

Union of India (UOI) Vs Sri Sudhangshu Kumar Mukherjee

Court: Calcutta High Court

Date of Decision: June 17, 2005

Acts Referred: Constitution of India, 1950 " Article 142
Requisitioning and Acquisition of Immovable Property Act, 1952 " Section 11, 8

Citation: (2005) 1 ILR (Cal) 553

Hon'ble Judges: Sadhan Kumar Gupta, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Daya Sankar Misra, for the Appellant; Jaharlal De and A. Dasgupta, for the Respondent

Judgement

Bhaskar Bhattacharya, J.

These two appeals u/s 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 ("Act") were

heard together as the questions involved in these two appeals are similar. In these two appeals, the Respondent-claimants have filed the two

separate cross-objections against the awards passed by the learned Arbitrator.

2. It appears from record that competent authority, namely Land Acquisition Collector, 24-Parganas(N), passed an award under the provision of

the aforesaid Act thereby assessing the valuation of the solid land at the rate of Rs. 24,000/- and odd per acre and the tank, at the half of that rate.

The Respondents prayed for reference u/s 8 of the said Act on August 2, 1978 but the Arbitrator was appointed after a lapse of five years on

August 14, 1983.

3. The Arbitrator on consideration of the materials on record came to the conclusion that the solid land should be valued at rate of Rs. 86,000/-

per acre and the valuation of the tank should be assessed at the half of the aforesaid rate, i.e. Rs. 43,000/- per acre. The Arbitrator also passed

award for compensation for value of Nim, Mango, Sal and Bamboo trees at the rate of Rs. 200, Rs. 400, Rs. 300 and Rs. 6 each respectively.

He, however, rejected the claim for the value of other trees as there was no evidence as to the price of those trees placed before him. The learned

Arbitrator, in addition to the above, fixed value of the structure at Rs. 2000/-. The learned Arbitrator further held that the entire amount of

compensation so determined should carry interest @ 6 per cent per annum from the date of acquisition of land in question till the date of payment

of the amount offered by the Land Acquisition Collector. The Arbitrator further held that amount of compensation so determined less the amount

already paid should also carry interest at the selfsame rate from the date next following the date of such payment till date of final payment.

4. While arriving at the aforesaid conclusion the Arbitrator relied upon an award passed by the selfsame Arbitrator in Arbitration Case No. 47 of

1983 (V) and two sets of settlement map. By the previous award the Arbitrator arrived at the conclusion that solid land involved therein should be

valued at Rs. 86,000/- per acre and tank at half of such amount and it appeared from the maps that those lands were adjacent to the lands

involved in the present proceedings. Although, the claimant relied upon some other document showing that the rate was much higher and the Union

of India also relied upon certain document indicating that the valuation was lesser than the aforesaid amount, the Arbitrator was of the view that

those lands were not similar to the ones involved in the present case and the time of acquisition was not contemporaneous with those transactions.

5. The learned advocate appearing on behalf of the Appellant tried to impress upon this Court that the land involved in the previous litigation relied

upon by the learned Arbitrator was not similar to the present one. We, however, find that the Appellant did not adduce any evidence showing that

the land involved in the present litigations was inferior to the one involved in the other litigation. On the other hand, the maps produced by the

claimant show that those lands are adjacent to the land involved in these litigations. We, therefore, find that the learned Arbitrator quite reasonably

accepted the valuation arrived at by the previous award which has attained finality.

6. The learned advocate for the Appellant, next contended that in the aforesaid Act there being no provision for grant of interest, the learned

Arbitrator acted without jurisdiction in granting interest @ 6 per cent per annum.

7. Mr. De, the learned advocate appearing on behalf of the claimant-Respondents at this stage has pressed the cross-objection filed in these two

litigations on behalf of the claimants and has contended that there being inordinate delay of long five years in appointing Arbitrator after the demand

of reference by his clients, the Arbitrator rightly granted interest @ 6 per cent per annum. Mr. De further contends that this is a fit case where in

addition of interest awarded by the learned Arbitrator, solatium at the rate of 30 per cent should also be granted and his clients have filed cross-

objections in support of such contention. Mr. De, in this connection, relied upon the decision of the Supreme Court in the case of Union of India v.

Hari Krishan Khosla 1993 Sup. (2) S.C.C. 149 and particularly upon para. 79 of the judgment dealing with one of the case involved therein. Mr.

De contends that Supreme Court in that decision although upheld the vires of the Act yet approved the award passed in one of the cases involved

therein which included solatium and interest in addition to the amount of compensation assessed as there was delay of appointment of Arbitrator.

Mr. De contends that the Respondent cannot deliberately delay the appointment of Arbitrator to frustrate the legitimate claim of the claimants

resulting in loss of interest on the money payable as compensation. Mr. De also relies upon the decision of the Supreme Court in the case of

Prabhu Dayal and Ors. v. Union of India 1995 Sup. (4) S.C.C. 221. He also relies upon two decisions of the Division Bench of this Court, one in

the case of Union of India v. Shib Charan Sarkar 2005 C.W.N. 413 and the other in the case of Union of India v. Sudhangshu Kumar Mukherjee

and Ors. 2002 (3) C.H.N. 33.

8. After hearing the learned Counsel for the parties and after going through the materials on record we are, however, of the opinion that in view of

the Supreme Court decision in the case of Union of India Vs. Kolluni Ramaiah and others, there is no scope of grant of solatium or interest in this

appeal. The Supreme Court in that case has specifically held that an Arbitrator appointed under the Act has no jurisdiction to grant solatium or

interest as the Act did not provide any provision for awarding solatium or interest like the provisions contained in Land Acquisition Act. Since we

are dealing with an appeal against an award passed by the Arbitrator under the Act, our jurisdiction is confined to scrutinize whether the Arbitrator

acted in accordance with law within his jurisdiction. Even if there was delay in appointing Arbitrator, the Arbitrator is not vested with power to

grant interest or solatium under the Act in case of delayed appointment. The present claimant-Respondent did not challenge the act of the Union of

India in making delay in appointing the Arbitrator and has accepted the delayed reference. Having claimed reference, the claimants are bound to

accept the outcome of such reference strictly in accordance with law laid down in the Act. Therefore, we find that the Arbitrator in these two

proceedings acted without jurisdiction in awarding interest over the compensation assessed. Similarly, we turn down the contention of Mr. De that

the Respondents are entitled to get solatium though not provided in the Act and that such solatium should be included in the award.

9. We now propose to deal with the decisions cited by Mr. De.

10. In the case of Union of India v. Hari Krishan Khosla (Supra) in para. 79 of the judgment the Supreme Court was dealing with Civil Appeal

Nos. 4688-94/1989 and 2674-85/1989 and were of the view that as in those cases for 16 years no Arbitrator was appointed it was just and

proper to apply the principles laid down in Harbans Singh Shanni Devi v. Union of India S.C. Feb. 11, 1985 disposed of by the Supreme Court

on February 11, 1985. Their Lordships thereafter quoted the following observations of the Supreme Court in the said case of Harbans Singh

Shanni Devi. S.C. Feb. 11, 1985:

Having regard to the peculiar facts and circumstances of the present case and particularly in view of the fact that the appointment of the arbitrator

was not made by the Union of India for a period of 16 years, we think this is a fit case in which solatium at the rate of 30 per cent of the amount of

compensation and interest at the rate of 9 per cent per annum should be awarded to the Appellants. We are making this order having regard to the

fact that the law has in the meanwhile been amended with a view to providing solatium at the rate of 30 per cent and interest at the rate of 9 per

cent per annum.

11. After going through the said question we find that in the case of Harbans Singh Shanni Devi. (Supra), the Supreme Court took into

consideration the fact that law in the mean time had been amended with a view to provide solatium @ 30 per cent and interest @ 9 per cent per

annum. The aforesaid law, however, was amended not in the present Act but in the Land Acquisition Act. Be that as it may, the Supreme Court

applied the principle of equity in those cases as pointed out by the Supreme Court in the case of Prabhu Dayal and Ors. v. Union of India (Supra).

From the aforesaid fact it is clear that although law does not permit grant of solatium and interest, the Supreme Court applied equitable principle in

granting solatium and interest where there was delay in appointment of Arbitrator. Since, we are dealing with an appeal under the provision of the

Act we are to confine ourselves within the strict statutory limit of the concerned statute and there is no scope of applying any equitable principle.

The Supreme Court having been vested with the authority under Article 142 of the Constitution of India to pass appropriate order for doing

complete justice between the parties applied the principles of equity in those case. We are, however, required to act strictly within the bound of the

Act and there is no scope of applying equitable principle when statute does not recognize grant of solatium and interest and such position has been

accepted by the Supreme Court.

12. In the case of Union of India (UOI) Vs. Dulal Chandra Ghosh and Others, we finds that the same equitable principle was followed by

Supreme Court.

13. In the decision of another Division Bench of this Court in the case of Union of India v. Shib Charan Sarkar (Supra) the said Division Bench has

held that although the Act does not postulate grant of solatium or interest, even then, State is not entitled to withhold the payment for an indefinite

period by depriving the claimant of his legitimate dues. In such circumstances, the said Division Bench by relying upon the principle laid down by

the Supreme Court in the cases of Harbans Singh Shanni Devi. (Supra), Union of India v. Dulal Chandra Ghosh (Supra) and Union of India Vs.

Ajaib Singh and others, decided to grant solatium and interest after taking into consideration the delay in appointing the Arbitrator.

14. We have already indicated that since this Court is hearing appeal under the provision of the Act against an award passed by the Arbitrator, our

jurisdiction is not wide-ranging than the one enjoyed by the Arbitrator. If the Arbitrator, according to the Supreme Court, is not entitled to grant

solatium or interest while assessing compensation, we also cannot while hearing an appeal against the order of the Arbitrator possess any higher

right than that of Arbitrator. Our jurisdiction is limited by a statute and we cannot transgress the same by taking recourse to equity. Solatium and

interest at a specified rate is the concept of Land Acquisition Act brought about by way of amendment and the Arbitrator or the High Court as

appellate authority under the Act cannot import such thought in to the proceedings before it when such notion is not recognised by this Act. We

have already pointed out that the Supreme Court in those decisions exercised equitable principle as the Supreme Court possesses power under

Article 142 of the Constitution of India whereas we have no such power. We are, thus, unable to agree with the decisions of the Division Bench in

the case of Union of India v. Shib Charan Sarkar (Supra).

15. In the case of Union of India v. Sudhangshu Kumar Mukherjea and Ors. (Supra), another Division Bench of this Court in para. 22 of the

judgment held that even if the Act does not make any provision for grant of solatium and interest the same should be made if special circumstances

existed, for instance, where there is delay in appointment of Arbitrator for which State is responsible. With great respect to their Lordships, we are

unable to follow the principles laid down in the said decision. As pointed out earlier, the Supreme Court for doing complete justice between the

parties can pass appropriate order in exercise of power under Article 142 of the Constitution of India but this Court while hearing appeal against

order of Arbitrator should be bound strictly by the statutory provision as this appeal is a creature of statute and there is no scope of invoking the

doctrine of equity. We cannot lose sight of the fact that the two different benches of Supreme Court consisting of three Judges in clear term

negated the right of the Arbitrator altogether to grant solatium or interest without making any reservation. See Union of India v. Kolluni Ramaiah

and Ors. (Supra) and Hari Krishan Khosla (Supra).

16. Since the other two Division Benches of this Court have taken the view that this Court can grant solatium and interest even though the Act

does not provide for it in exceptional cases after taking into consideration some Supreme Court decisions which according to us cannot be applied

in an appeal under the Act before High Court, we are of the opinion that this matter should be referred to the Hon"ble Chief Justice for constituting

a larger bench as we are unable to subscribe to the view taken by those Division Benches.

17. We, therefore, refer the matter to the Hon"ble Chief Justice for constitution of a larger bench to decide the following question:

Whether a High Court hearing an appeal against order of Arbitrator under the provision of Section 11 of the Requisitioning and Acquisition of

Immovable Property Act, 1952 is entitled to grant solatium or interest if there is delay in appointing Arbitrator at the instance of State although the

Act does not provide for payment of such solatium or interest?

Sadhan Kumar Gupta J.

18. I agree.