

KARNAL IMPROVEMENT TRUST

v.

SUMITRA DEVI (DEAD) BY LRS. AND ORS.
(Civil Appeal No. 5782 of 2002)

MARCH 24, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Land Acquisition Act, 1894:

ss.23(1-A) and 28 – Award passed by Land Acquisition Collector in 1972 – No enhancement of compensation in excess of the award passed by Collector – Entitlement to solatium u/s.23(1-A) and benefits u/s.28 – Held: Not entitled – Land Acquisition (Amendment) Act, 1984 – s.30(1).

Appellant filed writ petitions challenging award of solatium at the rate of 30% of the market value and other amounts permissible under ss.23(1-A) and 28 of the Land Acquisition Act, 1894. The writ petitions were dismissed.

In appeal to this Court, the contention of Appellant is that the benefits were not available because of the specific provisions of Section 30(1) of the Land Acquisition (Amendment) Act, 1984; that s.23(1-A) was not applicable and further that since there was no enhancement of compensation in excess of the award of the Collector, the benefits under Section 28 of the Act were also not applicable.

Allowing the appeals, the Court

HELD: 1.1. Entitlement of additional amount provided under Section 23(1-A) depends upon pendency of acquisition proceedings as on April 30, 1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under Section 23(1-A) shall be

A applicable to acquisition proceedings pending before the
Collector as on April 30, 1982 in which he has not made
the award before that date. If the Collector has made the
award before that date then, that additional amount cannot
be awarded. Section 30, sub-section (1)(b) provides that
B Section 23(1-A) shall be applicable to every acquisition
proceedings commenced after April 30, 1982 irrespective
of the fact whether the Collector has made an award or
not before September 24, 1984. [Para 6] [317-B, C, D, E]

C 1.2. When the Civil Court on reference under Section
18, or the High Court or in some States District Judge
exercising appellate power under section 54 or civil court
under Section 26, as the case may be, awards
compensation in excess of the amount awarded by the
Collector, then it gets jurisdiction and power to award
D additional benefits envisaged in sub-section (1-A) of
section 23, sub-section (2) of Section 23 and Section 28
of the Act. In other words, enhancement of the
compensation in excess of the award of the collector
under Section 11 is a condition precedent to exercise the
E power to award statutory additional amounts envisaged
under the aforesaid respective provisions on the excess
compensation. If the High Court dismisses the appeal
confirming the award of the Collector or that of the civil
court, then it has no jurisdiction and power to award
F additional statutory amount under the respective
provisions as amended under the Amendment Act 68 of
1984. [Para 8] [318-G, 319-A, B, C]

G 1.3. From a reading of the orders passed by the
Reference Court it is clear that there was no enhancement
of the rates as fixed by the Land Acquisition Collector.
That being so, benefits under Section 28 of the Act are
not available to the respondents. The award was passed
on 7.11.1972. The Reference Court decided the case on
18.10.1997. That will not change the position because the
H relevant date is the date of award by the Collector under

the Act. The High Court, therefore, is clearly wrong in dismissing the Writ Petition filed by the appellant. The inevitable conclusion is that respondents are not entitled to solatium under Section 23(1-A) of the Act and similarly the benefits under Section 28 of the Act. [Para 9] [319-D, E, F]

Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (1990) 1 SCC 277; Kashiben Bhikabai and Ors. v. Special Land Acquisition Officer and Anr. (2002)2 SCC 605 and The State of Punjab and Anr. v. Jagir Singh etc. (JT 1995 (9) SC 1) – relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5782 of 2002.

From the final Judgment and order dated 29/1/2002 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 6035/1998.

WITH

Civil Appeal Nos. 5670, 5778, 5779, 5804 and 6566/2002.

Seeraj Bagga and Sureshta Bagga for the Appellant.

Debasis Misra, G.K. Bansal and Ashu Bhatia for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT J. 1. These appeals have an identical point and are therefore disposed of by this common judgment.

2. Challenge in each case is to the final judgment and order dated 29.1.2002 passed by a Division Bench of the Punjab and Haryana High Court. Writ Petitions filed by the appellant in each case were dismissed. Challenge in the Writ Petitions was to the award of solatium at the rate of 30% of the market value and other amounts permissible under Sections 23(1-A) and 28 of

- A the Land Acquisition Act, 1894 (in short the 'Act'). According to the appellant the benefits were not available to the respondents because of the specific provisions of Section 30(1) of the Land Acquisition (Amendment) Act, 1984 (in short the 'Amendment Act'). The High Court relying on some earlier judgments
- B dismissed the writ petitions.

3. Learned counsel for the appellant submitted that in view of the decision of this Court in *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama* (1990 (1) SCC 277) and *Kashiben Bhikabai and Ors. v. Special Land Acquisition Officer and Anr.* (2002 (2) SCC 605) no amount was payable as provisions of under Section 23(1-A) are not applicable. Reference is also made to Section 30(1) of the Amendment Act for the purpose which reads as follows:

D "30. **Transitional provisions.** - (1) The provisions of subsection (1-A) of Section 23 of the principal Act, as inserted by clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to, -

E (a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People, in which no award has been made by the Collector before that date;

F (b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the date of commencement of this Act.

G (2) xxx xxx xxx

(3) xxx xxx xxx."

H 4. It is pointed out that since there was no enhancement of compensation in excess of the award of the Collector, the

benefits under Section 28 of the Act are also not applicable. A
Reliance is placed on *The State of Punjab and Anr. v. Jagir Singh etc.* (JT 1995 (9) SC 1) .

5. Learned counsel for the respondents on the other hand supported the judgment of the High Court. B

6. In *Filip Tiago's* case (supra) it was inter-alia observed at para 21 as follows: C

"Entitlement of additional amount provided under Section 23(1-A) depends upon pendency of acquisition proceedings as on April 30, 1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under Section 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on April 30, 1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30, sub-section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after April 30, 1982 irrespective of the fact whether the Collector has made an award or not before September 24, 1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2)." D E

7. Similarly, in *Kashiben's* case (supra) it was observed as follows: F

"17. Counsel appearing for the claimants contended that the claimants would be entitled to an additional compensation @ 12% as provided under Section 23(1-A) of the Act. This contention cannot be accepted in view of a Bench decision of this Court in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama* which held that additional compensation under Section 23(1-A) of the Act would not be available to a claimant in which the G H

A acquisition proceedings commenced and the award was
made by the Collector prior to 30-4-1982. If the Collector
made the award before 30-4-1982 then the additional
amount under Section 23(1-A) cannot be awarded. The
B pendency of the acquisition proceedings on 30-4-1982
before the Collector was essential for attracting the benefit
under Section 23(1-A) of the Act. It was held: (SCC pp.
286-87, para 21)

C '21. Entitlement of additional amount provided under
Section 23(1-A) depends upon pendency of
acquisition proceedings as on 30-4-1982 or
commencement of acquisition proceedings after that
date. Section 30 sub-section (1)(a) provides that
D additional amount provided under Section 23(1-A)
shall be applicable to acquisition proceedings
pending before the Collector as on 30-4-1982 in
which he has not made the award before that date.
If the Collector has made the award before that date
then, that additional amount cannot be awarded.
E Section 30 subsection (1)(b) provides that Section
23(1-A) shall be applicable to every acquisition
proceedings commenced after 30-4-1982
irrespective of the fact whether the Collector has
made an award or not before 24-9-1984. The final
F point to note is that Section 30 sub-section (1) does
not refer to court award and the court award is used
only in Section 30 sub-section (2).'

No judgment taking a contrary view to the above-referred
case was cited before us. Accordingly, it is held that the
appellants would not be entitled to the additional
G compensation provided under Section 23(1-A) of the Act."

8. In *Jagir's* case (supra) it was observed as follows:

H "It would thus be seen that the legislative animation is
clear that the Civil Court on reference under Section 18,
or the High Court or in some States District Judge

exercising appellate power under section 54 or civil court under Section 26, as the case *may* be, awards compensation in excess of the amount awarded by the Collector, then it gets jurisdiction and power to award additional benefits envisaged in sub-section (1-A) of section 23, sub-section (2) of Section 23 and Section 28 of the Act. In other words, enhancement of the compensation in excess of the award of the collector under Section 11 is a condition precedent to exercise the power to award statutory additional amounts envisaged under the aforesaid respective provisions on the excess compensation. If the High Court dismisses the appeal confirming the award of the Collector or that of the civil court, then it has no jurisdiction and power to award additional statutory amount under the respective provisions as amended under the Amendment Act 68 of 1984.”

9. From a reading of the orders passed by the Reference Court it is clear that there was no enhancement of the rates as fixed by the Land Acquisition Collector. That being so, benefits under Section 28 of the Act are not available to the respondents. The award was passed on 7.11.1972. The Reference Court decided the case on 18.10.1997. That will not change the position because as noted in *Filip Tiago's* case (*supra*) the relevant date is the date of award by the Collector under the Act. The High Court, therefore, is clearly wrong in dismissing the Writ Petition filed by the appellant. The inevitable conclusion is that respondents are not entitled to solatium under Section 23(1-A) of the Act and similarly the benefits under Section 28 of the Act.

10. The appeals are allowed but with no order as to costs.

B.B.B.

Appeals allowed..