

Arjan Singh Chopra *v.* Sewa Sadan Social Welfare Centre, Ferozepore
Cantt. (Mehtar Singh, C.J.)

and hence carried on with a profit motive. If this was so, nothing stops the Legislature from limiting a definition in section 2(d) in the Act to a shop, but that is not so. The definition of a "non-residential building" applies to a building, whether shop or otherwise, which is used solely for the purpose of trade or business. So that the definition is not confined to a shop only nor does it necessarily imply that the activity, that is 'business or trade', must have with it profit motive. So this argument on the side of the landlord cannot succeed and as the activity of the tenant-society is 'business' within the meaning and scope of that word as used in section 2(d), the demised premises are 'non-residential building', with the result that the landlord cannot have ejection of the tenant-society on the ground which is subject-matter of argument at this stage.

The revision application fails and is dismissed but in view of the circumstances of the case there is no order with regard to costs.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

THE PUNJAB STATE,—*Appellant*

versus

JHANDU LAL AND OTHERS,—*Respondents*

Execution First Appeal No. 86 of 1966

January 13, 1967.

Land Acquisition Act (1 of 1894)—Ss. 28, 31 and 34—Amount of compensation deposited in Government Treasury after the award of Collector because of the refusal of claimant to accept the same—Interest on the amount—Whether payable—Claimant obtaining interim order restraining Government or institution from making any constructions on the land—Whether has the effect of cessation of interest.

Held, that the deposit, in order that the interest may cease to run, has to be in terms of section 31(2) of the Land Acquisition Act, that is, it has to be made to the Court to which the reference lay, if made under section 18 of the Act. The deposit in the Government Treasury is not provided for in section

31(2) of the Act and section 34 clearly provides that if there is no deposit made, as required by section 31(2), the interest will have to be paid from the date of taking over of the possession till payment.

Held, that the refusal of the claimant to receive the amount from the Collector will not cause the cessation of the interest. Section 31(2) clearly contemplates that it is on the refusal of the claimant to receive the money that the same has to be deposited in a Court to which the reference will lie. Moreover, offer of payment cannot be equated with actual payment; and Section 34 talks of actual payment before interest will cease on the amount awarded.

Held, that an order obtained by the claimant from the Court restraining the Government or the Institution for whose benefit the land had been acquired, from altering the condition of the land, that is, by putting up buildings, etc., after the Government had taken possession of the land, does not have the effect of interest ceasing to run. There is no provision in the Land Acquisition Act that, after the taking of possession, if some interim order is passed by a Court, the interest will cease to run. The award of interest and the *terminus a quo*, that is, when it will start running and when it will cease, are provided in sections 28, 31 and 34 of the Act and for that purpose there is no question of falling on any supposed notions as to justice, equity and good conscience.

Execution First Appeal from the decree of the Court of Shri Gurbachan Singh, District Judge, Ambala, dated 10th December, 1965, holding that the total amount payable to the decree-holders on 31st May, 1965 was Rs. 3,36,076.25 Paise and they had received Rs. 3,08,216.75 Paise and that the judgment-debtors are liable to pay Rs. 27,859.50 Paise more. The objections of the judgment-debtors for the refund of Rs. 424.00 were rejected and it was held that the decree-holders were entitled to receive Rs. 27,859.50 Paise more. The judgment-debtors were directed to deposit this amount in the Court within one month, which would, however, be paid in accordance with the orders of the High Court after taking the requisite security.

D. N. AGGARWAL AND G. R. MAJITHIA, ADVOCATES, for the Appellant.

D. N. AWASTHY WITH J. K. SHARMA, ADVOCATES, for the Respondents.

JUDGMENT

MAHAJAN, J.—The only question in this Execution First Appeal is whether the respondents are entitled to interest on the amount that was paid into the Government Treasury after the award of the Collector in a land acquisition case, after they had refused to accept the same?

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It is not disputed by the learned Counsel for the State that the entire controversy will stand resolved on the interpretation that is placed on Sections 28, 31 and 34 of the Land Acquisition Act, 1894. The contention of the learned counsel for the State is that as soon as the amount was deposited in the Treasury, it was a valid tender, so far as the claimants are concerned and interest will cease to run from the date of deposit or, in any case, from the date of the offer. On behalf of the respondents, it is contended that the mode and the manner of deposit is laid down in section 31 and if there is no deposit, which is not in terms of Section 31, it will not stop the running of interest till the amount is paid to the respondents or is deposited as provided by the statute. It is for this reason that I have set down the three relevant provisions for facility of reference :—

“28. 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 four 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.

* * * * *

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons 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) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount. Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may have received the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the appropriate Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

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34. 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 four per centum per annum from the time of so taking possession until it shall have been so paid or deposited."

A plain reading of these provisions leaves no manner of doubt, that the deposit was not made, as required by Section 31(2) of the Act. The deposit had to be made to the Court, to which the reference lay, if made under section 18 of the Land Acquisition Act. Mr. Aggarwal contends that deposit could be made only when the reference had actually been filed. There is no warrant for this contention. I cannot read the words "has been" for the words "would be" in sub-section (2) of Section 31 of the Act. The legislature advisedly used the words "would be" because the idea of the tender was to place the money out of the reach of the State Government, so that the claimant, if so minded, could go to the Court and claim the money. Moreover, it was for the purpose of fixing the place of deposit that the words "would be" have been used. The legislature could have, in its wisdom, instead of "deposit in the Court to which a reference could be made", provided that the deposit would be made in the

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Government Treasury. But that is not what the legislature did. The deposit, in order that the interest may cease to run, has to be in terms of Section 31(2). It has been settled, so far as this Court is concerned, that a deposit in Treasury is not a deposit within the meaning of Section 31(2). See in this connection the decision in *Parma Nand and others v. Secretary of State for India in Council*-respondent (1). This decision was followed by the Calcutta High Court in *Secretary of State v. Joy Narain Chunder and others* (2). Section 34 clearly provides that if there is no deposit made, as required by Section 31(2), the interest will have to be paid from the date of taking over of the possession till payment.

Mr. Aggarwal, learned counsel for the Punjab State, then contended that refusal to receive the amount from the Collector would cause a cessation of the interest. If that was the intention of the legislature, Section 31(2) would not have been enacted. Section 31(2) clearly contemplates that it is on the refusal of the claimant to receive the money that the same has to be deposited in a Court to which the reference will lie. Moreover, offer of payment cannot be equated with actual payment; and Section 34 talks of actual payment before interest will cease on the amount awarded. I am, therefore, unable to accept this contention of Mr. Aggarwal as well.

As a last resort, Mr. Aggarwal sought to urge that after taking over possession, an order was obtained from Court restraining the Government or the Institution, for whose benefit the land had been acquired, from altering the conditions of the land, that is, by putting up buildings; and, therefore, it is argued that there would be no question of the award of interest. So far as this matter is concerned, it may be mentioned that it was not agitated in the Executing Court and, in any event, there is no provision in the Land Acquisition Act that, after the taking of possession, if some interim order is passed by a Court, the interest will cease to run. The award of interest and the *terminus a quo*, that is, when it will start running and when it will cease, are provided in the aforesaid provisions already quoted; and for that purpose, I cannot fall on any supposed notions as to justice, equity and good conscience.

For the reasons recorded above, this appeal fails and is dismissed; but there will be no order as to costs.

B. R. T.

(1) 44 P.R. 1904.

(2) A.I.R. 1936 Cal. 525.