

MARKET COMMITTEE, HODAL

v.

KRISHAN MURARI AND ORS.

NOVEMBER 6, 1995

[K. RAMASWAMY AND B.N. KIRPAL, JJ.]

*Land Acquisition Act, 1894 :*

*Ss.4(1), 5-A, 17(4)—Acquisition of land—Award made—Writ petition by land owners—High Court allowing writ petition holding that dispensing with enquiry under S.5-A was invalid—Held, High Court not justified in interfering at belated stage.*

*Constitution of India/Limitation Act, 1963 :*

*Article 136/S. 5—Petition for special leave—Limitation Delay of 3240 days—Condoned on proper and acceptable explanation.*

A notification under S.4(1) of the Land Acquisition Act, 1894 was published in respect of the lands of the respondent-land owners on 22.1.1981. The award was made on 19.5.1984. The amount of compensation was received under protest on 19.12.1984. The land owners filed a writ petition which was allowed by the High Court on 16.2.1985 holding that dispensing with enquiry under S.5A of the Act was invalid. Thereafter the matter was sent to the Central Agency in order to challenge the order of the High Court, and when it was discovered that the Central Agency did not take any steps as the matter related to the State Government, the instant appeal by special leave was filed on 30.5.1994. Meanwhile the land owners claimed to have constructed oil mill on the land under acquisition.

Allowing the appeal, this Court

HELD : 1. The award having been validly made on May 19.1984 and possession of the lands having been taken, the lands vest in the Government under S.16 of the Land Acquisition Act 1894 absolutely free from all encumbrances. The High Court was not justified in interfering with the exercise of power by the Government under S.17(4) dispensing with the enquiry under S.5A at the belated stage. If the respondent had not made any application for reference under S.18, they may file the same within one

A month. [789-E, 790-B]

2. Though, there is an inordinate delay of 3240 days, from February 26, 1985 to May 30, 1994, the date on which the petition for special leave was filed, there is proper and acceptable explanation given by the appellants in this case for the inordinate delay in filing the appeal. The matter was sent to the Central Agency and since the matter was of the State of Haryana, the Central Agency did not pursue the matter. When it was discovered that the Central Agency had not taken the steps in filing the appeal, the petition for special leave came to be filed on May 30, 1994. Delay is condoned. [788-G]

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C 3. The District Judge, Faridabad would have an enquiry made as to when the oil mill came to be constructed. The appellants would make ex-gratia compensation for the value of the building as determined by the District Judge, if he comes to the conclusion that the mill was constructed after the writ petition had been allowed. [789-F-G]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10498 of 1995.

From the Judgment and Order dated 26.2.85 of the High Court of Punjab & Haryana in Civil W.P. No. 5588/84.

E Altaf Ahmed, ASG., U.R. Lalit, B. Dutta, K.C. Bajaj for Ms. Indu Malhotra, K.B. Rohtagi, Baldev Atreya, Ms. Aparna Rohtagi, Ajay Kumar Agrawal, B.S. Jain, J.P. Singh, G.C. Tyagi, Sunil Kumar Jain, Jatinder K. Bhatia for the appearing parties.

The following Order of the Court was delivered :

F Leave granted.

G Having heard the learned counsel on both the sides we think that it is a case for our interference. Though there is an inordinate delay of 3240 days, merely 9 years, from February 26, 1985 to May 30, 1994, the date of which S.L.P. was filed, there is proper explanation given by the appellants in this case for the inordinate delay in filing the appeal. It was not in dispute that the matter was sent to the Central Agency and since the matter is of the State of Haryana, the Central Agency did not pursue the matter. When it was discovered that the Central Agency had not taken the steps in filing the appeal, the S.L.P. came to be filed on May 30, 1994. The H explanation offered is just and rational and can be acceptable. It is accord-

ingly accepted. Delay is accordingly condoned.

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It is contended by Shri Datta, learned Senior counsel for the respondent that on account of the delay the appellants have constructed oil mill expending considerable money. Though they have received the compensation under protest the respondents are prepared to return the compensation with suitable interest as may be determined by the Court and that, therefore, it may not be a case warranting interference. We find that there is no justification for accepting the contention.

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It is seen that the notification under S.4(1) of the L.A. 1 of 1994 for short 'the Act' was published on January 22, 1981. Declaration under S.6 was published on January 23, 1981 and possession was taken on April 29, 1981, "though it is claimed that the possession was with the respondent". The award came to be made on April 19, 1984. Compensation was offered as required under S.31 of the Act and it now transpires, though it was not mentioned in the High Court, that the amount was received under protest. The Writ Petition was filed four months thereafter, namely, on December 19, 1984. The High Court allowed the Writ Petition on February 16, 1985 holding that dispensing with enquiry under S.5A is invalid. It would be seen that the award having been validity made on May 19, 1984 and possession of the lands having been taken, the lands vest in the Government under S.16 absolutely free from all encumbrances. The High Court was not justified in interfering with the exercise of power by the Government under S.17(4) dispensing with the enquiry under S.5A at that belated stage. Under these circumstances the appeal is to be allowed.

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However, since the respondents had claimed to have constructed the oil mill, on the facts and circumstances in this case, it would be proper that the District Judge, Faridabad is directed to have an enquiry made as to when the oil mill came to be constructed. If it was constructed between January 22, 1985 and December 19, 1984 or pending writ petition without permission of the Court, the respondents are not entitled to claim any equities by way of compensation. On the other hand, if the mill came to be constructed after February 16, 1985 i.e. after writ petition was allowed till date, then equity requires that the appellants shall have to make *ex-gratia* compensation for the value of the building. The learned District Judge also would cause an enquiry to be made with regard to the value of the construction that was made on. In the event of the finding that it was

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- A constructed after the judgment of the High Court, the appellant shall pay the compensation for the value of the construction of the mill within a period of four months from the date of the decision made by the leaned District Judge. If the respondents had not made any application for reference, it may be open to them to make the application under S.18 within one month from today.

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The appeal is accordingly allowed. No costs.

R.P.

Appeal allowed.