

CASE NO.:
Appeal (civil) 635 of 2003

PETITIONER:
Dayal Singh & Ors.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 29/01/2003

BENCH:
CJI, S.B. Sinha & AR. Lakshmanan

JUDGMENT:

J U D G M E N T

W I T H

CIVIL APPEAL NOS. 636, 637, 638 OF 2003
(Arising out of S.L.P. (Civil) Nos.17079 of 2000,
533 of 2001 & SLP (Civil)CC 4700 of 2001)

S.B. SINHA, J :

Leave granted.

Applicability of Section 28A of the Land Acquisition Act, 1894 in a proceeding under the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as 'the 1952 Act') is in question in these appeals, which arise out of judgments and orders passed by Punjab & Haryana High Court in L.P.A. No. 971 of 1999, C.W.P. No. 183 of 1994, L.P.A. No. 914 of 1999 and L.P.A. No. 42 of 2000.

The factual matrix of the matter may be adverted to from the Civil Appeal arising out of Special Leave Petition (Civil) No.533 of 2001. The lands of the appellants were requisitioned under the Defence of India Act, 1971 for establishment of Military cantonment in the year 1972. They were later on acquired in terms of Section 23(1) of the Defence of India Act. An award of compensation was pronounced on 6th March, 1975 in the following terms :-

"1. Area assessed on flat	Rs.16,000/- per acre	
2. Nahri/Chani	Rs.14,000/-	"
3. Chali Mustan	Rs.10,800/-	"
4. Banani	Rs.9,000/-	"
5. Coir Mumkin/Bajar	Rs.4,500/-	" "

It is not in dispute that the appellants in relation to the amount of compensation awarded by the respondents herein for acquiring their properties entered into agreements in the prescribed form under the provisions of the 1952 Act, which was made operative for the residual matters flowing from the proceedings of acquisition of lands upon repeal of the Defence of India Act, 1971.

Questioning the non-inclusion of interest in the said award they filed a writ petition before the High Court which was marked as C.W.P. No.4983 of 1976 which were allowed. A special leave petition filed by the respondents herein before this Court marked as Special Leave Petition (Civil) No.74 of 1998 questioning the said order of the High Court was dismissed on 4th September, 1984. Another writ petition was filed by the Appellant claiming solatium before the High Court which was marked as C.W.P. No.1813 of 1978 and the same was also allowed. It is, however, not in dispute that several other land owners did not accept the said award and made a

reference which was referred to an arbitration of the Additional District Judge. By an award dated 20.11.1987 in the case of one Nihal Singh, the said Arbitrator awarded higher compensation together with solatium and interest. Compensation awarded to said Nihal Singh by the Arbitrator was at the following rates :-

- "1. Land situated on either side of National Highway leading from Bhatinda to Bana upto depth of 5000 mts. Rs.16.80/sq.yd
2. Land upto depth of 500 mts. The Municipal limits/fencing of Cantonment from boundry 3rd phase of Urban Estate of Bhatinda Town. Rs.16/- per sq.yd
3. For the rest of acquired land Rs.8.50 " "

The said Nihal Singh had also been paid solatium @ 30% and interest @ 9% per annum for one year after acquisition and thereafter @ 15% per annum till realisation.

The appellants herein having regard to the said award filed application under Section 28A of the Land Acquisition Act for redetermination of compensation. It is not in dispute that a Full Bench of the Punjab & Haryana High Court in Hari Krishan Khosla (decd.) and others vs. Union of India and Another. [AIR 1975 Punjab & Haryana 74] had held that even where an acquisition is made under the Defence of India Act, provisions of Section 28A of Land Acquisition Act would be applicable. Presumably, relying on or on the basis of the said decision, the Special Land Acquisition Collector, before whom the said purported application under Section 28A was filed, enhanced the compensation by an order dated 30th May, 1988. The said award indisputably was not implemented.

This Court in Union of India vs. Hari Krishan Khosla (Dead) by L.Rs. [(1993) Supp.2 SCC 149], however, held that the provisions of Land Acquisition Act are not applicable in respect of an acquisition made under the 1952 Act.

Thereafter, the respondent herein filed a writ petition questioning the said award on the ground that as the provisions of Section 28A of the Land Acquisition Act were not applicable in relation to acquisition under the Defence of India Act or the 1952 Act, the said award dated 30th May, 1988 was illegal and without jurisdiction. Before the High Court, the appellants herein, inter alia, raised a question of maintainability of the writ petition on the ground delay and laches on the part of the respondents, as allegedly the writ petition had been filed after a period of five years. By reason of a judgment and order dated 1.4.1999, a learned Single Judge of the High Court upon setting aside the order of the Special Land Acquisition Collector dated 30.5.1988 allowed the writ petition where-against the appellants preferred an intra-court appeal which also came to be dismissed by reason of the impugned judgment dated 27th January, 2000.

Mr. O.P. Sharma, learned Senior Counsel appearing on behalf of the appellants in the Civil Appeals arising out of Special Leave Petition (Civil) Nos. 11687 and 17079 of 2000 and SLP (Civil) ..(CC 4700 of 2001) would contend that no doubt this Court in Union of India vs. Gurbachan Singh and others [(1995) 1 SCC 292] and Union of India and Another vs. Babu Singh and others [(1996) 1 SCC 477] following its decision in Hari Krishan Khosla's case (supra) has held that in relation to an acquisition under the provisions of the 1952 Act, Section 28A of the Land Acquisition Act would not be maintainable but therein this Court did not take into consideration the question that if the provisions for grant of solatium and interest in terms of Sections 23A(1) and 23(2) of Land Acquisition Act

would apply in relation to acquisition under the 1952 Act, there is absolutely no reason as to why a proceeding under Section 28A would not be maintainable. Learned counsel in support of his argument placed strong reliance on a Seven-Judge Bench of this Court in Nagpur Improvement Trust and Another vs. Vithal Rao and Others [(1973) 1 SCC 500], U.P. Avas Evam Vikas Parishad vs. Jainul Islam and Another [(1998) 2 SCC 467] and a recent judgment of this Court in Nagpur Improvement Trust etc. vs. Vasantrao and Others etc. [(2002) 7 SCC 657].

Mr. P.S. Narasimhna, learned counsel appearing on behalf of the appellants in Civil Appeal arising out of Special Leave Petition (Civil) No.533 of 2001, would submit that although Section 28A of the Land Acquisition Act per se is not applicable to a proceeding under the 1952 Act, the said provisions should be read into therein. The learned counsel drew our attention to the said provisions of Section 28A of the Act and submitted that in a case where the parties entered into an agreement in terms of clause (a) of sub-section (1) of Section (8) of the 1952 Act, there is no reason as to why the parties cannot enter into another agreement having regard to the fact that the Arbitrator has awarded enhanced compensation for acquisition of similarly situated lands. The learned counsel drawing our attention to the provisions of sub-section (3) of Section 8 of the 1952 Act would submit that compensation required to be paid even under the 1952 Act being on the market value of the land, and, thus, the criteria for determination of compensation being the same, the provisions of the Land Acquisition Act should be held to be applicable being implicitly embodied therein. In support of the said contention, strong reliance was placed on Haji Mohammad Ekramul Haq vs. The State of West Bengal [AIR 1959 SC 488].

The 1952 Act was enacted to provide for the requisitioning and acquisition of immovable property for the purposes of the Union. The history of the said legislation and the purport and object thereof need not be noticed by us in view of the question involved herein. Section 3 of the said Act provides for power of the Central Government to requisition immovable property. Section 4 empowers the competent authority to take possession of the requisitioned property. Section 5 which provides for rights over requisitioned property reads thus :-

"Rights over requisitioned property.- (1) All property requisitioned under section 3, shall be used for such purposes as may be mentioned in the notice of requisition.

(2) Where any premises are requisitioned under section 3, the competent authority may order the landlord to execute such repairs as may be necessary and are usually made by landlords in that locality and as may be specified in the notice, within such reasonable time as may be mentioned therein, and if the landlord fails to execute any repairs in pursuance of such order, the competent authority may cause the repairs specified in the order to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the compensation payable to the landlord."

A requisitioned property can be released from requisition in terms of Section 6. Section 7 confers power upon the Central Government to acquire the requisitioned property. The principles and method of determining compensation are laid down in Section 8 of the said Act which reads as under :-

"8. Principles and method of determining compensation.- (1) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be

determined in the manner and in accordance with the principles hereinafter set out, that is to say, -

- (a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;
- (b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as, a Judge of a High Court;
- (c) the Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;
- (d) at the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;
- (e) the arbitrator shall, after hearing the dispute, make an award determining the award of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable;
- (f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons;
- (g) nothing in the Arbitration Act, 1940 shall apply to arbitrations under this section.

Sub-sections (2A) and (2B) of Section 8 of the 1952 Act lay down the mode and manner for determination of compensation on requisitioning of the property.

Sub-Section (3) of Section 8 thereof reads as under:

(3) The compensation payable for the acquisition of any property under section 7 shall be the price which the requisitioned property would have fetched in the open market. If it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition."

The acquisition of the lands of the appellants as also the award and the writ petitions, as noticed hereinbefore, have been made and disposed of prior to coming into force of Section 28A of the Land Acquisition Act.

The 1952 Act is a self-contained Code. The 1952 Act not only lays down a criteria for determination of compensation but also provides for the mode and manner thereof. The procedures for determining the award of compensation are not the same.

The provisions of the Land Acquisition Act are, ex-facie not applicable for determination of compensation under the 1952 Act. The provisions of the Land Acquisition Act and the 1952 Act are, thus, not in para-materia. Section 23 of the Land Acquisition Act 1894, on the other hand, lays down the factors which are required to be taken into consideration in determining the amount of compensation. The mode and manner in which the compensation payable for acquisition of land under the 1952 Act and Land Acquisition Act, 1894 are, thus, distinct and different. We fail to see as to how the provisions of Section 28A of the Land Acquisition Act can be made applicable in relation to a proceeding under the 1952 Act.

Furthermore, the criteria for determination of compensation in terms of sub-section (3) of Section 8 must be viewed with the limitations contained therein. In any event the market value of a property may also be determined from the stand-point of a willing purchaser of the land ready and willing to offer the consideration therefor to a buyer. The owner of a land normally would opt for the best offer. Once he has agreed to a price; so far as he is concerned the same ordinarily should be presumed to be the best offer which he could get.

It may be true that in Haji Mohammad Ekrmul Haq's case (supra) this Court observed that even in the matter of payment of compensation under the 1952 Act, the criteria laid down under the Land Acquisition Act would be applicable. However, Section 8 of the 1952 Act underwent amendments and the provisions of the 1952 Act having not only laid down a complete machinery but also the mode and manner of determining compensation, the said decision of this Court cannot be said to have any application in the instant case.

This Court in Gurbachan Singh's case (supra) and Babu Singh's case (supra), in view of the aforementioned distinction following the judgment of this Court in Hari Krishan Khosla's case (supra) clearly laid down the law that Section 28A of the Land Acquisition Act cannot be applied in relation to an acquisition proceeding under the 1952 Act.

Reliance placed by the learned Counsel appearing on behalf of the Petitioner in Hukam Chand and Others v. State of Haryana and others reported in (1996) 5 SCC 164 is mis-placed. Therein the questions raised herein did not fall for consideration. In the Land Acquisition Act, 1894, a provision exists for reference whereas in terms of the provisions of 1952 Act, only in the event the owner of the land does not accept the amount of compensation offered to him, the dispute in relation thereto may be referred to an arbitrator. We may note that although in these cases the dispute as regards amount of compensation was not referred to arbitrator, but the appellants herein filed writ petitions claiming solatium and interest. They, thus, did take the matter to a Competent Court of Law and the said proceeding had a direct bearing on the amount of compensation received by them. In the event it be held that the provisions of Section 28A of the Land Acquisition Act is maintainable in a proceeding under the 1952 Act, not only there would be an enhancement in the quantum of compensation but also corresponding enhancement in solatium and interest, which, in view of the orders passed in the writ petitions, would be impermissible.

In Union of India and Others v. Dhanwati Devi and others reported in (1996) 6 SCC 44 a three judge bench of this Court held:

"14. The question, therefore, emerges whether it is necessary for the State Legislature to expressly specify that interest or solatium shall not be payable for the lands or property acquired under Section 7(1) of the Act. Sub silentio is eloquent. It

would further be seen that Section 8 of the Central Act equally does not provide for payment of solatium and interest. The Act was passed in the year 1968 while the Central Act was passed in 1952. It would, therefore, be reasonable to conclude that the State Legislature was cognizant of the express provisions for payment of interest and solatium available in the Acquisition Act. The Act omitted similar provisions for payment of interest and solatium as part or component of compensation, obviously to fall in line with the Central Act."

The Bench agreed with the reasonings in Hari Krishan Khosla case (supra).

The ratio of Dhanwanti Devi case applies in the instant case.

The decision of this Court in Nagpur Improvement Trust (supra) may not be of much assistance in the instant case inasmuch as therein it was noticed that the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965, Nagpur Improvement Trust Act, 1936 as also the Punjab Town Improvement Act, 1922 which fell for consideration therein had a common scheme and pattern as the State legislations relate to Town Planning and Development and in terms of which, each one of them as regards acquisition of land, the Land Acquisition Act, 1984 was made applicable with certain modifications as contained in the Schedules appended thereto. In that view of the matter, the Bench followed the earlier decision of this Court in U.P. Avas Evam Vikas Parishad (supra) [wherein one of us (Hon'ble the Chief Justice) was a member]. Therein Hari Krishan Khosla (supra) was held to be not applicable as provisions of the Land Acquisition Act, as amended by the 1984 Act relating to determination and payment of compensation, were held to be applicable to acquisition of land for the purposes of the Adhiniyam.

As at present advised and furthermore in view in the factual matrix involved in the present appeals, we do not intend to enter into the question as to whether the said decisions have correctly been rendered or not.

It is the admitted case of the appellants that they entered into with the respondents agreements as regards the amount of compensation payable for acquisition of their lands in the prescribed form in terms of clause (a) of sub-section (1) of Section 8. What was only questioned by them in the writ proceedings was non-payment of solatium and interest. The High Court in the said writ proceedings indisputably came to the conclusion that even solatium and interest was payable. The correctness or otherwise of the said decisions is not in question.

However, once it is held that Section 28A of the Land Acquisition Act is not applicable in relation to lands of the appellants the only question which survives for consideration is as to whether the appellants have any legal right to force the respondents herein to enter into a fresh agreement relying on or on the awards passed by the arbitrator in 1987.

The answer to the said question, in our considered opinion, must be rendered in the negative. It has rightly been accepted at the bar that in the event a reference is made to an Arbitrator by the owner of the lands, Section 28A of the Land Acquisition Act would not be applicable.

The parties herein entered into agreements in terms of clause (a) of sub-section (1) of Section 8 and, thus, the same falls within the realm of a contract, and parties thereto would ordinarily be bound thereby unless the same is vitiated by fraud, misrepresentation etc.

Once the matter is concluded by a contract, a novation of contract would also fall within the realm of contract only. If the contention of Mr. Narasimha is accepted, a contract can be reopened only with the agreement of both the parties. The parties must be ad-idem therefor.

The person whose lands were acquired, thus, having entered into an agreement cannot be said to have any legal right which can be enforced in a court of law so as to enable him to obtain an order from the Court directing the Union of India to reopen the agreement; only because by reason of a subsequent award an enhanced amount of compensation has been paid for similar class of lands. If a right to get the amount of compensation re-determined is held to be implicit in the Act, the same for all intent and purport would amount to invoking the provisions of Section 28A of the Land Acquisition Act indirectly which cannot be done directly. It is a well-settled principle of law that what cannot be done directly cannot be done indirectly.

The enforceable right to re-open a proceeding, which has attained finality, must exist in the Statute itself.

The right to get the amount of compensation re-determined must expressly be provided by the statute. Such a right being a substantive one cannot be sought to be found out by implication nor can the same be read therewith.

The appellants, thus, cannot invoke a right by reading the same into a statute although admittedly there exists none.

It is a well-settled principle of law that the court cannot read anything into the statutory provision which is plain and unambiguous. The court has to find out legislative intent only from the language employed in the statutes. Surmises and conjectures cannot be restricted to for interpretation of statutes. [See Union of India and others vs. Filip Tiago De Gama of Vedem Vasco De Gama, (AIR 1990 SC 981)].

This Court in Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. & Ors. [2002 (9) SCALE 102], has observed :-

"Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute"

[See also M/s Unique Butyle Tube Industries Pvt. Ltd. vs. U.P. Financial Corporation & Ors. (2002 (9) SCALE 778)].

For the views we have taken, we are of the opinion that it is not necessary to go into the larger question raised by the learned counsel for the parties in these matters.

Submission of Mr. Narasimha to the effect that the Collector himself having made an award by order dated 30th May, 1988 the Central Government could not have filed a writ petition, is stated to be rejected. The contention of the Central Government, respondent herein, in the writ petition

was that as the provision of Section 28A of the Land Acquisition Act being not applicable, the Special Land Acquisition Collector acted illegally and without jurisdiction in reopening the matter and passing a supplementary award. Such a contention was raised on the basis of a decision of this Court. Furthermore, the Special Land Acquisition Collector is a creature of the statute. He, therefore, was bound to act within the four-corners thereof. If he has passed an order invoking a provision of law which was not applicable, he committed jurisdictional error and the order impugned before the High Court by the respondents was a nullity. We, therefore, cannot accept the contention of the appellants that the respondent was not a person aggrieved and thus could not have maintained the writ petition.

It was submitted that the respondents having filed a writ petition after a period of eight years, the same ought not to have entertained. Primarily a question of delay and laches is a matter which is required to be considered by the writ court. Once the writ court has exercised its jurisdiction despite delay and laches on the part of the respondents, it is not for us at this stage to set aside the order of the High Court on that ground alone particularly when we find that the impugned judgment is legally sustainable.

For the foregoing reasons, we do not find any merit in these appeals which are accordingly dismissed but in the facts and circumstances of the case, there shall be no order as to costs.