

(1989) 01 CAL CK 0020

Calcutta High Court

Case No: C.R. No. 8525-33 (W) of 1980

Kshatra Nath Banerjee and
Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Jan. 20, 1989

Acts Referred:

- Land Acquisition (Amendment) Act, 1967 - Section 4(3)
- Land Acquisition Act, 1894 - Section 18, 23, 23(1)

Citation: (1989) 1 CALLT 281

Hon'ble Judges: K.M. Yusuf, J

Bench: Single Bench

Advocate: Ranjit Banerjee and Abhijit Banerjee, for the Appellant;None, for the Respondent

Judgement

K.M. Yusuf, J.

All the Rules are taken up analogously for hearing as the point is one and the same and are disposed of by this judgment.

2. By virtue of Notification u/s 4 of the Land Acquisition Act, 1894 and proceedings started thereunder the Government acquired a large number of plots of land for development of industries in Durgapur Area and the possession was taken over sometime in 1964. In 1967 there were awards and the petitioners received the amount of the awards in October the same year. There was an Ordinance being No. 1 of 1967 which was replaced by the Land Acquisition (Amendment & Validation) Act, 1967. By virtue of Section 4(3) of the Amendment Act of 1967 a provision for the payment of simple interest calculated at 6 per cent per annum on the market value of the land acquired and as determined under" Section 23 of the principal Act was made. Thereafter the petitioners were served with a notice under the Amendment Act of 1967 sometime in March 1976 and the petitioners filed applications u/s 18 of

the Land Acquisition Act before the Land Acquisition Collector praying for reference to Civil Court. The Land Acquisition Collector by his Order dated 4th June, 1976 rejected the application on the ground of limitation. The petitioners moved the Hon'ble High Court in C.R. Cases No. 3065-72 and by Order, dated 22nd January, 1979 the High Court set aside the aforesaid Order of the L.A. Collector and directed him to dispose of the application u/s 18 of the Act after hearing the parties. The petitioners thereafter contended before the L.A. Collector that by virtue of the Amendment Act of 1967 the awards are incomplete and time does not run till the award is final. But" Order, dated 27th May, 1980 the L.A. Collector rejected the application u/s 18, of the Land Acquisition Act on the ground that the application is barred by limitation and this Order is now under challenge.

3. Mr. Banerjee, the learned Advocate appearing for the writ petitioners, submitted that the L.A. Collector failed to appreciate that u/s 4(3) of the Land Acquisition (Amendment & Validation) Act of 1967 interest has been merged with the award itself and the award is not complete and final until the interest u/s 4(3) of the said Act be included in the award itself. He further submitted that by virtue of Amendment Act of 1967 the award remains incomplete and does not run till the award is final and so long the condition laid down in Section 4(3) of the Amendment Act exists the Collector has no other alternative but to include the interest in the award itself. The period of limitation is clearly set out in Section 18 of the principal Act. He further submitted that the interest is part of the compensation and not something different from it. When an award is amended the whole award goes and the new award takes, its place. In support of his contention that interest is part of the award or compensation Mr. Banerjee cited several decisions including the [Union of India \(UOI\) Vs. Shri Ram Mehar and Others](#), and [Nagendra Nath Banerjee Vs. Ambica Charan Chakrabarty and Others](#), as well as Halsbury's laws of England, 4th Edition, Vol. 18 para 1565 on page 916.

4. The matter was heard on 23rd August, 1988 and 29th August, 1988 and on both the occasions nobody appeared on behalf of the State respondent nor any Amdavit-in-Opposition was filed in spite of the fact that an important point of law has been raised in this writ application.

5. Considered the facts and submissions made by Mr. Banerjee. The Land Acquisition Collector has been under the wrong impression that the applications u/s 18 of the Land Acquisition Act were made for higher valuation of land and not for interest only and the awards made in 1967 are final awards and no reference applications were filed u/s 18 of the Act within six weeks and the petitioners were satisfied with the awards. He was of the view that the objection is an after thought and as such the reference applications are beyond statutory period of limitation. The Land Acquisition Collector was obviously under a mistaken notion that the awards in question are final. The notice under L.A. (A. & V.) Amendment Act of 1967 was served upon the petitioners, sometime in March 1976. Section 4(3) of the said

Amendment Act relates to the payment of interest upon the value of the acquired land under. Section 23 of the principal Act. This means that the payment of interest becomes a part and parcel of the award or compensation or value of the acquired land. In the case of *Union of India v. Ram Mehar and Ors.* (supra) the Supreme Court in a cryptic but clear hint indicated as under : "It is significant and has been noticed at an earlier stage also that according to the other sections which appeared in the principal Act interest is payable on such amount which is either a part of compensation or is the total compensation payable itself." Now the key to the meaning of the word "compensation" is to be found in Section 23(1) of the principal Act, and the "interest" merges with the compensation as defined in this Section. In a Calcutta Division Bench decision of *Nagendra Nath Banerjee and Anr. v. Ambika Charan Chakraborti and Ors.* (supra) Chief Justice Rankin held that when a decree is amended, the only decree that exists is the decree as modified by the amendment and this goes back to the date of judgment and not the date either of the drawing up of the decree or of the date of amendment. This means that the fact of the decree being an amended decree makes no difference. In Halsbury's Laws of England, 4th Edition, Vol. 18, the explanation of the word "interest" appears in para 1765 as under: "The payment of interest is a proper element in compensation, being due for the loss by the claimant of the use of the principal sum during the period in which the principal sum has been withheld."

6. In the light of the aforesaid discussion it is crystal clear that the Land Acquisition Collector came to a wrong finding and disallowed the application of the writ petitioners on misappreciation of the point of law as well as fact. As to the question whether the interest is a part and parcel of compensation money or not, the answer is a definite affirmative. When an award is amended the new award takes its place and, as such, the applications of the writ petitioners u/s 18 of the Land Acquisition Act of 1894 ought to have been allowed.

7. In that view of the matter I make the Rules absolute. Let a writ or writs in terms of prayers (a) and (b) to the writ application be issued forthwith. There will be no Order as to costs.