

rate, a notice under Section 142(1) of the Act, which had not been complied with by the assessee and such non-compliance fully justified the framing of the assessment under Section 144 of the Act, as was done by the Income Tax Officer on September 12, 1973. This alternative plea must indeed prevail. A reference to the record here would show that there is a clear finding by the Income Tax Officer, not in any manner upset in appeal, that there has been non-compliance on the part of the assessee with the terms of the notice issued to it, under Section 142(1) of the Act on September 17, 1973. Such non-compliance having been established, the requisite jurisdiction was thereby clearly conferred upon the Income Tax Officer to frame the assessment under Section 144 of the Act. This being so there can be no escape from the conclusion that the Tribunal clearly fell in error in holding the assessment framed to be contrary to law. The second question referred must consequently be answered in the negative in favour of the Revenue and against the assessee. In view of this answer, the two other questions referred are rendered academic and are consequently returned unanswered. This reference is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

Before J. V. Gupta, A.C.J.

IMPROVEMENT TRUST, JIND (DISSOLVED) THROUGH CHIEF EXECUTIVE OFFICER, MUNICIPAL COMMITTEE, JIND,—
Petitioner/J.D.

versus

NARINDER KUMAR, SON OF RAGHBIR SARUP BHAGTNAGAR,
—*Respondent/D.H.*

Civil Revision No. 2644 of 1989.

20th February, 1990.

Land Acquisition Act, of 1894, Section 3(a) and Section 23 (1-A)—Definition of land—'trees' included in the term 'land'—claim of solatium on amount assessed for trees—Validity of such claim—Amount of compensation as enhanced by the Tribunal deposited—No increase awarded by High Court—High Court awarding higher interest and other statutory benefits—Claimants adjusting amount of compensation towards interest and costs—Such adjustment invalid

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said amount will be deemed to be the market value of the land and in view of the provisions of section 23(1-A) (2) of the Act, in addition to the market value of the land, the Court shall also award a sum of thirty per cent as solatium. On such market-value, in consideration of the compulsory nature of the acquisition. (Para 6)

Held, that the amount of compensation was deposited by the Judgment-debtor as determined by the tribunal. It was in the High Court that the matter was pending and the Act was amended meanwhile that the claimants were found entitled to more interest and solatium. That being the situation, the claimants could not be allowed to turn round and to say that the amount received by them earlier will be adjusted towards interest and costs etc. and not towards principal amount of compensation. (Para 7)

Revision Petition under Section 115 CPC against the order of the court of Shri G. L. Goyal, HCS senior Sub-Judge, Jind, dated 9th May, 1989 ordering that the D. H. can claim solatium on trees, Kotha, tube-well etc. at the rate of 30 per cent and the D. H. can claim interest at the rate of 9 per cent per annum from 10th January, 1977 to 10th January, 1978 and 15 per cent per annum from 10th January, 1978 to up to date, and further ordering that the D.H. is not entitled for compound interest, and the D.H. can also claim counsel fees as per the High Court rules and orders.

CLAIM.—Objection petition against the calculations.

CLAIM IN REVISION.—For reversal of the order of the Lower Court.

S. C. Mohunta Sr. Advocate with A. Mohunta Advocate, for the petitioner.

V. K. Jain Sr. Advocate, with S. K. Vij, Advocate, for the Respondents.

JUDGMENT

J. V. Gupta, A.C. J.

(1) This order will also dispose of Civil Revision Petitions Nos. 2645 to 2660 of 1989, as the question involved is common in all these cases.

(2) The facts giving rise to Civil Revision Petition No. 2644 of 1989, are that the land, in dispute, was acquired and the award by the Collector was given on November 26, 1976. On reference, the

tribunal enhanced the amount of compensation,—*vide* order, dated January 10, 1985. Then the matter was taken up in the High Court where statutory benefits were given in view of the amendments to the Land Acquisition Act (hereinafter called the Act),—*vide* order, dated January 12, 1988. After the award was given by the tribunal, the compensation amount including interest and solatium, etc. as then awarded, was deposited by the Municipal Committee, Jind. In some cases, it has been stated at the bar that the amount was deposited in full as determined by the tribunal whereas in certain cases only part payment was made by the Municipal Committee. After the decision of the High Court, execution was sought by the claimants where the Improvement Trust—Judgment-debtor which was dissolved subsequently, and was taken over by the Municipal Committee, Jind, filed objections alleging that the decree-holders cannot claim interest on the additional amount awarded by the High Court from the period of notification under section 4 of the Act and that of the award, the decree-holders cannot claim solatium on trees, *kotha* and tubewell, etc. at the rate of 30 per cent and they are not entitled to any interest at the rate of 9 per cent. per annum from January 10, 1977 to January 10, 1978 and 15 per cent. per annum from January 10, 1978 to date which they are not entitled even according to the judgment. The said objection petition was contested on behalf of the decree-holders-claimants. The executing Court found that the decree-holders can claim interest on the additional amount awarded by the High Court from the period of notification under section 4 of the Act and that of the award. Similarly, they could claim solatium on trees, *kotha*, tubewell, etc. at the rate of 30 per cent. and that they can claim interest at the rate of 9 per cent per annum from January 10, 1977 to January 10, 1978, and at the rate of 15 per cent. from January 10, 1978 up to date. The executing Court also found that the decree holders were not entitled to compound interest. Dissatisfied with the same, the judgment-debtor has filed this revision petition in this Court.

(3) The first contention raised on behalf of the counsel for the petitioner is that 30 per cent. solatium as awarded by the High Court could not be claimed in execution on the compensation amount awarded for the trees, *kotha*, tubewell, etc. It was next contended that since the compensation amount as determined by the tribunal was paid and was duly received by the claimants, the said amount is to be adjusted towards the principal amount first and, therefore the calculations are to be made accordingly. According to the learned counsel, the amount of compensation

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was deposited under different heads and that being so, the amount of compensation deposited under the head of compensation is to be adjusted towards compensation as such and not towards interest, as claimed by the decree-holders. Reference was made, in this behalf, to *L.I.C. of India v. Samarendra Nath* (1). It was also submitted that the claimants are not entitled to 15 per cent interest on the amount of compensation including 12 per cent interest which according to the claimants forms part of compensation, as awarded by the High Court under section 23(1-A) of the Act. In support of the contention, reference was made to *Kushal Singh v. The State of Haryana* (2).

(4) On the other hand, the learned counsel for the decree-holders-claimants submitted that they were entitled to 30 per cent solatium on the entire amount of compensation including trees etc. According to the learned counsel, the term "land" has been defined under section 3 (a) of the Act, which includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. Reference in this behalf was made to *Chaturbhuj Pande v. Collector, Raigarh* (3). As regards the adjustment of the amount paid, it was contended on behalf of the claimants that in view of the provisions of section 60 of the Contract Act, the creditor may adjust the amount at his discretion to any lawful debt and, therefore, if the amount paid is adjusted towards interest, solatium and costs, etc, there was nothing wrong or illegal therein. Reference was made in this behalf to *Meghraj v. Bayabai* (4), and *Manohar Lal v. State of Haryana* (5), 1986 Punjab Law Journal 581.

(5) I have heard the learned counsel for the parties at a great length and have also gone through the case law cited at the bar.

(6) So far as the first contention that the claimants are not entitled to 30 per cent solatium on the entire concerned, amount of compensation, including the price of the trees, is concerned, the same has no merit. The trees are included in the definition of the term "land", as defined under section 3(a) of the Act. That

(1) A.I.R. 1979 Calcutta 243.

(2) 1989 P.L.J. 262.

(3) A.I.R. 1969 S.C. 255.

(4) A.I.R. 1970 S.C. 161.

(5) 1986 P.L.J. 581.

being so, the said amount will be deemed to be the market value of the land and in view of the provisions of section 23(1-A)(2) of the Act, in addition to the market value of the land, the Court shall also award a sum of thirty per cent. on such market-value, in consideration of the compulsory nature of the acquisition.

(7) As far as the second contention with respect to the adjustment of the amount already paid by the judgment-debtor and duly received by the claimants is concerned, the amount will be adjusted first towards the principal and then towards interest and costs etc. It may be mentioned here that the amount of compensation was deposited by the judgment-debtor as determined by the tribunal. It was in the High Court that the matter was pending and the Act was amended meanwhile that the claimants were found entitled to more interest and solatium. That being the situation, the claimants could not be allowed to turn round and to say that the amount received by them earlier will be adjusted towards interest and costs etc. and not towards principal amount of compensation. Reference in this behalf may be made to clause (4) of rule (1) of order XXI of the Code of Civil Procedure, which provides that on any amount paid under clause (a) or clause (b) of sub-rule (1), interest, if any shall cease to run from the date of the service of the notice referred to in sub-rule (2). Under the circumstances, when once the principal amount as determined by the Tribunal on reference was deposited, further interest thereon will cease. However, the claimants will be entitled to enhanced rate of interest as ordered by the High Court in view of the amendment in the Act. The claimants cannot be allowed to adjust the amount already received by them towards enhanced interest and costs etc. and then to claim the principal amount, as was contended on behalf of the claimants in this court. As noticed earlier also, section 60 of the Contract Act, which provides that where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in

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force for the time being as to the limitation of suits, has no relevance to the facts and circumstances of the case. As observed earlier, this enhanced rate of interest and solatium was being allowed to the claimants by the High Court in view of the amendments later on made in the Act and, therefore, the claimants cannot be allowed to adjust that amount already received by them towards interest and costs etc. at this stage of the execution as enhanced by the High Court.

(8) As regards the third contention that the claimants are entitled to 15 per cent. interest on the entire amount of compensation including the addition amount of 12 per cent., the same stands concluded by the decision of this court in *Kushal Singh's case* (supra). It was noticed therein that 12 per cent. interest does not form part of the market value. The additional amount of 12 per cent. is a statutory creation. It is not related to the market value. Nor it is a benefit arising out of land.

(9) Consequently, all the revision petitions are disposed of accordingly. The amount payable to the claimants be calculated according to the observations made above.

S.C.K.

Before G. C. Mital & S. S. Sodhi, JJ.

COMMISSIONER OF INCOME-TAX, HARYANA,—Applicant.

versus

THE ATLAS CYCLE INDUSTRIES, SONEPAT,—Respondent.

Income Tax Reference No. 72 & 73 of 1981.

April 24, 1989.

Income Tax Act, 1961 Sections 215, 80-G, 40(c), 148—75 per cent Advance tax deposited before the stipulated date—I.T.O. charging interest on delayed payment—Validity—Reassessment—Grounds for reassessment did not exist—Cancellation of reassessment proceedings—Legality of.

Held, that the word 'or otherwise' in sub-section (2) signifies that in whatever manner tax is paid, it shall be taken note of in calculating the interest. In spite of the default having been committed by the assessee in not paying the due advance tax within time, yet by