(9) In the result, I accept the petition and quash the proceedings under Section 145 of the Code including the preliminary order passed therein.

S.C.K.

Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

STATE OF HARYANA,—*Appellant.*

versus

KAILASHWATI and others,—*Respondents.*

Regular First Appeal No. 1800 *of* 1978.

September 11, 1979.

Land Acquisition Act (1 *of* 1894)—*Sections* 23, 28 *and* 34—*Solatium—Whether a part of compensation—Interest on solatium—Whether payable.*

Held, that solatium is an integral part of the compensation awarded to a landowner. Once, it is held as it inevitably must be that the solatium provided for under section 23(2) of the Land Acquisition Act, 1894 forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of section 28 does not even remotely refer to the market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under section 28, therefore, would include within its ambit both the market value and the statutory solatium. It would be, thus evident that the provisions of section 28 in terms warrant and authorise the grant of interest on solatium as well. (Paras 9 and 10).

Regular First Appeal from the order of Shri S. K. Jan, Additional District Judge, Hissar, dated 15th June, 1978, *in L.A. case No.* 15 *of* 1978 *enhancing the compensation from Rs.* 4,293.00 *to Rs.* 5,962.50 *apart from the* 15 *per cent solatium and also to an interest at the rate of* 6 *per cent per annum from the date of taking possession till payment is made to them or deposited in court for payment whichever is earlier and further ordering that the interest will also be payable on the amount of solatium.*

U. D. Gaur, A. G. with Bhoop Singh, Advocate, *for the appellants.*

Ram Rang, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) This set of eleven regular first appeals — all preferred by the State of Haryana (With cross-objections in nine) — admittedly give rise to identical issues of law and fact and are, therefore, being disposed of by this single judgment.

2. By a notification under section 4 of the Land Acquisition Act published in the Government Gazette on the 1st of May, 1973, an area of 70 acres in all was sought to be acquired for the public purpose of the construction of the Hissar by-pass on National Highway No. 10 connecting Delhi, Hissar, Sirsa and Fazilka. In the acquisition proceedings, that followed, the Collector rendered his award on the 24th of December, 1973, wherein he classified the land into two blocks on the basis of its proximity or otherwise from the village of Sat Rod and awarded compensation at the rate of Rs. 6480 per acre for the land falling in 'A' block and at the rate of Rs. 5000 per acre for the remaining land in 'B' block. Feeling dissatisfied with the compensation awarded the landowners preferred a number of references which were all consolidated for trial by the learned Additional District Judge, Hissar. The solitary issues framed therein on merits was with regard to the compensation to be awarded to the landholders and it is the common case that in this set of appeals also this very question is the only one which falls for determination.

3. On behalf of the landowner-claimants as many as 11 instances of sale transactions in the vicinity Exhibits P. 1 to P. 11 were brought on record. In rebuttal the respondent-State relied on copies of registered sale deeds and mutations R.W. 1/2 to R.W. 1/13 being instances of transfers of land in the adjoining areas. Apart from these, oral testimony of witnesses was also adduced. The learned Additional District Judge on a consideration of the whole record enhanced the compensation in block 'A' to Rs. 9000 and that of

block 'B' to Rs. 6000 per acre. Apart from awarding the statutory solation at the rate of 15 per cent he also directed that interest at the rate of 6 per cent be paid to the landowners on the compensation inclusive of this solatium.

4. Mr. U. D. Gaur, learned Advocate General for the State of Haryana had been rather lukewarm in pressing the State Appeals. The first challenge raised was with regard to the categorisation of land into two blocks. Counsel contended with plausibility and cogency that no adequate reason had been given for the creation of two belts either by Collector or by the learned Additional District Judge. It was, therefore, submitted that this classification be struck down and the land be assessed at the uniform rate as given in block 'B'.

5. There is some merit in the aforesaid argument though no benefit therefrom accrues to the appellant-State. The only fragmentary reason given by the Collector for creating two blocks is the passing observation that part of the land was nearer to village Sat Rod and the rest was away therefrom. On that basis he seems to have drawn an arbitrary line and awarded compensation at relatively disparate rates for the two categories. What particularly calls for attention herein is that the land was not being acquired in a compact squarish or rectangular block but in the shape of a long strip for the purpose of a highway stretched out to skirt the town of Hissar over a long distance. In such a situation the relatively narrow strip of land which fell for acquisition over a long distance cannot possibly be evaluated on the basis of its mere proximity to village Sat Rod. The Collector gave no adequate reason and what is significant is that the learned Additional District Judge did not even remotely advert to this aspect apparently because neither of the parties seemed to have raised the issue. Having seen the site plans and the lay-out of the bye-pass and the relatively distant location therefrom of the village *abadi* it appears to us that the classification on this arbitrary basis cannot possibly be sustained. It is, therefore, held that the land must be evaluated at a uniform basis but what that is will have to be determined hereinafter in the discussion for its market value.

6. The other argument of Mr Gaur was that the learned Additional District Judge had wrongly ignored Exhibit P.W. 1/14 which was rendered by the District Judge, Hissar, with regard to a similar acquisition only a few days earlier of another area. In adverting

to this aspect of the case the learned Additional District Judge has observed as follows in paragraph 20 of his judgment:—

> "The learned Government pleader has also drawn my attention towards the judgment, dated 20th February, 1978 passed by the learned District Judge, Hissar, according to which the market value of the acquired land was held to be Rs. 5,000 per acre. I regret my inability to agree with the learned Government Pleader that the said judgment Exhibit P.W. 1/14 may be followed. In para No. 8 of the said judgment the learned District Judge has clearly observed that the claimant had not brought on record satisfactory evidence in support of his assertion that the market price of acquired land was more than Rs. 5,000 per acre. Whereas, in the case in hand the claimants have brought on record as many as 8 sale deeds of the year 1973, pertaining to the months of March, July and December. Besides this they have also brought a sale deed dated 21st January, 1972, and two sale deeds pertaining to October and November, 1975. Therefore, the evidence in this case cannot be treated at par to that which led in the case before the learned District Judge in which judgment Exhibit P.W. 1/14 was passed."

It is unnecessary to traverse the same line of reasoning over again and it suffices to say that we agree entirely with the learned Additional District Judge and for the aforesaid reasons reject the contention on behalf of the appellant-State.

7. Lastly Mr. Gaur had argued that the learned Additional District Judge had erred in granting interest on the amount of solatium as well in terms. He relied on *Union of India* v. *Ram Mehar and others* (1), to contend that interest could be allowed only on the market value of the land and not on solatium as well.

8. Now a close perusal of *Ram Mehar's case* (supra) would make it manifest that the argument of the learned Advocate-General Haryana is not well conceived. In the said judment what fell for construction before their Lordships was the provision of Section 4(3) of the Land Acquisition (Amendment and Validation) Act

(1) A.I.R. 1973 S.C. 305.

(1967). Grover, J., speaking for the Bench made it clear at the very out set that the sole point for determination was with regard to the true meaning and construction of the expression 'market value' employed in the aforesaid provision. Therefore, it is manifest that what was construed in the said judgment was the term 'market value' as used in the Amending and Validation Act. It was in that particular context that their Lordsips observed that market value did not include within it the amount of solatium and, therefore, the rate of interest prescribed by Section 4(3) was confined to the market value of land alone. *Ram Mehar's case* therefore, is of no aid what-so-ever to the appellant-State.

9. Indeed an in depth examination of the observations in *Ram Mehar's case* boomerang and go directly in aid to the stand taken by the respondents-landowners. Their lordships made it clear in no uncertain terms that solatium was an integral part of the compensation awarded to a landowner. It was observed as follows:—

> "— The additional amount of 15 per cent certainly forms part of the amount of compensation because under Section 23 the compensation is to consist of what is provided for in sub-section (1) and the additional amount of 15 per cent on the market value of the land acquired. But compensation and maket value are distinct expressions and have been used as such in the Acquisition Act.———"

And again:—

> "— If market value and compensation were intended by the legislature to have the same meaning it is difficult to comprehend why the word "compensation" in Section 28 and 34 and not "market value" was used. The key to the meaning of the word "compensation" is to be found in S. 23(1) and that consists (a) of the market value of the land and (b) the sum of 15 per cent on such market value which is stated to be the consideration for the compulsory nature of the acquisition. Market value is therefore only one of the components in the determination of the amount of compensation.—"

10. Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28, therefore, would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Secion 28 in terms warrant and authorise the grant of interest on solatium as well.

11. The view we are inclined to take is in accord with the earlier Single Bench judgment of this Court in *Gian Dev* v. *The State of Haryana* (2). In this view of the matter it is unnecessary to elaborate further. It suffices to say that we also affirm the reasoning of the learned Single Judge therein.

12. No other argument has been raised on behalf of the Appellant-State and finding no merit therein, we dismiss all the eleven Regular First Appeals without any order as to costs.

13. Adverting now to the cross-objections preferred by the landowners it appears that Mr. Ram Rang the learned counsel for the claimants is on firm ground in contending that his clients are patently entitled to the enhancement of the compensation granted. Our attention is pointedly drawn to Exhibits P. 1 to P. 11 which were proved on the record to show the relatively higher prevailing market value at the material time of the notification. It also calls for notice that the learned Additional District Judge did advert to and appears to have relied on these instances without in any way doubting their authenticity. Even if some of the sale instances which pertained to a period of time long after the notification and which have rightly to be excluded from consideration there yet remain Exhibits P. 4, P. 7 and P. 8 about whose relevancy and validity there

(2) E.F.A. 202 of 1974 decided on 9th August, 1975.

appears to be no manner of doubt. These may best be tabulated as under:—

Details of the documents	Date of sale	Khasra numbers of Rect. No. and its area sold	Sale price	Per acre sale price in rupees
Ex. P. 4 sale deed Regd. No. 3318 Mutation No. 905 vendor Madan Lal, son of Karam Chand.	30-3-73 Regd. on 30-3-73	121/16 (8-0) =8 Kanals tibba	Rs. 12,000/-	Rs.12,000/-
Ex. P. 7 sale deed Regd. No. 3819 Mutation No. 4761 Vendor Ram Chand, son of Lal Chand	30-3-73 Regd. on 30-3-73	121/14 (8-0) =8 Kanals Tibba	12,000/-	12,000/-
Ex. P. 8 Sale deed Regd. No. 3820 Mutation No. 4760 Vendor Lal Chand.	—Ditto—	121/24 & 25 (16-0) and 132/9/1(2-18)	28,000/-	11,851.85

It deserves highlighting that the learned Additional District Judge had excluded from consideration the sale instances proved on the record by the respondent-State for valid considerations which have not been at all challenged by the learned Advocate-General, Haryana, and he did not indeed press for their acceptance. That being so, one is inevitably left to assess the market value on the acceptable sale instances P. 4, P. 7 and P. 8 noticed above. All these three instances of sale on the 30th of March, 1973, are barely a month or more prior to the material date of acquisition, on the 1st day of May, 1973. Their proximity in time is thus self-evidence. They pertained to sizable area of land and the *bona fides* of the transactions are not even remotely in dispute. A reference to the site plan would show that they are not at all far removed by way of location and indeed from that angle also provide a fair standard of comparable land. Inevitably one has to conclude that the fair market value indicated therefore comes to the round figure of Rs. 12,000 per acre. As has been noticed earlier there is no justification for the two blocks created by the collector and maintained by the Additional District Judge. Land has, therefore, to be compensated at a uniform rate and the aforesaid market value appears to be the true assessment thereof.

14. It deserves recalling that the learned Additional District Judge after adverting to the sale instances of the landowner claimants had held as follows:—

> "23. From the close scrutiny of the above evidence brought by the parties on record, it is clear that whereas the respondent state has not brought any satisfactory evidence in support of their assertion that the market price of the required land was not more than Rs. 5,000 per acre, the petitioners have proved by reasonable and convincing documentary evidence that the market value of the acquired land and those lying in its locality and vicinity was, on or near about the date of publication of the notification under section 4 of the Act, was between Rs. 11,851.85 and Rs. 12,000 per acre. They have also proved that the market value of the land situated adjacently to the acquired land was Rs. 12,307 per acre even on 21st January, 1972, that is about 1¼ years prior to the acquisition and that it had shot up to Rs. 15,360.66 per acre on 5th November, 1975, i.e., after about 2¼ years of the acquisition.
>
> 24. After taking all the above documentary and oral evidence into consideration, I am of the view that the compensation for 'A' grade land at the rate of Rs. 9,000 per acre and for 'B' grade land at the rate of Rs. 6,000 per acre shall be the market value. Issue No. 1, is, therefore, decided accordingly."

It is evident from the above that the learned Additional District Judge had himself come to the finding that the average price indicated was above Rs. 12,000 even prior to the date of acquisition and further that it had risen sharply by nearly Rs. 4,000 within two years thereof. Nevertheless without giving the least reason in the following paragraph he slashed this evaluation to a sum of Rs. 9,000 and further maintaining the 'B' block to a rate of Rs 6,000 only. We are unable to sustain this finding and indeed the learned Advocate-General, Haryana could also advance no cogent argument to explain the patent disparity.

15. For the aforesaid reasons all the cross-objections are hereby allowed. Compensation to the land owner-claimants is awarded at

a uniform rate of Rs. 12,000 per acre. They will also be entitled to solatium at the statutory rate of 10 per cent and interest on the enhanced amount at the rate of 6 per cent from the date of taking possession including the solatium thereof. The landowner-claimants would also be entitled to their coasts.

S.C.K.

Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

SWARAN DASS ETC.,—*Petitioners.*

versus

DEPUTY COMMISSIONER and others,—*Respondents.*

Civil Writ Petition No. 2742 *of* 1979.

September 25, 1979.

Punjab Municipal Act (III of 1911)—*Section* 24—*Municipal Election Rules* 1952—*Rule* 5(8) (b)—*Prescription of time for notifying the names of co-opted members—Whether mandatory—Publication of the notification beyond the prescribed time—Whether legal.*

Held, that construing the purpose, language and the context of the statutory provisions, there appear a wide variety of reasons which are all a pointer to the fact that the prescription of one week's time as provided by rule 5(8) (b) of the Municipal Election Rules 1952 was not intended to be mandatory. Section 24(1) of the Punjab Municipal Act, 1911 which is the parent provision does not even remotely specify the time within which the relevant notification is to be made. A reading of this section would show that whilst the issuance of the notification has been made mandatory, the time for doing so is not at all indicated by the section. The fact that the prescribing of time was left by the legislature to subordinate legislation is in a way suggestive of the fact that the time within which the notification was to be made was not considered by the legislature to be of a paramount importance. The word 'shall' in rule 5(8) (b) has been used therein with regard to the factum of the publication of the notification in the official gazette and not with regard to the one week's time mentioned therein. Section 24 has in no uncertain terms made the publication of the notification not only mandatory but as a pre-requisite before any of the elected or co-opted members