

over-rule his earlier decision in *Didar Singh's case (supra)* which means both of his judgments stand. Since the present case is not at par on facts with *Santokh Singh's case (supra)*, I feel the rule laid down by J. V. Gupta, J. in *Didar Singh's case (supra)* which is in consonance with all earlier decisions of this Court, Lahore High Court, Privy Council and Supreme Court stand. In the case in hand the pre-emptors did not seek partition and it was the vendees who obtained partition. The pre-emptors possessed superior right of pre-emption on the date of sale and on the date of suit, which they retained till the decree of the trial Court. Hence, I follow *Didar Singh's case (supra)* and distinguish *Santokh Singh's case (supra)*.

(9) I have my reservations about the correctness of the decision in *Santokh Singh's case (supra)* and whenever case on identical facts would come before me the matter would be dealt with and if I say anything now it would be *obiter dicta*.

(10) For the reasons recorded above, the appeal is devoid of merit and is dismissed leaving the parties to bear their own costs. The Misc. applications stand disposed of.

(11) Since the pre-emptors were allowed to withdraw the pre-emption amount in view of the stay order granted to the vendees, the pre-emptors are allowed two months time from today to deposit the pre-emption amount failing which the suit for pre-emption would stand dismissed.

R.N.R.

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

MATU RAM and others,—Appellants.

versus

UNION TERRITORY OF CHANDIGARH,—Respondent.

Civil Misc. No. 97 of 1987

in Letters Patent Appeal No. 1123 of 1984.

October 12, 1987.

Land Acquisition Act (I of 1894) as amended by Act 68 of 1984—Sections 23(1A), 23(2), 28 & 30—Code of Civil Procedure (V of 1908)—Section 152 and O. 47 R. 1—Modification of order—Application for grant of benefits of amended Sections 23(1A), 23(2) and 28 made

Matu Ram and others v. Union Territory of Chandigarh
(H. N. Seth, C.J.)

after two years of judgment in Letters Patent Appeal—Application—Whether amounts to review of judgment and barred by limitation—Award made prior to 30th April, 1982—Claim under S. 23(1A)—Whether maintainable—Claim for benefits under S. 23(2) and 28—Application therefor—Whether can be treated as an application for correcting error in judgment of Single Judge in not granting benefits of amended provisions—Applicants—Whether entitled to enhanced benefits under Ss 23(2) and 28—Doctrine of merger—Summary dismissal of Letters Patent Appeal—Judgment of Single Bench—Whether merges in order of Appellate Bench.

Held, that when the claimants have moved an application requiring the Court to give them the benefits under Sections 23(2) and 28 of the Land Acquisition Act, 1894, as amended by Act 68 of 1984, their claim cannot be termed as an application for review. Consequently, the application moved requiring the Court to discharge its statutory obligation cannot be said to be barred by limitation merely because it has not been filed as an application for review within 30 days of the date of judgment. (Para 9)

Held, that since the award in this case was made prior to April 30, 1982 the applicant cannot claim benefit under Section 23(1A) of the Act without the aid of Section 30 of the Land Acquisition Act, 1894, as amended by Act 68 of 1984. Section 30 of the amended Act gives a limited retrospective operation to sub-section (1A) of Section 23 and the retrospectivity is confined merely in cases where the award has been made between the two cut off dates i.e. April 30, 1982 and September 23, 1984. Hence it has to be held that the applicants cannot claim the benefits under Section 23(1A) of the Act. (Para 10)

Held, that in view of the summary dismissal of the Letters Patent Appeal the case would fall outside the ambit of Section 152 of the Code of Civil Procedure, 1908. (Para 12)

Held, that if the Court committed a mistake in dismissing the letters patent appeal filed by the applicants the error in that respect can be corrected only by means of an application for review of the judgment and the present application, if treated as an application for review of the order dated January 17, 1985, would be barred by time. As no application under Section 5 of the Limitation Act has been filed for condoning the delay, the application would not be maintainable. However, this does not preclude the court from treating this application as an application for correcting the error in the judgment of the learned Single Judge. (Para 12).

Held, that where an appeal against the judgment is dismissed summarily it cannot be said that the judgment merges in the order passed by the appellate Bench. There is no impediment in the

way in correcting the judgment of the learned Single Judge and granting the benefits of Sections 23(2) and 28 of the Land Acquisition Act, 1894 as amended by Act of 1984. (Para 13).

Application under Section 151 of the Code of Civil Procedure, 1908 praying that this application be allowed and the order passed by the Division Bench dated 17th January, 1985 be modified granting thereby the benefits of enhanced solatium and interest and additional compensation. Any other order as may be deemed fit and proper may also be passed.

Govind Goel, Advocate, for the Appellants.

Ashok Bhan, Senior Advocate, with Rakesh Garg, A. K. Mital, Advocates, for the Respondents.

JUDGMENT

(1) The Union Territory of Chandigarh acquired 8.58 acres of land in village Dadu Majra, within the Union Territory of Chandigarh,—vide notification published on May 30, 1980, for rehabilitation of victims of kumhar colony of Sector 25, Chandigarh. The Land Acquisition Collector,—vide award dated June 23, 1980 awarded compensation at the rate of Rs. 33,000 per acre. On a reference under section 18 of the Land Acquisition Act, the District Judge,—vide his order dated June 2, 1983, enhanced the compensation to Rs. 76,000 per acre. Aggrieved, the tenure-holders came up in appeal before this Court. Learned Single Judge by his judgment dated August 27, 1984, allowed the appeal and determined the market value of the acquired property at the rate of Rs. 80,000 per acre. He further directed that they shall be paid solatium at the rate of 15 per cent and interest at the rate of 6 per cent from the date of taking possession till payment thereof.

(2) The tenure-holders then filed letters patent appeal claiming that the market value of the property be raised to Rs. 1,00,000 per acre. This letters patent appeal, was, however, dismissed by a Division Bench by an order dated January 17, 1985.

(3) After the decision of the said letters patent appeal, one of the tenure holders appellant Matu Ram died. This application has been presented by the heirs of Matu Ram as also by the remaining appellants. They prayed that the order passed by the Division Bench on January 17, 1985, be modified granting thereby the benefit of enhanced solatium and interest and additional compensation

Matu Ram and others v. Union Territory of Chandigarh
(H. N. Seth, C.J.)

as envisaged by Act 68 of 1984. In substance, the prayer made by the applicants is that this Court may award to them the benefits envisaged by section 23(1A) of the Land Acquisition Act as introduced by Act 68 of 1984, as also those of section 23(2), and section 28 as amended by Act 68 of 1984.

(4) On behalf of the respondent, a preliminary objection has been raised that in substance the prayer made in this application amounts to review of the judgment of the Division Bench dated January 17, 1985, which application therefore can be filed within a period of 30 days from the date of the judgment. The present application has been filed after about two years and is barred by limitation. There is neither any request for condoning the delay nor has any explanation been offered for presenting the application beyond the period of limitation.

(5) In our opinion, before dealing with the objection raised by learned counsel for the respondent, it will be apt to appreciate the impact of Act 68 of 1984 on the provisions contained in the Land Acquisition Act, 1894. Section 23(2) prior to its amendment by Act 68 of 1984 provided that in addition to the market value of the land, the Court shall in each case award a sum of 15 per cent of such market value, in consideration of the compulsory nature of the acquisition. Section 28 of the Act laid down that 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 6 per centum per annum from the date of taking possession till payment thereof. The Land Acquisition (Amendment) Act 68 of 1984, *inter-alia*, added new sub-section (1A) to section 23, which laid down that in addition to the market value of the land, the Court shall in every case award an amount calculated at the rate of 12 per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or to the date of taking possession, whichever was earlier. Sub-section (2) of section 23 was amended so as to increase the amount in consideration of the compulsory nature of the acquisition (solatium) from 15 per cent to 30 per cent. Likewise, section 28 provided that the rate of interest provided for on the excess amount awarded by the Court shall be raised

from 6 per cent 9 per cent for the first year and for the following years to 15 per cent per annum. Section 30 of Act of 1984 gave retrospective operation to the insertion of sub-section (1A) of section 23 and to amendments made in sub-section (2) of section 23 and section 28 of the Land Acquisition Act thus :—

“30. *Transitional provisions.*—(1) The provisions of sub-section (1A) 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,—

(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 ;

(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 that date of commencement of this Act.

(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, 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) We shall first deal with the applicants' claim for the benefits under the amended sub-section (2) of section 23 and section 28 of the Land Acquisition Act.

(7) In the case of *Bhag Singh and others v. Union Territory of Chandigarh* (1), notification under section 4 of the Land Acquisition

(1) A.I.R. 1985 S.C. 1576.

Matu Ram and others v. Union Territory of Chandigarh
(H. N. Seth, C.J.)

Act was issued on October 19, 1974. This notification was followed by notifications under sections 6 and 9. The Land Acquisition Collector made the award on October 9, 1975, which was eventually enhanced in appeal by the High Court. The High Court directed that the claimants were entitled to 15 per cent solatium on the enhanced amount of compensation. The matter was taken up in letters patent appeal, which was decided on December 8, 1982, wherein the compensation awarded by the learned Single Judge was enhanced from Rs. 25,000 per acre to Rs. 38,720 per acre for the second belt. The matter was then taken up in appeal before the Supreme Court, wherein controversy with regard to the extent of retrospective effect given by the provisions contained in section 30(2) of the Amending Act was raised. The problem before the Court was as to whether amended provisions of section 23(2) and section 28 were applicable only to cases where the award was made by the Collector or Court after April 30, 1982, or it applied also to cases where an award may have been made by the Collector or Court prior to April 30, 1982, but the proceedings by way of appeal were pending in the High Court or the Supreme Court on April 30, 1982 and were disposed of subsequent to that date. The Supreme Court, after noticing the conflict of judicial opinion prevailing in that Court in the cases of *Kamalajammanniavar v. Special Land Acquisition Officer*, (2) and in *State of Punjab v. Mohinder Singh*, (3) eventually concluded thus :—

“It is, therefore, clear that under section 30, sub-section (2) the provisions of the amended section 23, sub-section (2) and section 28 are made applicable to all proceedings relating to compensation pending on 30th April, 1982 or filed subsequent to that date, whether before the Collector or before the Court or the High Court or the Supreme Court, even if they have finally terminated before the enactment of the Amending Act. It would not be a correct interpretation of section 30, sub-section (2) to say that the provisions of the amended Section 23, sub-section (2) and section 28 would be applicable in relation to an order passed by the High Court or Supreme Court only if the order is passed in appeal against an award made by the Collector or Court between 30th

(2) 1985 (1) S.C.C. 576.

(3) Civil Appeal No. 3267 of 1979 decided on May 1, 1985.

April, 1982 and the commencement of the Amended Act. Even if an award is made by the Collector or Court on or before 30th April, 1982 and an appeal against such award is pending before the High Court or the Supreme Court on 30th April, 1982 or is filed subsequent to that date, the provisions of the amended section 23, sub-section (2) and section 28 would be applicable in relation to an order passed in such appeal by the High Court or the Supreme Court..."

(8) In the instant case, even if the award had been made prior to April 30, 1982, regular first appeal in respect of that award was filed before the High Court after the 30th day of April 1982 and was decided by the learned Single Judge on August 27, 1984, before the enforcement of Land Acquisition (Amendment) Act 68 of 1984 (the date of enforcement being September 24, 1984). The provision contained in sub-section (2) of section 30 to the effect that amended sub-section (2) of section 23 and section 28 of the Land Acquisition Act shall apply to and in relation to appeals decided by the High Court as between the dates on which the bill for amending the provisions was introduced in the year 1982 and coming into force on September 24, 1984, clearly contains an implication that it is the duty of the Court to amend such decisions and to bring them in accord with the provisions of the amended Act. The question that arises for consideration is as to whether or not an application made for enforcing such an obligation placed on the Court for modifying its earlier order, falls within the purview of Order 47, Rule 1 of the Code of Civil Procedure.

(9) Similar question came up for consideration before the Supreme Court in the case of *Raja Shatrughit v. Mohammad Azmat Azam Khan and others*, (4) in which the Court was concerned with the scope of section 4 of the U. P. Zamindars Debt Reduction Act, 1952, which ran thus :—

“Power to reduce debts after passing of decree ; (1) Notwithstanding anything in the Code of Civil Procedure, 1908 or any other law, the Court, which passed a decree to which this Act applies relating to a secured debt, shall on the application either of the decree-holder or judgment-debtor, proceed as hereinafter stated.

(4) A.I.R. 1971 S.C. 1474.

Matu Ram and others v. Union Territory of Chandigarh
(H. N. Seth, C.J.)

(2) Where the mortgaged property (charged under the decree consists exclusively of estate and such estate has been acquired under the provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1950, the Court shall...

(3) Where the mortgaged property (charged under the decree) consists partly of estate and partly of property other than estate, the Court shall...

The Court interpreted section 4 as conferring power on the Court to amend certain decrees already made and held that such exercise of power could not be described as a review and could be exercised independently of it. This would be evident from the following observations made by it in paragraph 13 of the judgment:—

“Counsel for the appellant submitted that when the High Court decided the matter, the High Court applied the law as it stood and a subsequent change of law could not be ground for review. The appellant’s contention is not acceptable in the present case for two principal reasons; first, it is not a subsequent law. It is the law which all along was there from 1952. The deeming provision is fully effective and operative as from 25th May, 1953 when the 1952 Act came into force. The result is that the Court is to apply the legal provision as it always stood. It would, therefore, be error on the face of the record. The error would be that the law that was applied was not the law which is applicable. Secondly, section 4 of the 1952 Act confers power on the court to apply the law notwithstanding any provision contained in the Code of Civil Procedure. Therefore, the application though entitled an application was not so. The substance and not the form of the application will be decisive.”

It is, thus, clear that when the applicants have moved the application requiring the Court to discharge its obligation by giving to them the benefit under section 23 (2) and section 28 of the principal Act, as amended by Act 68 of 1984, their application cannot be termed as an application for review. As already stated, sub-section (2) of section 30 clearly implies that the benefit of sub-section (2) of section 23 and amended section 28 has to be given by the Court

even in those appeals which had been decided by it after April 30, 1982, and before coming into force of Act 68 of 1984 (date of enforcement being September 24, 1984). The section has not fixed any time-limit for this purpose. In the circumstances, the application moved requiring the Court to discharge its statutory obligation cannot be said to be barred by limitation merely because it has not been filed as an application for review within 30 days of the date of the judgment.

(10) Coming now to the applicants' claim for the benefit under section 23 (1A) is concerned, we find that this amended section 23 (1A) was introduced by the Amending Act 68 of 1984 with effect from September 24, 1984. The section, on its own, could not apply at the time when the learned Single Judge decided the appeal on August 27, 1984. Section 30 of the Amending Act gave a limited retrospective operation to sub-section (1A) of section 23 and, as held by Full Bench of this Court in *State of Punjab v. Krishan Lal* (5), the retrospectivity is confined merely in cases where the award had been made between the two cut off dates, i.e., April 30, 1982 and September 24, 1984. Since the award in this case was made earlier, the applicants cannot claim benefit under section 23 (1A) without the aid of section 30 of Act 68 of 1984.

(11) Learned counsel for the applicants next urged that inasmuch as the letters patent appeal was decided by this Court on January 17, 1985, the appeal will be deemed to be pending till that date and the provisions of section 23 (1A) would be applicable to the appellate proceedings by its own force. We find that the letters patent appeal directed against the judgment of the learned Single Judge dated August 27, 1984, was summarily dismissed by one-line order which ran thus:—

(12). "No ground for interference is made out. Dismissed." In these circumstances, it cannot be said that while passing the said order, the Court omitted to do something which it wanted to do or it did something which it did not want to do and that the omission in this regard was as a result of some clerical or arithmetical mistake. The case would, therefore, fall outside the ambit of section 152 of the Code of Civil Procedure. If the Court committed a mistake in dismissing the letters' patent appeal filed by the applicants the error in that respect can be corrected only by means of an application for review of the judgment and the present application, if

Sucha Singh and another v. Chanan Singh and others
(M. R. Agnihotri, J.)

treated as an application for review of the order dated January 17, 1985, would be barred by time. As no application under section 5 of the Limitation Act has been filed for condoning the delay, the application would not be maintainable. However, this does not preclude us for treating this application as an application for correcting the error in the judgment of the learned Single Judge dated August 27, 1984, and we treat it accordingly.

(13) It was suggested that in view of the order dated January 17, 1985, passed in the letters patent appeal, the judgment of the learned Single Judge dated August 27, 1984, has merged in the judgment of the letters patent appeal, and as such, no question of amending or correcting the judgment dated August 27, 1984, arises. In our opinion, where an appeal against a judgment is dismissed summarily, it cannot be said that the judgment merges in the order passed by the appellate Bench. In this view of the matter, we see no impediment in our way in correcting the judgment of the learned Single Judge dated August 27, 1984.

(14) In the result, this application succeeds and is allowed. The judgment of the learned Single Judge dated August 27, 1984 is amended to the extent that on the enhanced amount of compensation as determined by him, the applicants would be entitled to 30 per cent instead of 15 per cent solatium under the amended section 23(2) as also to the interest calculated at the rate of 9 per cent per annum for one year and thereafter at the rate of 15 per cent per annum from the date on which possession of the land was taken to the date of payment of such excess in accordance with the amended section 28 of the Land Acquisition Act.

R.N.R.

Before M. R. Agnihotri, J.

SUCHA SINGH AND ANOTHER,—Petitioners.

versus

CHANAN SINGH AND OTHERS,—Respondents.

Civil Revision No. 2750 of 1986.

January 5, 1988.

Code of Civil Procedure (V of 1908)—Order 6, Rule 17—
Amendment of written statement—Scope of—Power to permit
amendment—Grounds of amendment.