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PANNA LAL GHOSH AND ORS.

v.

LAND ACQUISITION COLLECTOR AND ORS.

DECEMBER 12, 2003

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[RAJENDRA BABU AND RUMA PAL, JJ.]

Land Acquisition :

Land Acquisition Act, 1894

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Sections 23(2) and 28—Solatium—Enhanced Rate—Claim for benefits under the Amendment Act of 1984—Award made by Land Acquisition Collector in 1974—Reference pending in the Reference Court between 30/4/1982 and 29/9/84—Award passed by Reference Court in 1985—Claim for enhanced rate—Held, Supreme Court having widened the restricted interpretation given to the Amending Act, the appellants are

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entitled to enhanced solatium @ 30% and interest under Section 23(2) of the Act.

Solatium—Held, is mandatory and cannot be done away with—Contention that Section 8(2) of the West Bengal Land Development and

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Planning Act, 1948 excludes compensation by way of solatium, does not hold good—Deprivation of solatium by the Act having been held by Courts to be invalid and violative of Article 14 of the Constitution of India—West Bengal Land Development and Planning Act, 1948—Section 8(2)—Constitution of India, 1950—Article 14.

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Compensation—Enhancement of—Claim based on an award in another acquisition proceedings in respect of land situate near the lands of appellants—High Court dismissing the claim holding the two lands not being proved to be comparable in nature and potentiality—Held, High Court was right in not relying on the said document and disallowing the claim for enhancement for compensation.

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Certain lands of the claimants-appellants were acquired under the Land Acquisition Act, 1894. The Land Acquisition Collector made his award in 1974 awarding Rs. 12,000 per acre for 'nal land' and Rs. 9000 per acre for 'chara' land. The reference court by its award passed

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in 1985 enhanced the compensation to Rs. 36,000 per acre and also

granted 15% solatium and interest under Section 23(2) of the Act. The land owners filed appeal before High Court claiming benefits under Section 23(2) of the Act as also for further enhancement of compensation, and in support of their claim for enhancement, they produced certified copy of an award in another acquisition proceedings in respect of land, which was 150 ft. away from their lands and wherein Rs. 1 lakh per acre had been awarded as compensation. The High Court did not rely on this document and the claim for enhancement was dismissed and appellants were also denied the benefits under Section 23(2) of the Act. Hence the present appeal. A B

On behalf of the respondents, it was contended that solatium was not applicable because the West Bengal Land Development and Planning Act, 1948, under which the area in question fell, did not contemplate it. C

Allowing the appeal in part, the Court D

HELD : 1.1. The compensation @ 36,000 per acre as awarded by the L.A. Judge is upheld. The appellants are entitled to enhanced solatium @ 30% under Section 23(2) of the Land Acquisition Act, 1894 and an interest @ 9% per annum under Section 28 of the Act. The High Court in considering the case under Section 23(1-A) of the Act has committed an error. The reference by the High Court to Section 23(1-A) is irrelevant in the present case. The main aspect that arises for consideration is the rate of solatium. By an amendment in 1984, the rate was increased to 30% from the original 15% by virtue of Section 30(2) of the Amending Act. This increase was given a limited retrospectivity, in the sense that, the Amending Act, under Section 30(2) provided that the increased solatium is applicable to those awards passed by the Collector or the Court between 30.4.1982 and 29.9.1984. The award was made by the L.A. Collector in 1974. However; during the period between 30.4.1982 and 29.9.1984, the reference was pending in the Reference Court which passed its award in 1985. Therefore, the issue is whether the amendment would apply to a case pending during the period of 2 years from 30.4.1982 to 29.9.1984. It has been held by this Court that the enhanced solatium would apply even to a case pending at the time the Act came into force. Thus, the benefit of enhanced solatium would extend to the present E F G H

A case. [746-E, 746-B-C; 744-G; 745-A-B; 745-G-H]

K.S. Paripoornan v. State of Kerala, AIR (1995) SC 1012; *Union of India v. Raghbir Singh*, [1989] 2 SCC 754 and *Union of India v. Filip Tiago De Gama*, AIR (1990) SC 981, relied on.

B 1.2. Solatium is 'money comfort' quantified by the statute and given as a conciliatory measure for the compulsory acquisition of land of the citizen, by a welfare state such as India. Thus the statutory amount of solatium is intended to compensate the owner for his distinction to part with his property. The provision of solatium is **C** mandatory and cannot be done away with. It has been held in a number of cases that the deprivation of solatium by the West Bengal Land Development and Planning Act is violative of Article 14 of the Constitution of India and Section 8(2) of the Act is held to be invalid. Therefore, the contention that Section 8(2) of the Act excludes compensation by way of solatium does not hold good. [744-F-G; 746-C-D]

Monoranjan Routh v. State of W.B., AIR (1972) Cal. 487 and *Ramendranath v. State of W.B.*, AIR (1975) Cal 325, relied on.

E *Narain Das Jain v. Agra Nagar Mahapalika*, [1991] 4 SCC 212, referred to.

2. Compensation payable on a piece of land acquired under the Land Acquisition Act is determined by taking into account the market value of the land so acquired. The most reliable way to determine the **F** market value is to rely on the instances of sale of portions of the same land as has been acquired or adjacent lands made shortly before or after the Section 4 notification. While determining the market value of land, it must be with reference to a piece of land which is comparable to the present lands being acquired. It must be similar in potentiality **G** and nature. The document which the appellants seek to rely on relates to land which was acquired for the purpose of Assam-Agartala Road. It was 3 feet higher than the acquired land. Further, the two lands were not proved to be comparable in nature and potentiality. Therefore, the High Court is right in not relying on the said documents and disallowing the claim for enhancement for compensation. [744-A-B, D-E]

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Sanjiva Row, Law of Land Acquisition & Compensation, 8th Edn., A
2001, p. 640, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9734 of
2003.

From the Judgment and Order dated 6.4.2000 of the Gauhati High B
Court at Agartala Bench in M.A. (F) No. 11 of 1989.

Sanjay Parikh and R.R. Chandrachud for the Appellants.

Amitesh Kumar and Gopal Singh for the Respondents. C

The Judgment of the Court was delivered by

RAJENDRA BABU, J. : Leave granted.

The case relates to acquisition of land measuring 3.37 acres in Mouja D
Pabiacheura in Kailashahar, State of Tripura. The notification under
Section 4(1) of the Land Acquisition Act, 1894 [hereinafter, 'the Act'] was
issued on 24th December 1968 and on 13th October, 1969, declaration
under Section 6 of the Act was published. The Land Acquisition Collector
made his award in October 1974 awarding Rs. 12,000 per acre for 'nal E
land' and Rs. 9,000 per acre for 'chara land'. On 21.10.1974, the
appellants filed an application for reference under Section 18 of the Act
for enhancement of compensation. On reference, the learned L.A. Judge
passed an award enhancing compensation, allowing Rs. 36,000 per acre
and also granted 15% solatium, and interest under Section 23(2) of the Act
in 1985. F

On appeal to the High Court, the claim for enhancement was
dismissed. The High Court also denied the appellants benefits under
Section 23(2) of the Act by relying on the decision of this Court in *K.S.
Paripoornan v. State of Kerala*, AIR (1995) SC 1012. G

Before this Court, the main issues are as follows:

- (1) Was the High Court justified in not awarding enhanced
compensation? H

- A (2) Are the appellants entitled to solatium and interest @ 30% under Section 23(2) of the Act?

Compensation payable on a piece of land acquired under the Act is determined by taking into account the market value of the land so acquired. The most reliable way to determine the market value is to rely on the instances of sale of portions of the same land as has been acquired or adjacent lands made shortly before or the after the Section 4 notification¹.

- B Accordingly, the appellants had produced before the High Court a certified copy of an award passed by the learned L.A. Judge in another acquisition proceedings. In this case, the land was 150 ft. away from the lands involved in the present proceedings. In those proceedings, the learned L.A. Judge had awarded Rs.1 lakh per acre as compensation. This was sought to be relied on by the appellants. The High Court chose not to rely on this document as no evidence was led to show that both lands are similar in nature having similar potentiality.

- C While determining the market value of land, it must be with reference to a piece of land which is comparable to the present lands being acquired. It must be similar in potentiality and nature. The document which the appellants seek to rely on relates to land which was acquired for the purpose of Assam-Agartala Road. It was 3 feet higher than the acquired land. Further, the two lands were not proved to be comparable in nature and potentiality. Therefore, the High Court is right in not relying on the said document and disallowing the claim for enhancement for compensation.

- D The second issue relates to the payment of solatium @ 30% under Section 23(2) of the Act. Solatium is 'money comfort' quantified by the statute and given as a conciliatory measure for the compulsory acquisition of land of the citizen, by a welfare state such as India². Thus the statutory amount of solatium is intended to compensate the owner for his disinclination to part with his property.

The main aspect that arises for consideration is the issue of the rate

1. *Sanjiva Row, Law of Land Acquisition & Compensation*, 8th Edn., 2001, p. 640.

H 2. *Narain Das Jain v. Agra Nagar Mahapalika*, [1001] 5-SCC 212.

of solatium. By an amendment in 1984, the rate was increased to 30% from the original 15% by virtue of Section 30(2) of the Amending Act. This increase was given a limited retrospectivity, in the sense that, the Amending Act, under Section 30(2) provided that the increased solatium is applicable to those awards passed by the Collector or the Court between 30.4.1982 and 29.9.1984. Can it be said that the present case would be entitled to this additional benefit?

The award was made by the L.A. Collector way before the said period i.e. in 1974. However, the reference Court passed its award after the said period, i.e. in 1985. Therefore, the issue is whether the amendment would apply to a case pending during the period of 2 years from 30.4.1982 to 29.9.1984.

This precise issue has come up for consideration a number of times before this Court. In *Union of India v. Raghubir Singh*, [1989] 2 SCC 754, it was held that the benefit of enhanced solatium would apply only in cases where the award by the Collector or Court is made between 30.4.1982 and 24.9.1984 or appeals against such awards decided by the High Courts or this Court, whether rendered before 24.9.1984 or after that date. This Court found that the language of the Section ruled out the applicability of the benefit to all pending proceedings.

In *Union of India v. Filip Tiago De Gama*, AIR (1990) SC 981, the issue was whether the amendment would apply to an award made subsequent to 24.9.1984 even though the acquisition proceedings had commenced prior to the date. This Court looked at the intention behind giving retrospective effect to the amending Section. If the literal interpretation is taken, it was held, it will result in an anomaly. In order to avoid it, regard must be had to the purpose of Section 30(2). Consequently, this Court awarded higher solatium even though the Reference Court made the award in 1985.

Again in *K.S. Paripoornan's* case [supra], this Court widened the restricted interpretation given in *Raghubir Singh's* case. It held that the enhanced solatium would apply even to a case pending at the time the Act came into force.

Following this train of thought, the benefit of enhanced solatium would extend to the present case. During the period between 30.4.1982

A and 29.9.1984, the reference was pending in the Reference Court. The court's award was passed in 1985. Following the above interpretation, the appellants are thus entitled to enhanced solatium @ 30% and interest under Section 23(2) of the Act.

B The High Court in considering the case under Section 23(1-A) of the Act has committed an error. The appellants are entitled to solatium under Section 23(2) of the Act and, therefore, the reference by the High Court to Section 23(1-A) is irrelevant in the present case.

C The learned counsel for respondents has contended that solatium is not applicable because the West Bengal Land Development and Planning Act, 1948, under which this present area falls, does not contemplate it. The provision of solatium is mandatory and cannot be done away with. It has been held in a number of cases that the deprivation of solatium by the West Bengal Land Development and Planning Act is violative of Article 14 and Section 8(2) of the Act is held to be invalid. [See : *Monoranjan Routh v. State of W.B.*, AIR (1972) Cal 487 and *Ramendranath v. State of W.B.*, AIR (1975) Cal 325]. Therefore, the contention that Section 8(2) of the Act excludes compensation by way of solatium does not hold good.

E In the light of the above, the compensation @ 36,000 per acre as awarded by the L.A. Judge is upheld. The solatium is to be paid @ 30% under Section 23(2) of the Act and an interest @ 9% per annum is also payable under Section 28 of the Act. The award made by the Reference Court as affirmed by the High Court shall stand modified accordingly and the appeal is allowed to that extent. No orders as to costs.

M.P.

Appeal partly allowed.