**(1996) 07 CAL CK 0037**

**Calcutta High Court**

**Case No:** C.R. No. 2611 of 1993

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| Manik Lal Mitra | | APPELLANT |
| | Vs | |
| State of West Bengal | | RESPONDENT |

**Date of Decision:** July 25, 1996

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151, 152
- Land Acquisition (Amendment) Act, 1984 - Section 15, 18, 20, 23(1A), 23(1A)(2)
- Land Acquisition Act, 1894 - Section 28, 34, 4, 6

**Citation:** (1997) 1 ILR (Cal) 388

**Hon'ble Judges:** Basudeva Panigrahi, J

**Bench:** Single Bench

**Advocate:** Pradip Kumar Ghosh, N.K. Manna and K.K. Manna, for the Appellant;

**Judgement**

Basudeva Panigrahi, J.
This revision is directed against the order No. 120 dated August 21, 1993 passed by the learned Judge, L.A. Tribunal Darjeeling in Misc. L.A. Case No. 19/71 rejecting the prater of the Petitioners made u/s 152 of the Code of Civil Procedure. The important question which forms the basis of this revision at the instance of the owners is whether the benefit u/s 23(1-A) and Section 28 of the Land Acquisition (Amendment) Act, 1984 is available to them.

2. The Petitioners were owners of 1.59 acres of land on old Military Road, (Pankhabari Road), Kurseong within the District Darjeeling. The aforementioned land was the subject matter of the land acquisition by the State of West Bengal for the construction of the staff quarters of the All India Radio Station, Kurseong. The notification u/s 4 of the Land Acquisition Act, 1894 was published in the official gazette on September 25, 1969 and the declaration u/s 6 of the said Act was made on October 1, 1970. At the first instance, the Land Acquisition Collector had valued the land at Rs. 33,113.79 paise and passed an award for the aforesaid amount as compensation for the land and the building. The

Official Trustee received the said amount without prejudice to the rights of the parties. At the relevant time it was the official trustee who was in possession of the land which was under land acquisition proceeding. Following receipt of the compensation amount, the receiver submitted an application to the Collector requiring him to refer the matter to the Civil Court for determination of the compensation amount and he claimed the compensation at Rs. 1,78,000. The reference was dismissed for default of the Petitioners and therefore they moved this Court against order of dismissal which was reversed on November 28, 1980 in Civil Rule No. 789 of 1981 and on a revision, this Court had set-aside the order and, accordingly, the reference was restored to the file. After restoration of the case, the learned Additional District Judge-cum-the Land Acquisition Tribunal, Darjeeling by his judgment and award dated September 18, 1982 in Land Acquisition Case 9/5 of 1970-71 Misc. Judicial Case No. 18/71 was pleased to award compensation to the Petitioners for Rs. 1,78,000. As per Section 23 of the Land Acquisition Act, 1894, as it stood then, the owner was entitled to solatium payable u/s 23(2) of the Land Acquisition Act, 1894. It is significant to note that the award was totally silent about the solatium payable u/s 23(2). The Petitioner No. 1 filed an application for execution in the Court of Learned Additional District Judge, Darjeeling being Land Acquisition (Ex) Case No. 2 of 1983 on September 16, 1983. During the pendency of the execution case the land Acquisition (Amendment) Act, 1984 came into force u/s 23 of the amending act, new Sub-section (1-A) was introduced whereby the enhancing solatium from 15% to 30%.

(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the Notification u/s 4, Sub-section.

1. In respect of such land to the date of the award of the Collector or the date of taking possession of the land, which ever is earlier.

Explanation - In computing the period referred to in this Sub-section, any period or period during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the Order of any Court shall be excluded.

2. In addition to the market value of the land, as above provided, the Court shall in every case award a sum of (thirty per centum) on such market value in consideration of the compulsory nature of the acquisition.

3. u/s 28 of the Land Acquisition Act 1894 the Collector shall pay interest on such excess rate 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 Government. The said provision has undergone an amendment and the amending provision reads as follows:

Section 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 (nine 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.

(Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry).

4. Section 34 stipulates the payment of interest which reads as follows:

Section 34 Payment 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 (nine per cent per annum from the time of so taking possession until it shall have been so paid or deposited.

(Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year, on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.)

5. Section 30 of the Amending Act governs the cases during the transitional period ; therefore, it is necessary to quote Section 30 of the amending act for better appreciation of the case.

Section 30. Transitional provisions-(l) The provisions of Sub-section (1-A) of Section 23 of the Principal Act as inserted by Clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also and in relation to -

(a) every proceeding for the acquisition of any land under the Principal Act pending on the 30th day of April, 1982 (the date of introduction of the land Acquisition (Amendment) Act, 1982 in the House of the People). In which no award has been made by the Collector before that date ;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that the date, whether or not an award has been made by the Collector before the commencement of this Act. (2) The provisions of Sub-section (2) of Section 23 and Section 28 of the Principal Act, as amended by Clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied," also to, and in relation, any award made by the Collector on Court or to any order passed by the High

Court or Supreme Court in appeal against any such award under the Provisions of the Principal Act after the 30th day of April, 1982 (the of introduction of the Land Acquisition (Amendment) Act, 1982, in the House of the people) and before the commencement of this Act.

(3). The Provisions of Section 34 of the Principal Act as amended by Section 20 of this Act, shall apply and shall deemed to have applied, also to, and in relation to:

(a) Every case in which possession of any rand acquired under the Principal Act had been taken before the 30th day of April, 1982 (the date of introduction of the land Acquisition (Amendment) Act, 1982, in the House of the people), and the amount of compensation for such acquisition had not been paid or deposited u/s 31 of the Principal Act until such date, with effect on and from that date, and

(b) every case in which such possession had been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said Section 31, with effect on and from the date of taking such possession.

6. The instant award was made on September 8, 1982 which is within the aforesaid period, the benefit of the amending provisions is claimed to be applicable to the Petitioners in accordance with the provisions of Section 30 of the said amending act. A sum of Rs. 33,113.09 paise as awarded by the land Acquisition Collector was deposited on November 10, 1971. Subsequently, a further sum of Rs. 1,44,866.21 paise was deposited on January 28, 1985. On the application on the Petitioners for withdrawal of the aforesaid amount, the Court has allowed the aforesaid amount. Execution Case it was, however, stressed by the Petitioners that since the Court inadvertently omitted to grant interest which was violative of the provisions of the Act requires amendment of the decree. It was further urged on behalf of the Petitioners that the solatium amount was also not given to them. The learned Additional District Judge, Darjeeling by an order dated July 31, 1989 had directed that the Execution application having already been fully satisfied the decree-holders could not claim any further amount, either towards the solatium or interest.

7. Being aggrieved by the order passed by the Additional District Judge, Darjeeling the Petitioners filed a revisional application in this Court in CO. 16852 (W) of 1989 when it was held by Tarun Chatterjee, J. on March 15, 1993. The order of the learned Additional District Judge was set-aside by this Court upon direction to the Petitioners to file a petition for correction of the award/decree within 4 weeks from the date of the order. Pursuant to the aforementioned direction, the Petitioners filed an application u/s 152 CPC for amending award/ decree. The learned Additional District Judge had, however, disinclined to entertain the prayer of the Petitioner and, accordingly, the application was rejected. Therefore, being aggrieved by and affected with the orders passed by the Additional District Judge, Darjeeling they preferred this revisional application.

8. Though notice of this application was served against opposite party no steps was taken by State of West Beng"al contesting this revisional application. Mr.- P.K. Ghosh, the learned senior Advocate, has contended in course of hearing that in this case the learned Additional District Judge has wrongly rejected the claim of the Petitioner on account of the decree being fully satisfied on payment by the opposite party State, so, therefore, to examine the correctness of the findings the original record was sent for. On examination of the original record it is found the present Petitioners who are the decree-holders in the land acquisition proceeding had never filed any application or memo showing the decree to have been fully satisfied. When there has been no such memo filed by the decree-holder, it was not open to the executing court to reject the claim of the" present Petitioner, on the ground that the claim is untenable in law inasmuch as after the decree having been fully satisfied.

9. According to the opinion of the learned executing court that the amendment of decree by way of award of interest cannot amount to clerical or arithmetical mistake so as to bring it within the provision of Section 152. Therefore, the Petitioners even otherwise were entitled to the said claim, the decree being silent"s on award of interest as well as solatium the decree-holders cannot claim the aforesaid amount.

10. While examining the merit of the findings or the learned advocate for the Petitioner Mr. Ghosh, has placed reliance on a decision Jayakrishna Mangaraj Mohapatra Vs. State of Orissa and Another, The identical question came for consideration in the aforementioned case the Division Bench of Orissa High Court has decided that when the Court has omitted the statutory duty in not awarding interest in terms of the provision of the Act such omission could amount to accident to slip or omission in the order which could be rectified u/s 152. In the aforesaid decision it has been held as follows:

Statutory interest provided u/s 28 of the Land Acquisition Act is an integral part of the decree to be passed by the Court and the Court, while determining compensation under the Act, has to award the same. An omission to award statutory interest is an error which can be cured by the Court in exercise of its power u/s 152, CPC ; for an application u/s 152, CPC there is no period of limitation prescribed under the law and unless a third party has acquired an interest in the decree without knowing that there is an accidental slip or omission in it such accidental slip or omission can be. rectified u/s 152.

Where a decree granting compensation did not award statutory interest and the same was confirmed on appeal, and petition to correct the decree was made nearly 6 years thereafter. Held that the Petitioner was guilty of gross negligence and delay in the circumstances of the case and that he should be saddled with costs and that it was not proper to dismiss the petition.

11. The learned executing Judge has also considered the question of limitation and rejected the claim of the Petitioners. Such claim would or would not be barred on account of limitation was also considered in a judgment in the case of Shyamal Bihari Mishra and

Others Vs. Girish Narain Missir and Another, In the aforementioned decision it has been held:

Held that the order allowing the amendment was perfectly legal and within jurisdiction and could not be challenged on the ground that the decree was dead on the date of the amendment was allowed. Where a decree has been executed and satisfied and the execution thereof dismissed on full satisfaction the court may be functus officio with respect to the execution of the decree, but it is not functus officio with respect to its power to correct its judgment, decree or order, if there is any clerical or arithemetical mistake, or any- error due to accidental slip or omission therein. The fact that the decree has already been executed and satisfied, and therefore, it is dead, is of no consequence, and of no importance whatsoever, so far as the question as to whether its amendment asked for should be allowed or not. The fact that the decree has been executed and satisfied does not take away the inherent power of the court to allow the amendment asked for of its judgment, decree or order, it is fit to be allowed, in view of the provisions of Sections 151 and 152 of the Code, irrespective of the consideration as to how the Plaintiff will proceed so far as the execution of the same is concerned after its amendment sought for is made.

12. Question of limitation was also considered in a Bench decision of this Court in the case of Janaki Nath Roy, Narendra Nath Roy and Co. Ltd. (in liquidation) Vs. Sambhu Nath Mullick and Others, It was held as follows:

The most formidable objection that has been raised by Mr. Mukherjee is that there is undue delay in making the application and it would be inequitable to allow such amendment at this stage. Mr. Banerjee on the other hand states that there is sufficient ground for delay in making the application and there would be no inequity if the application is allowed. It will appear that though the decree was passed and signed in 1955, the execution proceeding started in 1958. On 5.2.1958 the judgment-debtor company went into liquidation and the execution proceeding filed in 1958 was objected to by the liquidators which culminated in a second miscellaneous appeal being No. 57 of 1961. That was disposed of on 6.2.1963 directing the executing court to allow amendment describing the company as being in liquidation. It appears that again on June 17, 1963 objection was taken by the said liquidators that the decree was not in conformity with the judgment in so far as interest on costs concerned and the miscellaneous case started thereon was disposed of on 19.4.1969 with the observation, as already stated, that the judgment being the High Court, the said Court should be moved for making correction if any. Further it was also to be remembered that the present Petitioners, the liquidators, were not the original judgment debtors. There is also no question of any inequity on the materials on record as the opposite parties themselves put the decree in execution and no interest of any third party has intervened. In this circumstances, even though by all these processes there has been lapse of 15 years, the delay is not really of the said period and also it cannot be said that there has been an unexplainable or unreasonable delay in the matter for making the application for amendment of the decree taking into account the various proceedings referred to above.

13. Therefore, from the ratio of the above judgment there could be no manner of doubt that the claim of the Petitioners cannot be spurned if they are otherwise entitled to such interest and solatium. The award was admittedly passed by the learned Additional District Judge, Darjeeling on September 18, 1982. The Land Acquisition (Amendment) Act, 1984 came into force on September 24, 1984. The Apex Court in the decision Mir Fazeelath Hussain and Others Vs. Special Deputy Collector, Land Acquisition, Hyderabad, had decided that as per Section 30 of the amending Act, the provisions of the amending Act shall be applicable if any award that was passed on and after April 30, 1982 either before the Collector, or the Tribunal, or the Court, or the Supreme Court. The said transitional provisions came into forece with the amending act 68 of 1984. It is undoubtedly true that the Court has not applied Section 23(1-A) while passing of the award. So far the Sub-Section 2 of Section 23(1 -A) is concerned the owner can claim 15% of the market value of the land. Subsequently, it was enhanced as par the amending provision in the judgment of the Supreme Court hereinbefore mentioned above ; the trite position has emerged that the benefit of enhancement to the extent of 30% is available to the owners where the award was passed on or after April 30, 1982. As a matter of fact, the award was passed after the dateline, that is, April 30, 1982. The Court did not award solatium at the enhance rate as per Sub-Section 2 of Section 23.

14. The facts of the case lying within narrow compass whether the claimants are entitled to solatium as per Section 23(1-A) of the amended Act. In this connection, reliance can be placed on a judgment of the apex court in the case of K.S. Paripoornan Vs. State of Kerala and Others, .

The question then is whether any indication has been given by Parliament that Section 23(1-A) will have retrospective operation so as to be applicable to acquisition proceedings which were commenced prior to the date of the enactment of the said provision. In fact, Parliament has given a clear indication of its intention in this regard in Section 30(1) of the amending Act. Since express provision is contained in Section 30(1) of the amending Act indicating the intention of Parliament as to the extent to which the provision of Section 23(1-A) would apply to pending proceedings there is no scope for speculating about the said intention of Parliament by reading Section 23(1-A) in isolation without reference to Section 30(1) of the amending Act. Merely because the provision regarding scope of the retrospectively in regard to pending matters is contained in a separate provision and is not found in the amended provision would not justify treating the said provisions independent of each other. The provisions contained in Section 30 of the amending Act are to be treated as an integral part of the amended provisions in the principal Act to which they relate. They are so interconnected that for construing Sub-Section 30 of (1-A) of Section 23, it is not possible to ignore the provisions of Section 30(1) of the amending Act.

As stated by Thirnton, "The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force" and that "what appears to be the plain meaning of

a substantive enactment is often modified by transitional provisions located elsewhere in the Act." Therefore, there was no sound basis for construction in Zora Singh to the effect that Parliament has made two provisions for giving retrospectivity to Section 23(1-A), one in Section 23(1-A) itself and the other in Section 30(1) of the amending Act. Also Zora Singh case insofar it laid stress on the word "also" in Section 30(1) and arrived at its interpretation on retrospectivity of Section 23(1-A) failed to take note of the basic premises underlying the decision in Raghubir Singh".

15. In an another decision in the case of K.S. Paripoornan Vs. State of Kerala and Others, the apex court has also held that the claimant is entitled to solatium at an enhanced rate as per Section 23(1-A) and interest u/s 28 of the amending" Land Acquisition Act, 1984.

In Rabhubir Singh case it was held that even in the pending reference made before 30.4.1982, if the civil court makes an award between 30.4.1982 and 24.9.1984, Section 30(2) gets attracted and thereby the enhanced solatium was available to the claimants. Since Section 30(2) deals with both the amendments to Section 23(2) and to Section 28 of the Principal Act by Section 15(b) and Section 18 of the Amendment Act, respectively, by parity of the reasoning the same ratio applies to the awards made by the civil court between those dates. The restricted interpretation should not be understood to mean that Section 23(2) would not apply to the award of the civil Court pending at the time when the Act came into force or thereafter. In this case, admittedly the award of the civil court made on 28.2.1985 was after the Act had come into force. Therefore, 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 court shall direct the Collector to pay interest u/s 23, on such excess at the rate of 9% per annum from the date on which the Collector took possession of the land to the date of payment of such excess into the court. By operation of the proviso, if such excess or any part thereof is paid initially payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the court before the date of such expiry. Accordingly, the Appellant is entitled to tne enhanced interest @ 9% from the date of taking possession, namely 15.1.1981 and 11.3.1981 respectively for one year and thereafter @ 15% till tie date of the deposit made by the Collector. Admittedly, the deposit of the enhanced compensation was made on 20.10.86 and 3.12.1986. Therefore, the interest shall be calculated at the enhanced rates for aforesaid period.

16. In addition to this, the decision in the case of State of Orissa v. Darasania Samal 1996 (1) Ori Law 261, it has been held by the High Court of Orissa:

The next question relates to additional amount u/s 23(1-A), solatium u/s 23(2) and interest u/s 28 of the Act as amended by Act 68 of 1984. In this case the award of the collector was passed on 18.8.1984 i.e., after 30.4.*1982 when the Bill relating to Act 68 of 1984 was introduced in the Parliament. Therefore, keeping in view the provisions of Section 30(1) and (2) of the amending Act (Act 68) of 1984) and the principles decided in

the decision reported in AIR 1995 SC 1012 R.S. Paripoornan v. State of Kerala and Ors.) which has been followed by me in F.A. No. 139 of 1984 (Land Acquisition Officer, Puri v. Rama Sundari Dei) disposed of on 30.1.1996 and F.A. No. 2 of 1987 (Land Acquisition Officer, Ganjam, Chhatrapur v. Bisweswar Rao) disposed of on 7.2.1996, the claimant is entitled to the benefits of the amended Act.

17. From the ratio of the above judgment, it becomes terse that the claimant Petitioner is further entitled to receive additional amount at the rate of 12% in accordance with Section 23(1-A); of the Act from the date of notification till the date of award by the Land Acquisition Collector. He is further entitled to receive solatium at the rate of 30% under provisions of Section 23(2) of the Act as amended by Act 88 of 1984. The claimant further entitled to interest at the rate of 9% from the 1st year and at the rate of 15% thereafter till the date of actual payment, on the awarded amount in view of the Act as amended by Act 68 of 1984.

18. In the above back-drop of the case, the revision succeeds against the opposite party-State but in the circumstances, there is no order as to costs.