

**Rattan Singh Vs. Union of India**

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**Court :** Delhi

**Decided On :** Mar-11-1991

**Reported in :** 1991(21)DRJ113

**Judge :** Leela Seth and; Anil Dev Singh, JJ.

**Acts :** [Land Acquisition Act, 1894](#) - Sections 23(2) and 28

**Appeal No. :** Civil Miscellaneous Appeal No. 1497 of 1984 and Regular First Appeal No. 202 of 1967

**Appellant :** Rattan Singh

**Respondent :** Union of India

**Advocate for Def. :** Shri. R.P. Bhardwaj

**Advocate for Pet/Ap. :** Ramesh Chandra,; Anand Yadav,; R.P. Bhardwaj and;

**Judgement :**

**Anil Dev Singh, J.**

(1) By means of this application, the applicants seek correction/modification of the judgment and order of this court dated September 14, 1984 in R.F.A. No. 202 of 1967. In the R.F.A this court awarded a sum of Rs. 7,000.00 per bigha as compensation as also solarium @ 15 per cent and interest @ 6% per annum from

the date of taking over of possession of the land by the Collector till the payment into court of the amount in excess of the sum which the Collector awarded as compensation.

(2) By this application the applicants claim the benefits of higher solarium and interest under the Land Acquisition (Amendment) Act, 1984 (Act No 68 of 1984) (hereinafter referred to as the 'Amending Act' ). Shri Ramesh Chandra, learned counsel turn the applicants urged that by virtue of Amending Act his clients would be entitled to enhanced solarium @ 30% on the market value instead of 15% awarded by this court in R.F A. 202 of 1967 under Section 23(2) as amended by Section 15 clause (b) read with Section 30(2) of the Amending Act. He also claimed higher interest under Section 34 as amended by the Amending Act.

(3) Before going to the merits of the contention raised by the learned counsel for the applicants it may be pointed out that the Collector had made the award in the present case on April 5, 1965. Thereafter in reference proceedings under Section 18 of the Land Acquisition Act, the Additional, District Judge made the award on May 24, 1967. As already pointed out the appeal from the said award of the District Judge was decided by this Court on September 14, 1984. The Amending Act received the assent of the President on September 24, 1984. Thus by this time the appeal of the applicants already stood disposed of.

(4) Learned counsel for the applicants submitted that according to Section 30(2) of the Amendment Act the claimants would be entitled to higher solarium since their appeal against the award of the Additional District Judge was pending when the corresponding Land Acquisition (Amendment) Bill, 1982 was introduced in the Parliament. According to him a land owner is entitled to an award of 30% solarium instead of 15% where an order was passed by the High Court or the Supreme Court in appeal against an award of the Collector or the court between 30th day of April, 1982 and September 24, 1984, In other words he contended that Section 30(2) of the Amending Act is applicable to all proceedings relating to compensation pending on April 30, 1982 whether before the Collector or the Court or the High Court or the Supreme Court.

(5) The argument of the learned counsel for the applicants boils down to this that irrespective of the date of the award of the Collector under Section 11 or the court under Section 18 if an appeal is pending between April 30, 1982 and the date of commencement of the Act, the amended Section 23(2) and Section 30(2) of the Amending Act would be attracted qualifying a claimant for enhanced solarium.

(6) The scope of amended Section 23(2) as also Section 30 of -the Amending Act was considered by the Supreme Court in K. Kamalafammanniavar (dead) by L Rs. v. The Special Land Acquisition Officer, and Vice Versa : [1985]2SCR914 . It was held that the Parliament bestowed limited retrospectivity to amended Section 23(2) by Section 30(2) of the Amending Act as it made the provisions applicable to awards made between April 30, 1982 and before September 24, 1984 and also to appeals to the High Court and the Supreme Court arising from such awards. The Supreme Court observed as follows:

'2.However, in the appeal filed by the claimant, Shri K.N. Bhat, learned counsel urged that in view of the Land Acquisition Amendment Act, 1984, his client is entitled to be paid solarium ' - of 30% of the compensation instead of the 15% to which he had been held entitled by the lower courts under the unamended Act. He relied upon Section 15(b) and Section 30(2) of 1984 Amendment Act which are in the following terms :- '15. In Section 23 of the principal Act,- (a)..... (b) in Sub section (2) for the words 'fifteen per centum', the words 'thirty per centum' shall be substituted'. (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 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 30 day of the April, 1982 (the date ! of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People) and before the commencement of this Act.;

Shri Bhat's submission was that Section 30(2) of the amendment Act made the amended Section 23(2) which increased the solarium 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. We are

unable to agree with Shri Bhat's submission. It is worthwhile remembering at this juncture that awards made by the Collector under Section 11 and by the court on reference under Section 18 only are described as awards in the Land Acquisition Act, while further appeals are provided to the High Court and the Supreme Court. The new Section 23(2), of course, necessarily applies to awards made by the Collector or court after the commencement of the Act. that is, after September 9, 1984 which has the date on which the Act received the assent of the President. The Bill which ultimately became the Amendment Act was introduced into Parliament on April 30, 1982. Parliament obviously desired to give affect to the amended Section 23(2) from the date of introduction of the Bill. So the amended provision was expressly made applicable by Section 30(2) to awards made by the Collector or the court between April- 30. 1982 and September 24, 1984 also. A natural corollary was that the new provision should apply to orders made by the High Court or by the Supreme Court in appeals against such awards that is awards made between April 30, 1982 and September 24. 1984 Parliament did not intend and could not have intended that whatever be the date of the award, however, ancient it may be, solarium would stand enhanced to '30 per centum' if an appeal happened by chance or accident to be pending on April 30, 1982. Surely it was not the intention of Parliament to reward those who kept alive the litigation even after several years. If it was the intention of the Parliament to make the amended Section 23(2) applicable to all proceedings relating to compensation wherever they be pending, the words 'after 30th day of April, 1982 (the date of introduction of the Land Acquisition Amendment Bill, 1982 in the House of People) and before the commencement of this Act' in Section 30(2) would become meaningless. It is clear that the Parliament wanted Section 23(2) to have very limited retrospectivity It made the provisions applicable to awards made after April 30, 1982 and before September 24, 1984 also and further to appeals to the High Court and Supreme Court arising from such awards, In this view we see no force in the submission of Shri Bhat.....'

(7) This decision was not able to hold its sway for long as hot on its heels followed the decision of a three Judges Bench of the Supreme Court in Bhag Singh v. Union Territory of Chandigarh : AIR 1985 SC1576 , which took a contrary view, by holding that under Sub-section 2 of Section 30 of the Amending Act the provisions

of amended Section 23(2) would apply when proceedings relating to compensation are pending during the interregnum viz between April 30, 1982 and before September 24, 1984 whether before the Collector or before the Court or the High Court or the Supreme Court and even when they have finally terminated before the enactment of the amending Act. According to this judgment the provisions of amended Section 23(2) would be attracted even in a case where the award of the Collector or the court was prior to April 30, 1982 provided an appeal was pending before the High Court or the Supreme Court on the date of introduction of the corresponding Land Acquisition Amendment Bill in Parliament. In taking that view Bhag Singh (Supra) overruled Kamalakammanniavaru (dead by Lrs (Supra) and approved the opinion expressed in another three Judges Bench in State of Punjab v. Mohinder Singh and another, : AIR 1987 SC758 . Even before the judgment of the Supreme Court was rendered in Bhag Singh (Supra), this court in Rfa 113 and 1 14 of 1968 Roghubir Singh (deceased by LRs) and others v. Union of India etc decided on : AIR1985 Delhi228 ), that Section 30(2) of the amending Act would also be applicable to cases in which the award is made by the Collector or by the Court of the District Judge or to any order passed by the High Court or the supreme Court between April 30, 1982, when the amendment Bill was introduced in the House of the People, and before the commencement of the Amendment Act i.e. September 24, 1984. Consequently this court awarded 30% solarium under the amended provisions of Section 23(2) even though the award of the Collector and the Additional District Judge was made long before the dale of introduction of the corresponding Land Acquisition Amendment Bill in the Parliament. This judgment was carried in appeal to the Supreme Court by the Union of India. The matter ultimately came to be decided by the Constitution Bench of Five Judges. Our attention was drawn by Shri R.P. Bhardwaj, learned counsel for the respondents, to this decision of the Supreme Court which is reported as Union of India & another v. Roghubir Singh (dead) by LRs. etc. : [1989]178ITR548(SC) . The Constitution Bench by a unanimous opinion overruled Bhag Singh (Supra) State of Punjab (Supra) and reiterated and upheld the view expressed in K. Kamalajommanniavaru (Supra), Speaking for the court Pathak, E.J. held as under : 31. We now come to the merits of the reference. The reference is limited to the interpretation of Section 30(2) of the Land Acquisition

(Amendment) Act of 1984. Before the enactment of the Amendment Act, solarium was provided under Section 23(2) of the Land Acquisition Act (shortly, 'the Parent Act') at 15% on the market value of the land computed in accordance with Section 23(1) of the Act. the solarium being provided in consideration of the compulsory nature of the acquisition. The Land Acquisition Amendment Bill, 1982 was introduced in the House of the People on 30th April, 1982 and upon enactment the Land Acquisition Amendment Act, 1984 commenced operation with effect from 24th September, 1984.. Section 15 of the Amendment Act amended Section 23(2) of the Parent Act and substituted the words '30 per centum' in place of the words '15 per centum'. Parliament intended that the benefit of the enhanced solarium should be made available albeit to a limited degree, even in respect of acquisition proceedings taken before that date. It sought to effectuate that intention by enacting Section 30(2) in the Amendment Act. Section 32 of the Amendment Act provides :

'(2).The provisions of Sub-section.(2) of Section 23.....of the principal Act as amended by clause (b) of Section 15... .....of this Act.....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) Bill, 1982, in the House of the People) and before the commencement of this Act.'

In construing Section 30(2), it is just as well to be clear that the award made by the Collector referred to here is the award made by the Collector under Section 11 of the Parent Act. and the award made by Court is the award made by the Principal Civil Court of Original jurisdiction under Section 23 of the Parent Act on a reference made to it by the Collector under Section 19 of the Parent Act. There can be no doubt that the benefit of the enhanced solarium is intended by Section 30(2) in respect of an award made by the Collector between 30th April, 1982 and 24th September, 1984. Likewise, the benefit of the enhanced solarium is extended by Section 30(2) to the case of an award made by the Court between 30th April, 1982 and 24th September, 1984, even though it be upon reference from an award

made before 30th April, 1982. 32. The question is : what is the meaning of the words 'or to any order passed by the High Court or Supreme Court on appeal against any such award ?' Are they limited, as contended by the appellants, to appeals against an award of the Collector or the Court made between 30th April, 1982 and 24th September, 1984. or do they include also, as contended by the respondents, appeals disposed of between 30th April, 1982 and 24th September, 1984 even though arising out of awards of the Collector or the Court made before 30th April, 1982. We are of the opinion that the interpretation placed by the appellants should be preferred over that suggested by the respondents. Parliament has identified the appeal before The High Court and the appeal before the Supreme Court by describing it as an appeal against 'any such award'. The submission on behalf of the respondents is that the words 'any such award' mean the award made by the Collector or Court, and carry no greater limiting sense; and that in this context, upon the language of Section 30(2), the order in appeal is an appellate order made between 30th April, 1982 and 24th September, 1984 in which case the related award of the Collector or of the Court may have been made before 30th April, 1982. To our mind, the words 'any such award' cannot bear the broad meaning suggested by learned counsel for the respondents. No such words of description by way of identifying the appellate order of the High Court or of the Supreme Court were necessary. Plainly, having regard to the existing hierarchical structure of for a (forum?) contemplated in the parent Act these appellate orders could only be orders arising in appeal against the award of the Collector or of the Court. The words 'any such award' are intended to have deeper significance. .and in the context in which those words appear in Section 30(2) it is clear that they are intended to refer to awards made by the Collector or Court between 30th April, 1982 and 24th September, 1984, In other words Section 30(2) of the Amendment Act extends the benefits of the enhanced solarium to cases where the award by the Collector or by the Court is made between 30th April, 1982 and 24th September, 1984 or to appeals against such awards decided by the High Court and the Supreme Court whether the decisions of the High Court or Supreme Court are rendered before 24th September, 1984 or after that date. All that is material in that the award by the Collector or by the Court should have been made between 30th April, 1982 and 24th September, 1984. We find ourselves in agreement with

the conclusion reached by this court in K. Kamalajammanniavar (dead) by Lrs ". Special Land Acquisition Officer. : [1985]2SCR914 (supra), and find ourselves unable to agree with the view taken in Bhag Singh v Union Territory of Chandigarh. : AIR 1985 SC1576 (Supra) The expanded meaning given to Section 30(2) in the latter case does not, in our opinion, flow reasonably from the language of that subsection. It seems to us that the learned Judges in that case missed the significance of the word 'such' in the collocation 'any such award' in Section 30(2). Due significance must be attached to that word, and to our mind it must necessarily intend that the appeal to the High Court or the Supreme Court, in which the benefit of the enhanced solarium is to be given, must be confined to an appeal against an award of the Collector or of the Court rendered between 30th April, 1982 and 24th September, 1984'.

(8) In view of the above authoritative pronouncement of the Supreme Court the matter is no longer *res integra* and the benefit of enhanced solarium can be given only in those cases in which award of the Collector under Section 11 or the Court under Section 18 is made between April 30, 1982 and before September 24, 1984 and the application of the provisions be confined to the appeals arising under such awards.

(9) Learned counsel for the applicants invited our attention to the decision of this court in Rfa 132 of 1968 in Hukam Chand Jain v. The Union of India decided on September 28, 1990 which granted 30% solarium even though the awards of the Collector and the Court were dated February 28, 1962 and February 3, 1968 respectively. This court was of the view that since the appeal, which is a continuation of the original proceedings, was pending on April 30, 1982 i.e. on the date of commencement of the Amending Act, the land owners would be entitled to higher solarium. This very aspect was considered by the Supreme Court in Raghbir Singh (Supra) and it was held that the application of the general principle must yield to limited terms of the statutory provisions itself. In this regard it would be advantageous to refer to the observations of the Constitution Bench which reads as under:

'34Our attention was drawn to the order made in *State of Punjab v. Mohinder Singh* AIR 1962 Sc 758 (supra), but in the absence of a statement of the reasons which persuaded the learned Judges to take the view they did we find it difficult to endorse that decision. It received the approval of the learned Judges who decided *Bhag Singh* AIR 1985 1576 (Supra), but the judgment in *Bhag Singh* ( Supra) as we have said earlier, has omitted to give due significance to all the material provisions of Section 30(2), and consequently we find ourselves at variance with it. The learned Judges proceeded to apply the principle that an appeal is a continuation of the proceeding initiated before the Court by way of reference under Section 18 but. in our opinion, the application of a general principle multi yield to the limiting terms of the statutory provision itself. Learned counsel for the respondents has strenuously relied on the general principle that the appeal is a re-hearing of the original matter, but we are not satisfied that he is on good ground in invoking that principle.....'

(10) On principle it seems to us that while this court should regard itself bound by & previous decision of a bench of coordinate & length of the court, nevertheless it must depart from it if the previous decision is contrary to the law laid down by the Supreme Court. As already noticed the Supreme Court has set the controversy at rest in *Raghubir Singh* (Supra) by holding that the benefit of enhanced solarium under Section 30(2) of the Amending Act would be available to cases where the award by the Collector under Section 11 or the court under Section 18 was made between April 30, 1982 and before September 24, 1984 or to appeals decided by the High Court or of the Supreme Court arising out of an award of the Collector or the court made between the said two dates. thereforee the benefit of Section 23(2) as amended has to be confined only to those cases in which the award is given between the two cut off dates viz April 30. 1982 and September 24, 1984.

(11) Mr. Ramesh Chandra also referred to the decision of the Supreme Court in *Union of India and others v. Filip Tiago De Gama of Vedem Vasco De Gama* : (1990)1SCC277 . The decision in that case does not further the case of the applicants in any manner. In that case award by the Collector was made on March 5, 1969 whereas the reference court made the award on May 28.1985. Obviously Section 23(2) was attracted as the award of the Court was made after the

commencement of the Act viz. September 24, 1984. thereforee it was held that the benefit of enhanced solarium should be available to the claimants in that case. The line of reasoning in Filip Tiago De Gama of Vedem Vasco De Gama (Supra) conforms to the view expressed by the Supreme Court in K.Kamalafammanniavaru (Supra) are reproduced even at the cost of repetition in order to emphasise the correct legal position :

'THE new Section 23(2), of course, necessarily applies to awards made by the Collector or Court after the commencement of Act, that is, after September 9, 1984 which was the date on which the Act received the assent of the President.'

However, in the instant case the award of the Collector as also of the court were made long before the introduction of the Land Acquisition Amendment Bill. The case of the applicants falls outside the purview of amended Section 23(2) and Section 30(2) of the Amending Act as it is not covered by limited retrospectivity of latter provision which is confined to awards passed between April 30, 1982 and before September 24, 1984 and appeals arising there from. Thus this case is of no avail to the applicants. Consequently we reject the contention of the applicants for award of higher solarium.

(12) It was next contended by the learned counsel for the applicants that his clients in any case would be entitled to higher interest under Section 34 of the principal Act as amended, by the Amending Act read with Section 30(3) of the same Act. It was urged that since the possession of the land had been taken before April 30, 1982 and the amount of excess compensation having not been paid his clients would be entitled to the higher interest in accordance with the provisions of Section 30(3) of the Amending Act. In order to appreciate this contention it would be advantageous to extract the relevant provisions of the Act ;

'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'.

30(1).Transitional provisions..... (3) The provisions of Section 34 of the principal Act, as amended by Section 20 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,- (a) every case in which possession of any land acquired under the principal Act had been taken before the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982. in the House of the People), and the amount of compensation for such acquisition had not been paid or deposited under Section 31 of the principal Act until such date, with effects on and from the date ; and (b) every case in which such possession has 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.

31.Payment of compensation or deposit of same in Court:-(1) On Making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persona interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies. mentioned in the next sub-section, (2) xxxxxxxx (3) xxxxxxxx (4) xxxxxxxx

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 centum 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.'

(13) As is apparent from the plain reading of Section 28 the Collector is liable to pay interest at the stipulated rate on any amount awarded as compensation by the court in excess of the collector's award from the date on which he took possession of the land till the date of payment of such excess in the court. However, under Section 34 of the Act where the compensation is not paid or deposited before taking possession of the property from the landowners, the Collector in that event is also bound to pay interest @ 6% or 9% on the amount awarded by the court from the time of so taking over of the possession of the land until such amount has been paid or deposited. While Section 28 applies in a case of possession taken after the Collector has made the award Section 34 applies where possession of the land under acquisition has been taken before an award has been made. Ordinarily, the Collector will not take possession of the land under acquisition until an award has been made, however, in urgent cases under Section 17(4) of the Act possession can be taken before he has made an award. It appears to us that Section 34 would be attracted in the latter category of cases. The claimants have not made out a case of having lost possession before making of the award by the Collector and as such provisions of Section 34 of the principal Act read with Section 30(3) of the Amending Act are not attracted.

(14) Section 30(3) of the Amending Act would apply in a case where the amount of compensation had not been paid or deposited under Section 31 of the principal Act until 30th day of April, 1982. It is neither alleged nor proved by the applicants that the compensation had not been deposited under Section 31 of the principal Act before April 30, 1982. In this view of the matter neither Section 34 of the principal Act nor Section 30(3) of the Amending Act is attracted to the instant case. No claim for interest under Section 28 read with Section 30(2) of the Amending Act has been made by the learned counsel for the applicants. Even if the same had been pressed into service, it would have failed for the same reason for which demand for higher solarium has been rejected. Thus the contention of the learned counsel is in regard to higher rate of interest is without any force and the same is rejected.

(15) In view of the aforesaid discussion the application merits dismissal and is accordingly dismissed. However, we make no order as to costs.

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