess compensation: ---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 award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.”

E “34. Pay of interest. -- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.”

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H There is no dispute that under the Act the claimant is entitled to compensation at the rate of the market value of the land on the date of notification under Section 4 of the Act. Section 23(1) of the Act enumerates the matters which are to be taken into consideration in determining the compensation. On a reference under Section 18 of the Act the parties go to trial before the Court primarily on the issue of determination of market value of the land. So far as award of interest is concerned it is never an issue between the parties. Once the conditions under Section 28 or Section 34 of the Act are satisfied the award of interest is consequential and automatic.

The High Court while appreciating the point in issue did not consider the mandatory provisions of section 34 of the Act. The said section specifically provides that when the amount of compensation is not paid on or before taking possession of the land the collector shall pay interest at 6% per annum from the date of taking over possession. The payment of interest is not dependent on any claim by the person whose land has been acquired. There can be no controversy or any lis between the parties regarding payment of interest. When once the provision of section 34 are attracted, it is obligatory for the collector to pay the interest. If he fails to do so the same can be claimed from the Court in proceedings under section 18 of the Act or even from the appellate court/courts thereafter.

We have carefully examined the reasoning of the High Court in reaching the conclusion which we have reproduced in the earlier part of this judgment. We do not agree with the interpretation placed by the High Court on various provisions of the Act. Reading section 23 with section 26 of the Act it is clear that the award, which is deemed to be a decree, is the sum total of conclusions reached by the courts in determining compensation under Section 23 of the Act on appreciation of the evidence between the parties. The costs under Section 27 and the interest under Sections 28 and 34 are added to the compensation amount to make it a consolidated award. The costs and interest under the Act if not awarded by the lower court can always be awarded by higher courts in any proceedings under the Act and to any party entitled to the same under the Act.

There is inherent evidence in the wording of Sections 28 and 34 to show that the framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Section 34 lays down that "the Collector shall pay the amount awarded with interest at 6% per annum" The legislative mandate is clear. It is a directive to the collector to pay the interest in a given circumstance. Section 34 nowhere says that the interest-amount is to be included in the award-decree as prepared under section 23(1) read with section 26 of the Act. Similarly Section 28 provides "the award of the Court may direct that the Collector shall pay interest." Here also the award under Section 23(1) read with Section 26 has been kept distinct from the payment of interest under the section. The interest to be paid under section 34 and also under section 28 is of different character than the compensation amount under section 23(1) of the Act. Whereas the interest, if payable under the Act, can be claimed at any stage of the

A proceedings under the Act, the amount of compensation under section 23(1) which is an Award-Decree under section 26, is subject to the rules of Procedure and Limitation. The rules of procedure are hand maiden of justice. The procedural hassle cannot come in the way of substantive rights of citizens under the Act.

B We do not, therefore, agree with the reasoning and the findings reached by the High Court. We are of the opinion that it was not necessary for the appellant-claimant to have filed separate appeal/cross-objections before the High Court for the purposes of claiming interest under Section 28 or Section 34 of the Act. He could claim the interest in the State-appeal. The fact. that he filed cross-objections
C which were dismissed as time barred, is wholly irrelevant.

We, therefore, partly allow the appeal and set aside the judgment of the High Court on the second point and direct that the appellant is entitled to interest on the compensation amount for the period from November 19, 1949 to February 1, 1955. The appellant shall further be
D entitled to 6% interest on the amount so determined from February 1, 1955 till the date of payment. We make it clear that the appellant shall not be entitled to invoke the provisions of the amended Act for the purpose of claiming higher amount of interest or for any other claim. The appeal is allowed in the above terms with no order as to costs.

Y.Lal

Appeal allowed.