

AIR 1986 Bom 1

Bombay High Court (Goa Bench)

Case No: First Appeal No. 84 of 1984

Union of India

APPELLANT

Vs

Maria Olivia Carvalho
and Others

RESPONDENT

Date of Decision: July 16, 1985

Acts Referred:

Land Acquisition (Amendment) Act, 1984 " Section 30(2)#Land Acquisition Act, 1894 " Section 23

Citation: AIR 1986 Bom 1

Hon'ble Judges: Kamat, J; Couto, J

Bench: Division Bench

Advocate: V.B. Nadkarni, for the Appellant; Mario Bruto D"Costa, for the Respondent

Judgement

Couto, J.

This appeal by the Union of India is directed against the Award dated 27th August 1984, made by the learned District Judge,

Panaji, in a reference made to him under S.18 of the Land Acquisition Act, 1984.

2. By a Notification dated 19-11-1977, the Government notified that several pieces of land, situated at Bambolim and admeasuring, in all,

1,81,690 sq.mts., would be required for the purposes of "Grenade Range". Amongst the acquired plots, those bearing the Nos. 1 to 5 belonged

to the respondents herein. The Land Acquisition Officer, in his Award, assessed the value of the said plots at the rate of Rs.3/- per sq.mt. and he

further valued, separately, the cashew, mango and other trees standing on the plots.

3. Being aggrieved by the said compensation awarded by the Land Acquisition Officer, the respondents herein filed under S.18 of the Land

Acquisition Act, a reference to the learned District Judge and a compensation at the rate of Rs.8/- per sq.mt. be paid to them. After reference was

made, the learned District Judge, Panjim, by his Award dated 27th Aug. 1984, partly allowed the reference, and accordingly, enhanced the

compensation awarded by the Land Acquisition Officer from Rs.3/- to Rs.5/- per sq.mt. It is against this Award that the present appeal was filed

by the Union of India, on the ground that there was no reason for enhancing the compensation awarded by the Land Acquisition Officer.

4. Mr. Nadkarni, learned Government Advocate, has indeed argued that the learned District Judge has erred in enhancing the compensation. He

invited our attention to the impugned Award and after taking us through it, submitted that the only ground on which the learned Judge based his

Award for enhancing the compensation was that some where in 1973, an acquisition of part of the same land has been done and the Land

Acquisition Officer had awarded a compensation at the rate of Rs.4/- per sq.mt. Then, the learned Judge proceeded on the basis that if, in the

years 1972-73, part of the same property had been acquired at the rate of Rs.4/- per sq.mt., it was patent that the value of the same land, as well

as of the adjoining one, would have been enhanced in the year 1984. He did not , according to the learned counsel, consider even two sale deeds

in respects of two plots of land situated at "Morambim - O - Pequeno" which had been sold in the year 1977 for Rs. 10,000/- and Rs. 15,000/- .

The learned counsel then submitted that as it is apparent from the Award made in the year 1973, the Land Acquisition Officer, while awarding a

compensation at the rate of Rs. 4/- per sq.mt., had taken into consideration the likelihood and the prospects of development of the land for

construction purposes in view of the expansion of the cities and the industries, as well as that, after acquisition of the land was made in the several

proceedings pending, there would be no more land available at Bambolim. The learned counsel further invited our attention to the circumstances

that the Land Acquisition Officer has also observed that had this aspect been ignored, the compensation would have been much less because the

income derived by the parties, according to themselves, was almost negligible and in the circumstances, a compensation even at the rate of Rs. 2/-

per sq.mt. would have been adequate and appropriate. Then, the learned counsel submitted that those considerations were no more available in

favour of the respondents, because, admittedly, the plots acquired in the present case were situated far away from the road and had no access to

it. In addition, the same plots were land-locked in military areas and had no potentialities at all as a building construction site.

5. We are afraid that the above submission of Mr. Nadkarni are not well founded. Admittedly, part of the same land belonging to the respondents

had been acquired by the Government in the year 1973 and, at that relevant time, the Land Acquisition Officer had awarded a compensation at the

rate of Rs.4/- per sq.mt. He considered that the land acquired at that time had building construction potentialities and further that on account of

several acquisitions of land made by the Government, no more land would be available in the place. These considerations, in our view, stand even

today, for it is a well-known fact that the plateau of Bambolim has been developed and besides the military area, there is also the complex of the

Goa Medical College, which was not existing in the year 1973. The construction of the Medical College complex had undoubtedly enhanced the

value of the land in the area and, as such, we are of the view that though the plot acquired by the Government in the present case is not adjoining

the road, nonetheless, it has good potentialities as a building construction site. Thus, even considering that the value of the land would be about

Rs.4/- per sq.mt., considering the inflation, we feel that the enhancement of the compensation from Rs.3/- to Rs.5/- is not on the higher side and is,

on the contrary, reasonable. In our view, such compensation reflects the market value of acquired land, considering that the same is not adjoining

the main road and is within the Military area. We do not see, therefore, any reason for interference with the impugned Award insofar as the

compensation is concerned. However, we may point out that after the passing of the said impugned Award, the Land Acquisition Act has been

amended and the Amendment came into force on 24th Sep. 1984. This is relevant because Ss. 23 and 28 of the original Land Acquisition Act,

1894 were amended and additional compensation, solatium and increased rate of interest had been provided . We may, therefore, advert to the

relevant provisions of the law. S. 15 of the Land Acquisition (Amendment) Act, 1984, hereinafter called ""the Amendment Act"", provides, inter alia,

that in S. 23 of the principal Act, sub-sec. (1-A) is added. The said sub-sec. (1-A) reads as under:-

(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 centum per annum on such market value for the period commencing on and from the date of the publication of the notification under S.

4, sub-sec. (1), in respect of such land to th date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Clause (b) of S. 15 of the Amendment Act provides that in sub-sec. (2) of S. 23, for the words ""fifteen per centum"" the words ""thirty per centum

shall be substituted. Then, S. 18 of the Amendment Act amends S. 28 of the Principal Act by providing that for the words ""six per centum"", the

words ""nine per centum"" shall be substituted and further that the following proviso be inserted at the end, ""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 the 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 party thereof which has not been paid into Court before the date of such expiry"".

6. It will be also useful to advert to S. 30 of the Amendment Act which deals with transitional provisions. Its sub-sec. (2) lays down that the

provisions of sub-sec. (2) of S. 23 and S. 28 of the Principal Act as amended by Clause (b) of S. 15 and S.18 of the Amendment Act

respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or 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 date of introduction of the Land Acquisition (Amendment) Act, 1984 in the House of the People) and before the commencement

of the Amendment Act.

7. Now, on reading the provisions of S. 23(1-A), S. 23(2)(b) and S. 28 of the Principal Act as they stand today after the amendment along with

the aforesaid sub-sec. (2) of S. 30 of the Amendment Act, it flows crystal clear that the amended provisions are attracted to any Award made by

the Collector or Court after the 30th day of April, 1982, the date of introduction of the Land Acquisition (Amendment) Act. This view is approved

by the Supreme Court in the case of K. Kamalajammanniavar (Dead) by Lrs. Vs. Special Land Acquisition Officer, In fact, the Supreme Court

has held that S. 30 of the Amendment Act did not make the amended S. 23(2) which increased the solatium to 30 per centum applicable to all

proceedings in regard to compensation which had not become final whether they be pending before the Collector, Court, High Court or Supreme

Court. It is clear, the Supreme Court observed, that Parliament wanted the amended S. 23(2) to have very limited retrospectivity. It made the

provision applicable to awards made after 30th April, 1982 and before 24th Sept. 1984 also and further to appeals to the High Court and

Supreme Court arising from such awards. The Bill which ultimately became the Amendment Act was introduced into Parliament on 30th April,

1982. Parliament obviously desired to give effect to the amended S. 23(2) from the date of introduction of the Bill. So, the amended provision was

expressly made applicable by S. 30 (2) to awards made by the Collector or Court between April, 30, 1982 and Sept. 24, 1984 also.

8. The learned District Judge has, admittedly, made impugned Award on 27th Aug. 1984 and, therefore, clearly after the date the Bill for the

Amendment Act was introduced in Parliament, namely after the 30th April, 1982. The Act came into force on 24th Sept. 1984 and, therefore,

undoubtedly, the impugned Award falls squarely within the sweep of sub-sec. (2) of S.30 of the Amendment Act. Thus, it is undisputable that the

respondents are entitled to the benefits of the newly introduced sub-sec. (1-A) of S. 23 as well as to the benefit of solatium introduced in Cl. (b) of

sub-sec. (2) of S. 23 and to the one given in the amended S. 28.

9. We already said that sub-sec. (1-A) of the amended S. 23 of the Principal Act provides that the Court shall in every case award an amount

calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of publication of the

notification under S. 4(1) in respect of such land to the date of the Award of the Collector or the date of taking possession of the land, whichever

is earlier. The learned District Judge has calculated the market value of the acquired land belonging to the respondents at the rate of Rs.5/- per sq.

mt. Therefore, by virtue of the aforesaid sub-sec.(1-a), the respondents are entitled to a further compensation calculated at the rate of twelve per

centum per annum on the aforesaid compensation calculated at the rate of twelve per centum per annum on the aforesaid compensation awarded

by the learned District Judge from the date of the publication of the Notification under S. 4(1) to the date on which possession of the land was

taken or to the date of the award of the Collector, whichever, is earlier. We were told and this fact is not disputed that the acquired land had been

earlier requisitioned by the Government and, since that time, was in possession of the Military authorities. The learned Government counsel

submitted that in view of this circumstance and since a compensation as provided in sub-sec.(1-A) is to be awarded to the respondents. We are

unable to accept this submission of the learned counsel. In fact, the possession which is spoken of in sub-sec. (1-A) is the possession that follows

the acquisition of the land. It is obvious that in view of the particular factual situation, fresh possession of the land was not taken by the Government

and, therefore, we have to consider the date on which the Collector made his Award for the purposes of granting to the respondents the additional

compensation they are entitled to under sub-sec.(1-A) of S. 23 of the Act. Thus, we hold that the respondents should be paid an additional

compensation calculated at the rate of twelve per centum per annum on the compensation awarded by the learned District Judge from the date of

the notification under S. 4(1) to the date on which the Collector made his award, i.e. 19th Feb. 1979.

10. Section 23(2) of the original Act was providing for a solatium of fifteen per centum. The amount to be paid on account of solatium was now

increased to thirty per centum. Therefore, the amount of solatium at the rate of fifteen per centum awarded by the learned District Judge is to be

increased to 30 per centum. Thus, the respondents are directed to pay another fifteen per centum on the amount awarded on account of solatium

to the respondents.

11. The original S. 28 of the Land Acquisition Act was amended by the Amendment Act and it is now provided that the interest to be paid is at the

rate of 9% and further that 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 the 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. It would appear from the above amended provision of the Land Acquisition Act that the respondents will be entitled also to interest at

the rate of nine per centum per annum on the amount that the District Judge has awarded in excess of the compensation granted by the Collector

and further that if such payment is done after the date of the expiry of one year from the date on which the possession is taken, then the

respondents will be entitled to interest at the rate of fifteen per centum per annum. Mr. Nadkarni, however, submitted that though this view was

taken by the Delhi High Court in Raghbir Singh Vs. Union of India and Others, the fact remains that this does not appear correct as it was pointed

out in that very case by the Counsel for the Union of India. In fact, in the said case, it has been submitted on behalf of the Union of India that the

aforesaid interpretation is not correct because it would make the proviso to the amended S. 28 wholly unworkable. The Court has held that the

said argument was based on a misconception that the Collector is being asked to pay interest at the rate of 15% even though the excess

compensation was not known to him. The Delhi High Court further observed that the argument was that if the excess compensation is not known

to the Collector, how could he deposit the excess within one year from the date of taking possession, and that the said proviso is penal in nature

and, therefore, could not be enforced. The Court then held the view that there was no merit in the said submissions made on behalf of the Union of

India and observed as under (at p.234):-

The wordings of the section are clear. The theory of S. 28 is that the excess compensation awarded by the District Court or the High Court or the

Supreme Court is in fact a sum which the Collector ""ought to have awarded as compensation"" and as such was payable at the date of the taking of

the possession. Though determined in future by the Courts the "excess compensation" relates back to the date of taking possession of the owner's

land. And it ought to be so. The Government cannot take the land as well as keep compensation with it. The taker of the land must pay interest on

compensation for the delay. Therefore the legislature has gone to the aid of the landowner and has made its intention quite clear by opening the

section with words: ""If the sum which in the opinion of the Court the Collector ought to have awarded as compensation is in excess between the

amount awarded by the Collector and as determined by the Court on reference under S. 18 or on appeal by the High Court or on a further appeal

by the Supreme Court , then such excess compensation shall carry interest not from the date when the excess is determined but from the date

when the Collector took possession of the owner's land. That interest is 9 per cent for the first year. After the expiry of the first year it is 15 per

cent till the date of payment.

We respectfully agree with these observations of the Delhi High Court and we too hold that interest has to be paid at the rate of 9% for the first

year and, after the expiry of the first year, at the rate of 15% till the date of payment by virtue of the amended S. 26.

12. Mr. Nadkarni finally contended that in any event, the respondents have to pay Court fee on the additional compensation as well as on the

increased solatium and interest. We find no merit at all in this contention of the learned counsel. In fact, as held by the Patna High Court in Smt.

Siawati Kuer Vs. The State of Bihar , the statutory compensation allowed under S. 23(2) does not form part of the compensation awarded and

when an appeal is filed under S. 54 against the award, no court-fee is payable on the amount of statutory compensation. The same view was taken

by the Andhra Pradesh High Court in Kesireddy Appala Swamy and Others Vs. Special Tahsildar, Land Acquisition Officer, Central Railway,

Vijayawada, Undoubtedly, the additional compensation as well as increased solatium and interest are being awarded to the respondents on

account of a statutory provision of law. This being so, the question of paying any court-fee on these amounts does not arise.

13. In the result, this appeal fails and consequently, the impugned award is affirmed. In addition, we order that an additional compensation

calculated at the rate of 12% per annum on the compensation awarded by the District Judge from the date of the Notification under S. 4(1) be

paid to the respondents, as well as another amount of 15% on the compensation on account of solatium and interest at the rate of 9% per annum

from the date of the Collector's award till payment into Court in the first year and if not paid, at the rate of 15% till the payment in Court. There

will be no order as to costs in the circumstances of the case. Appeal dismissed.