

Union of India *v.* Inder Singh (D. S. Tewatia, J.)

Act, withhold a refund without forming an opinion regarding its adverse impact on the Revenue, and, merely for the reason that some proceedings under the Act is pending, was neither canvassed nor gone into. This case, therefore, does not help the submission made on behalf of the Revenue.

(7) In the result, the petition succeeds and the same is allowed. The order made by the Income-tax Authorities withholding the refund to the petitioner, as communicated to it,—*vide* letter dated 9th December, 1985, Annexure P-2 to the petition, is quashed.

S. C. K.

Before D. S. Tewatia and M. R. Agnihotri, JJ.

UNION OF INDIA,—Appellant.

versus

INDER SINGH,—Respondent.

Civil Misc. No. 1671-C II of 1986

in F.A.O. No. 48 of 1978

April 30, 1987.

Land Acquisition (Amendment) Act (LXVIII of 1984)—Section 30(2)—Appeal for reduction of compensation pending—No appeal by claimants for enhancement—Benefit of amending provision—Whether such claimant entitled to such benefit.

A perusal of provision of sub-section (2) of Section 30 of the Land Acquisition (Amendment) Act, 1984 would show that the Legislature intended to extend the benefit of the provisions of the Amending Act to the claimants upto a certain date in the past if by then, the compensation matter had not been finally disposed of by the Courts. If at the relevant time, the Court happens to be seized of the compensation matter, the Court would take into view the provisions of the Amending Act while determining the correct quantum of compensation, whether the Court was seized of the matter at the instance of the State, which had intended to reduce the quantum of compensation or it was seized of the matter at the instance of the claimants for having the quantum of compensation enhanced.

(Para 6).

Application under Section 151 and 153 C.P.C. read with Section 30 of the Central Act No. 68 of 1984 praying that this Hon'ble Court may be pleased to amend the judgment dated 6th April, 1983 and hold that the applicants are entitled to solatium at the rate of 30 per cent and interest at the rate of 9 per cent in the first year after the acquisition and 15 per cent per annum, thereafter. The applicants may also be awarded costs of this application.

"The case was referred to the Larger Bench by Hon'ble Mr. Justice I. S. TIWANA on July 15, 1986 for the decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice D. S. TEWATIA and Hon'ble Mr. Justice M. R. AGNIHOTRI finally decided the case on April 30, 1987."

R. S. Chahar, Advocate, for the appellant.

M. L. Sarin, Senior Advocate (Miss Jaishree Thakur, Advocate with him), for the respondent-applicants.

JUDGMENT

D. S. Tewatia, J. (oral)

(1) The question of some significance that falls for consideration for this Bench on a reference order dated July 15, 1986, passed by I. S. Tiwana, J. is as to whether claimant-respondents, whose land stands acquired under the Land Acquisition Act, 1894, can or cannot take advantage of the provisions of the Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984) (hereinafter called 'the Amending Act') even though no appeal against the award at their instance was pending in the High Court or the Supreme Court at the relevant time, only appeal pending against the award being that of the State Government.

(2) When the matter came up for hearing before the learned Single Judge, counsel for the claimant-respondents canvassed that even the pendency of an appeal of the State Government would give the respondents right to claim benefit of the provisions of the said Amending Act and in support of that stand, the learned counsel placed reliance on the following decisions:—

(i) *Amritsar Improvement Trust v. Gurdial Singh* (1).

(1) C.M. No. 3127 of 1985 in C.W.P. No. 3962 of 1973 decided on 9th May, 1986.

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- (ii) *State of Haryana v. Ishwar Singh* (2).
- (iii) *P.S.E.B. v. Saranjit Singh etc.* (3).
- (iv) *State of Haryana v. Hukam Singh etc.* (4).

Tiwana, J. in view of the fact that in *Lila Wati v. State of Haryana* (5), he had held that only when the claimant's appeal is pending in the High Court or the Supreme Court at the relevant period that the provisions of the Amending Act can be taken advantage of by the claimants, which view is contrary to the judgments cited on behalf of the claimant-respondents, referred the matter for decision to the larger Bench and that is how the case is before us.

(3) The judgments cited on behalf of the claimants have not examined the provision of section 30, sub-section (2) of the Amending Act. As a matter of fact no reason has been given, as it appears, the question had not been posed to the learned Judges, who decided those cases and, therefore, no occasion arose to examine the controversy that arises for consideration before us.

(4) Tiwana, J., no doubt examined the proposition of law that he has referred for decision to this Bench. He while construing the provision of section 30(2) of the Amending Act, took the view that the benefit of the Amending Act could be available to the claimants only if at the relevant time envisaged by section 30(2) of the Amending Act, the Court was seized of the matter at the instance of the claimants and not otherwise.

(5) The provision of section 30, sub-section (2) of the Amending Act is in the following terms:—

“30. *Transitional provisions.*—(1)

(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,

(2) C.M. No. 105-CI of 1986 in R.F.A. No. 1352 of 1981 decided on 16th May, 1986.

(3) C.M. No. 371-CI of 1985 in R.F.A. No. 714 of 1975 decided on 18th December, 1985.

(4) C.M. No. 203-C-I of 1986 in R.F.A. No. 129 of 1983 decided on 10th March, 1986.

(5) C.M. No. 1515-C-I of 1985 in R.F.A. No. 815 of 1979 decided on 30th November, 1985.

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.”

(6) A perusal of the aforesaid provision would show that the Legislature intended to extend the benefit of the provision of the Amending Act to the claimants upto a certain date in the past if by then, the compensation matter had not been finally disposed of by the Courts. If at the relevant time, the Court happens to be seized of the compensation matter, the Court would take into view the provisions of the Amending Act while determining the correct quantum of compensation, whether the Court was seized of the matter at the instance of the State, which had intended to reduce the quantum of compensation or it was seized of the matter at the instance of the claimants for having the quantum of compensation enhanced.

(7) That, it has been so intended by the Legislature, appears to have weighed with their lordships (though the legal proposition had not been examined by their lordships) when dismissing the appeal of *State of Punjab* against *Mohinder Singh and others* (6). Their lordships awarded solatium and interest at the increased rates, as is evident from the following relevant portion of the judgment:—

“.....
.....
.....
We find no merit in this appeal so far as quantum of compensation is concerned, because special leave petition has been dismissed against the impugned judgment. However, the respondents are entitled to the benefit of the provisions of Act 68 of 1984 by which 30 per cent solatium is to be given from the date of publication to the date of notification under Section 4, sub-section (1) of the Act, and interest at the rate of 9 per cent instead of 6 per

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cent, as originally contained in the unamended Act, from the date of taking possession of the land acquired. Since the decision in this case has been given after one year, it is manifest that under the said Act, respondents would be entitled to interest at the rate of 9 per cent towards which they have already got 6 per cent."

In view of the aforesaid decision of the apex Court, there is no escape from holding that the claimants to the compensation for the land acquired under the Land Acquisition Act shall be entitled to claim enhanced solatium and interest in terms of sub-section (2) of section 30 of the Amending Act, notwithstanding the fact that at the time envisaged by the said provisions, there is pending in the High Court or the Supreme Court only an appeal on behalf of the State Government or the Union of India, as the case may be,—in the present case on behalf of the Union of India.

(8) In the light of above view, we hold that the judgment *Lila Wati v. State of Haryana* (supra) does not lay the correct law.

(9) Accordingly, we direct that the claimant—respondents, shall be paid 30 per cent solatium on the entire amount of compensation instead of 15 per cent and interest at the rate of 9 per cent instead of 6 per cent for the first year from the date of taking possession and 15 per cent per annum there after till the payment of the amount of compensation.

(10) The Civil Misc. Application No. 1671-CII of 1986 in F.A.O. No. 48 of 1978 is allowed. No costs.

S.C.K.

Before H. N. Seth, C.J. and M. S. Liberhan, J.

TILAK RAJ BHALLA,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 961 of 1987

April 21, 1987.

... Punjab District Attorneys Service Rules, 1960—Rules 3 and 14—District Attorney—Transfer of—Posts of Law Officers in the Prosecution and Litigation Department of the Police created—District Attorney transferred and appointed as such Law Officer against his