

Girdhari and ors. Vs. Union of India (Uoi) and ors.

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Court : Rajasthan

Decided On : Jul-23-1996

Reported in : 1996(2)WLN74

Judge : B.J. Shethna, J.

Appeal No. : S.B. Civil Writ Petition No. 3070 of 1995

Appellant : Girdhari and ors.

Respondent : Union of India (Uoi) and ors.

Disposition : Petition allowed

Judgement :

B.J. Shethna, J.

1. The petitioners are the poor villagers. They are fighting their legal battle against mighty Union of India for getting the amount awarded to them by the arbitrator including compensation, solatium and interest for the lands which have been acquired by the Union of India under the Requisitioning and Acquisition of Immovable Property Act, for short the Act. The lands of the petitioners are situated in the State of Rajasthan. Initially their lands were hired on rent in 1972 by the Union of India for the defence purposes and they continued to pay rent for the said lands to the lands owner-petitioners upto 1987. In 1987 the said lands were

acquired under the notification. Since then they have stopped to pay rent for the said lands. It appears from the judgment of this Court at Annex.I dated July 17, 1992, delivered in several petitions on September 28, 1989 a meeting of the representative of Union of India, Collector, Addl. Collector, SDO, and Tehsildar of Jodhpur and the Khatedars was held and the resolution was passed for payment of compensation at Rs. 7000/- per bigha to the khatedars. These lands were acquired without any solatium and interest. Not only that the interim payment was made at Rs. 1000/- per bigha to the khatedars. However, one khatedar filed writ petition No. 4814/90 before this Court which was allowed by B.R.Arora, J. by his order dated May 16, 1991 directing payment of compensation at Rs. 7000/- and also to determine the compensation of trees, building and well within two months. From the award dated 23.11.1992 (Annex-2) of the arbitrator it also appears that subsequently i.e. on 18.12.1991 the Collector reduced the amount to Rs. 3850/- per bigha unilaterally without assigning any cogent reasons in a arbitrary manner. On July 17, 1992 this Court (Milap Chandra Jain, J, as he then was) while allowing the group petitions directed the respondent No. 1 to appoint arbitrator under Section 8(1)(b) of the Act within three months from the date of the order and also directed the respondents to make payment of 80% of the amount mentioned in the notice to the petitioners within three months from the date of the order and also adjust the amount' already paid to them at Rs. 1000/- per bigha and the total amount will be adjusted in the final amount of compensation payable to them. Pursuant to that order the Secretary to the Union of India ordered on 23.11.1992 appointed Shri O.P. Bishnoi, Distt. and Sessions Judge, Jodhpur as arbitrator under Section 8(1)(b)(v) of the Act.

2. The facts which are not in dispute are as under:

The agricultural land in question is situated in villages Jajiwal, Khichiya, Kankrala, Bhandariya, Katudi and Kala. In all, about 981 acres of land was taken on rent for defence purposes and it is not in dispute that the rent upto 31.3.1987 has been paid to the land owners. Subsequently, it was decided to acquire the said land which was acquired under the provisions of Requisitioning and Acquisition of Immovable Property Act and the competent authority (District Collector, Jodhpur) vide his order dated 18.12.1991 fixed compensation at the rate of Rs. 3850/- per

bigha... the land owners have filed their claims and according to them, the land in question is very fertile and capable of producing double crops. Apart from that, the land being in the vicinity of the city of Jodhpur and being well connected by rail and road, it has been contended that at present the prices of the land are ranging between 40 to 50 thousand per bigha and in April, 1987 the prices were not less than Rs. 20,000/- per bigha.

3. In reply, the Assistant Defence Estate Officer has submitted that the compensation awarded by the competent authority at the rate of Rs. 3850/- per bigha was very reasonable. It is further submitted that the land owners in their writ petitions themselves submitted that the compensation at the rate of Rs. 7000/- per bigha be awarded and in view of that, they are estopped from asking for a higher price. It is also contended that no solatium or interest can be allowed under the law.'

4. Following issues were framed by the learned arbitrator on the contentions raised by both the sides before him:

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5. After hearing both the sides, the learned arbitrator passed the following award on 6.6.94:

1. Compensation shall be paid @ Rs. 7000/- per bigha, less the amount already paid, to the concerned land owners.

2. Solatium shall be paid @ 10%

3. Interest @4% shall be paid, w.e.f. 12.11.1987 till the payments are made, on the amount due.

6. The petitioners have prayed in this writ petition to direct the respondents to pay compensation with interest and all benefits and also pay compensation to the petitioners at the present market price. In alternative it was submitted by the learned Counsel for the petitioners that the respondents be directed to comply with the award at Annex. 2 passed by the arbitrator forthwith. Infact, earlier prayer made by the petitioners in the petition has not been seriously pressed and the learned Counsel for the petitioners have only argued that the respondents be directed to comply with the award passed by the learned arbitrator forthwith in its true spirit. As against that, learned Counsel Shri P.P. Chaudhary, appearing for the Union of India vehemently submitted that this Court should not entertain this petition as according to him this writ petition filed by the petitioners is not at all maintainable. He submitted that instead of filing this writ petition the petitioners ought to have filed a civil suit before the competent authority and obtain decree and get the award passed by the arbitrator executed against the respondents. He also submitted that respondents are not bound to pay solatium and interest awarded by the arbitrator. He also submitted that the Union of India has challenged the award of the arbitrator in favour of the petitioners before this Court by way of regular appeal under the Act and, therefore, this Court should not interfere with the award in this writ petition. At this stage it must be stated that the objections were filed by the Union of India before the arbitrator on 6.6.94 against the award, but the same were dismissed on 28.3.95 on the ground of jurisdiction as stated at the Bar by the learned Counsel Shri Chaudhary. It is only thereafter the Union of India has filed appeal under Section 11 of the Act after the period of limitation. The period of limitation is 30 days. It is also to be stated that the special appeal is under defects as it is filed beyond the period of limitation and the application for condonation of delay has not yet come up before the Court. It may

also be stated that on the last occasion i.e. 12.7.96 when this matter was called out for hearing learned Counsel Shri Chaudhary stated that Union of India has already challenged the award dated 6.6.94 passed by the arbitrator before this Court by way of civil misc. appeal No. 38/96, but no stay has been obtained so far in that appeal and the matter has not come up for admission. Therefore, it was made clear that if the special appeal is not heard and no stay is obtained by 18.7.1996 then this petition will be heard and finally disposed of on merits on 23.7.96 i.e. today.

7. Today, it is stated at the Bar by the learned Counsel Shri Chaudhary that delay application itself has not come up for orders before the Court and, therefore, he was unable to obtain any stay in the appeal and get the appeal heard.

8. As stated earlier the possession of the land of the petitioners was taken away back in 1987, after the notification was issued under the Act. Instead of depositing amount at the rate of Rs. 1000/- per bigha the Union of India has not done anything in the matter. Though they initially agreed to pay Rs. 7000/- per bigha without solatium and interest. Subsequently they did not agree to pay Rs. 7000/- per bigha and ultimately the Collector unilaterally fixed the price of the land at Rs. 3850/- per bigha instead of Rs. 7000/- per bigha. Before the arbitrator the Union of India fought and miserably failed and the arbitrator passed the award on 6.6.94 which has been reproduced earlier. They were aggrieved of that award and instead of filing objections before the arbitrator himself they ought to have filed appeal provided under the Act before this Court at the earliest, in any case before the period of limitation expired. Instead of that they preferred to file objection which came to be dismissed on the ground of jurisdiction on 28.3.95. It was only thereafter they filed appeal in 1995, but so far not obtained any interim order from this Court. Infact they did not make any attempt to see to it that atleast delay application is heard. Thus, without getting any stay order from this Court against the award passed by the arbitrator in appeal filed by them which is filed much after the period of limitation they granted stay to themselves and refused to comply with the award passed by the arbitrator and raise all sorts of technical objections about the maintainability of the writ petition. Their first preliminary objection that the petitioner should have been relegated to alternative remedy of suit and obtain

decree from the Civil Court and to get the award executed must be straight away rejected for the simple reason that though the petitioners have succeeded before the arbitrator for more than 2 years they have not got fruits of that award. The petitioners as stated earlier are poor villagers and they cannot be sent from pillar to post. In absence of any interim order from, this Court in the appeal filed by the Union of India against the award passed by the arbitrator the award passed by the arbitrator has to be complied with unless and until it is disturbed or set aside by the High Court. At present the award holds good. The Union of India was bound to comply with the award and it is only because they deliberately avoided to comply with the award the petitioners were compelled to approach this Court by way of this writ petition, therefore, the first objection regarding maintainability of this writ petition on the ground of alternative remedy available to the petitioners must be rejected and it is rejected.

9. Mr. Chaudhary, next contended that arbitrator committed an error in awarding solatium and interest on the awarded amount. He submitted that the land was not acquired under the Land Acquisition Act but was acquired under the Requisitioning and Acquisition of Immoveable Property Act, 1952 under which there is no provision for awarding solatium or interest. He submitted that even if they have not filed appeal then also they are not bound to comply with the award and this Court cannot direct the Union of India to comply with such illegal order passed by the arbitrator who has no jurisdiction to award solatium or interest. In support of his submission Mr. Chaudhary relied upon two decisions of the Supreme Court reported in : 1992(2)SCALE621 in case of Union of India v. Harikishan Khosala and : AIR 1994 SC1149 in case of Union of India v. Kolluni Ramaiah and Ors. In the latter decision of the Supreme Court in case of Kolluni Ramaiah (supra) the Supreme Court relying upon its earlier decision in case of Hari Kishan Khosala (supra) held that award relating to solatium and interest was illegal. As against that, learned Counsel for the petitioners relied upon two Supreme Court decisions reported in : [1993]2SCR969 in case of Rao Narain Singh v. Union of India and : AIR 1994 SC1451 in case of Prabhudayal and Ors. v. Union of India and submitted that the arbitrator has not committed any error in awarding solatium and interest. In fact, it was pointed out by the learned Counsel for the petitioner that the learned arbitrator did consider the judgment of the Supreme Court in case of Hari

Kishan Khosala (supra) which was cited by the Union of India before him but relying upon the later judgment of the Supreme Court in case of Rao Narain Singh (supra), the arbitrator has awarded solatium and interest, therefore, he submitted that this Court should not interfere with the order passed by the learned arbitrator in awarding solatium and interest. In fact, he submitted that it is not open to this Court to go into this question because this is a petition filed by the petitioners to implement award passed by the arbitrator against the Union of India and it is not open to the Union of India to raise such a plea in this writ petition. He submitted that learned Counsel for the Union of India has tried to take two chances before this Court. He also submitted that this argument could have only been advanced in regular appeal which he has filed before this Court and not in this writ petition.

10. I find lot of force in this submission made by the learned Counsel for the petitioner. It is touching but an attempt on behalf of the learned Counsel for the Union of India to get a finding from this Court in this writ petition. It may be that the appeal filed by the Union of India before this Court may be even dismissed on the ground of delay while not condoning the delay in filing the appeal late before this Court. Therefore, an attempt is made in this writ petition to see to it that the award passed by the arbitrator granted solatium and interest be not implemented. However, Mr. Chaudhary insisted and invited finding on this issue, therefore, I have to deal with the submission made by Mr. Chaudhary, though, I am of the opinion that this Court cannot go into this question. It is true that in H.K. Kosla's case (supra) the Supreme Court has held that when the land is acquired under 'the Act' and not under the Land Acquisition Act then there is no question of granting solatium and interest. That decision was followed by the Supreme Court in Kolluni Ramaiah's case (supra), but it must be stated that in para No. 20 at page 156 the Supreme Court has stated in H.K. Khosla's case as under:

In Civil Appeal Nos. 4688-94 of 1989 for 16 years no arbitrator was appointed. Under exactly similar situation this Court in Civil Appeal Nos. 470 and 471 of 1985 dated February 11, 1985 took the view that the award does not call for any interference.

11. It must be stated that the said case was arising out of the acquisition proceedings initiated under 'the Act' from Malo majra Tehsil, Distt. Patiala of Punjab State and Kulluni Ramaiah case was arising out of the proceeding initiated under the Act from a District Vishakhapatnam of State of Andhra Pradesh. H.K. Khosla's case was decided by the Supreme Court on 16th September, 1992, thereafter, Rao Narain Singh's case (supra) was decided on 6.4.93 by the Supreme Court. That was a case arising out of acquisition proceedings initiated under the Act from the Rajasthan State. In para 17 of the judgment at page 1564 of Rao Narain Singh's case the Supreme Court has observed as under.:

The last question that arose for our consideration is whether the High Court had acted rightly in fixing the solatium payable on the amount of compensation for land and building at 10 per cent instead of 15 per cent. The High Court in fixing the solatium at the rate of 10 per cent on the amount of compensation payable for the land and building has held that the land and building acquired being in the State of Rajasthan the solatium payable was the rate admissible therefore under Section 23(2) of the Rajasthan Land Acquisition Act the State Act and not the rate admissible under the corresponding provision in the Central Land Acquisition Act. We find no good reason to disagree with the High Court in the said matter as the solatium to be paid for the land acquired under the Requisitioning and Acquisition Act cannot be a benefit of solatium not available for a land acquired under the State Act, i.e. under the Rajasthan Land Acquisition Act.

12. Thus, there is a clear distinction between two cases of the Supreme Court cited by Mr. Chaudhary. They are from different state and not from Rajasthan, whereas the present case is directly covered by the Supreme Court decision in Rao Narain Singh's Case (supra). In the later decision, the Supreme Court did not interfere with the award of granting solatium and interest by the arbitrator in the award on the ground of equity. In Prabhu Dayal's case the Supreme Court did consider the H.K. Khosla's case as well as Harbans Singh Shanni Devi v. Union of India (C.A. Nos. 470 and 471 of 1985 disposed of by this Court on 11th February, 1985) which was infact referred by the Supreme Court in para No. 20 of H.K. Khosla's case. From the fact stated above it is clear that equity also is clearly in favour of the petitioners and, therefore, the respondents are bound to comply with

the award passed by the arbitrator in its true spirit.

13. For the reasons stated above, this petition is allowed and the respondents are directed to comply with the award, Annex. 2 passed by the arbitrator on 6.6.94 within three months from today. The Union of India shall pay special cost of Rs. 5000/- to the petitioners. Accordingly, this petition is allowed with costs.

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