

UNION OF INDIA AND ORS.

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v.

AJAIB SINGH AND ORS.

SEPTEMBER 20, 1995

[A.M. AHMADI, CJ. AND SUHAS C. SEN, J.]

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Requisitioning and Acquisition of Immovable Property Act, 1952 :

Compensation—Enhancement of—Award of Solatium and interest by Arbitrator—Validity of.

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In respect of certain land acquired, the competent authority awarded compensation @Rs. 60 per Marla. After a long lapse of time, the question of compensation was referred to an arbitrator, who enhanced the compensation to a flat rate of Rs. 300 per Marla and awarded solatium @30% per annum and interest @ 9% per annum for the first year and thereafter @ 15% per annum for the subsequent years from the date of possession of the property.

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Against the award, Government preferred appeals to the High Court. Single Judge as well as the Division Bench dismissed the appeals. Hence these appeals.

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Partly allowing the appeals, this Court

HELD : 1. The arbitrator was in error in allowing solatium and interest without coming to a decision as to the existence of any dispute and the failure of the Government to refer the matter to an arbitrator. The order relating to payment of solatium and interest is set aside. [835-A]

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2. It has not been established on behalf of the respondent that there was any delay in the appointment of arbitrator on the part of the appellant. There is nothing to show that the respondents had demanded appointment of arbitrator or had disputed the amount of compensation paid by the Special Land Acquisition Collector. It is true that arbitrator was ultimately appointed at the instance of the respondent. But there is nothing to indicate that the respondents had earlier disputed the amount of compensation or had demanded appointment of arbitrator. There is no dispute that the compensation was accepted. It is for the respondents to establish

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A that it was accepted under protest. These facts have not been established by the respondents. [834-E-F]

B 3. There had been no delay on the part of the Government in referring the matter to an arbitrator. It has not been stated by the respondents that they had demanded appointment of an arbitrator, when they found that the compensation amount was inadequate. No letter or any other document has been annexed to the writ petition or produced before this Court in support of the case of the respondents. [834-G-H]

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8435-36 of 1995.

From the Judgment and Order dated 5.4.90 of the Punjab & Haryana High Court in L.P.A. No. 250-251 of 1990.

N.N. Goswami, W.A. Qadri and C.V.S. Rao for the Appellants.

D R.C. Pathak for the Respondent Nos. 2-5.

The Judgment of the Court was delivered by

SEN, J. Special leave granted.

E This is a case of acquisition of land under the Requisitioning and Acquisition of Immovable Property Act, 1952. The short question that falls for determination is whether the arbitrator had erred in enhancing the amount of compensation to the flat rate of Rs. 300 per Marla and awarding solatium @30% per annum and interest @9% per annum for the first year and thereafter 15% per annum for the subsequent years from the date of possession of the property.

G Land measuring 26.08321 acres in village Daulatpur, Tehsil Pathankot, District Gurdaspur was acquired under the Requisitioning and acquisition of Immovable Property Act, 1952 by the Special Land Acquisition Collector by a notification issued on 30th October, 1969. The competent authority awarded compensation for the acquired land @ Rs. 60 per Marla. After a long lapse of time, the question of compensation was referred to an arbitrator.

H Mr. Goswami, on behalf of the appellants, has argued that there was

no dispute as to the quantum of compensation between the respondents and the appellants and the compensation was actually paid to the respondents and the respondents duly accepted the compensation without any protest. Under Rule 9 of the Requisitioning and Acquisition of Immovable Property Rules, 1953, the competent authority can pay compensation only after entering into an agreement in Form-K. Mr. Goswami has contended that in the instant case, compensation was paid. There was no dispute as to the quantum of compensation. An agreement in Form-K was entered into with the respondents before payment of the compensation. A B

However, there is no averment in the pleading that an agreement in Form-K was entered into by and between the competent authority and the respondents. But, there is no dispute that eight years after compensation was paid, the writ-petitioners raised the dispute as to the quantum of compensation and made an application for referring the dispute to the arbitrator. On 30th March, 1987, the Additional District Judge, Gurdaspur, as arbitrator awarded compensation at flat rate of Rs. 300 per Marla. The arbitrator also awarded solatium @30% and interest @ 9% per annum for the first year from the date of acquisition. i.e., 31.10.1969 and 15% per annum for the subsequent years till the amounts were realised. C D

Aggrieved by this award, the Government preferred appeals to the High Court of Punjab and Haryana. The appeals were dismissed by a Single Judge of the High Court on 30th July, 1987. Further appeals were filed before the Division Bench of the High Court. Those appeals were dismissed on 5th April, 1990. E

These Special Leave Petitions were moved in this Court on 21st December, 1990. The dispute before this Court is not about the quantum of the compensation fixed by the Additional District Judge as arbitrator on 30th March, 1987. Notice was issued only on the question of solatium and interest. Mr. Goswami, on behalf of the appellants, has contended that there is no basis for granting solatium at 30% and interest at 9% for the first year and 15% for the subsequent years. He has pointed out that the Government was not at fault in this case for the delay in appointment of the arbitrator. Since the compensation amount fixed by the Special Land Acquisition Collector had been accepted without any dispute, there was no scope for referring any dispute to an arbitrator under Section 8(1)(b) of the Act. Therefore, the Government should not be held responsible for the F G H

A delay in the instant case.

The contention on behalf of the appellant will have to be upheld in the facts of this case. Unlike the Land Acquisition Act, there is no provision in the Requisitioning and Acquisition of Immovable Property Act for payment of solatium and interest. Solatium and interest have been awarded in the interest of justice in certain cases. But in the absence of special circumstances, such award of interest and solatium cannot be justified under the provisions of the Requisitioning and Acquisition of Immovable Property Act.

On behalf of the respondents, Mr. R.C. Pathak has drawn our attention to a judgment of this Court in the case of *Union of India v. Hari Krishan Khosla*, (1992) 2 SC No. 621. This was also a case under Requisitioning and Acquisition of Immovable Property Act, 1952. The ultimate decision in this case goes against the contention of Mr. Pathak. In S.L.P. (C) No. 1780/1991, the award of 15% solatium and 6% interest on enhanced compensation was set aside. In C.A. No. 4688-94/1989 and C.A. No. 2674-85/1989, award of solatium and interest was upheld because no arbitrator was appointed for a period of sixteen years.

In the instant case, it has not been established on behalf of the respondents that there was any delay in the appointment of arbitrator on the part of the appellant. There is nothing to show that the respondents had demanded appointment of arbitrator or had disputed the amount of compensation paid by the Special Land Acquisition Collector. It is true that arbitrator was ultimately appointed at the instance of the respondent. But there is nothing to indicate that the respondents had earlier disputed the amount of compensation or had demanded appointment of arbitrator. There is no dispute that the compensation was accepted. It is for the respondents to establish that it was accepted under protest. These facts have not been established by the respondents.

It is true, in the instant case, there had been no delay on the part of the Government in referring the matter to an arbitrator. It has not been stated by the respondents that they had demanded appointment of an arbitrator, when they found that the compensation amount was inadequate. No letter or any other document has been annexed to the writ petition or produced before this Court in support of the case of the respondents.

Therefore, we are of the view that in the facts of this case, the arbitrator was in error in allowing solatium and interest without coming to a decision as to the existence of any dispute and the failure of the Government to refer the matter to an arbitrator. The appeals, therefore, are partly allowed. The order relating to payment of solatium and interest is set aside. There will be no order as to costs.

G.N.

Appeals partly allowed.