

MISCELLANEOUS CIVIL

Before Harbans Lal J.

AMRITSAR IMPROVEMENT TRUST,—Petitioner.

versus

NARINDER NATH BHATIA ADVOCATE AND OTHERS,—Respondents.

Civil Writ Petition No. 3967 of 1973

October 4, 1977.

Punjab Development of Damaged Areas Act (X of 1951)—Sections, 5, 9, 23 and 25—Constitution of India 1950—Article 14—Acquisition of property under the Act—Grant of solatium—Whether permissible—Failure to grant the same—Whether hit by Article 14—Amount of compensation enhanced by the Land Acquisition Tribunal—Claimants—Whether entitled to interest on such enhanced amount.

Held, that any provision in an Act which deprives the owner of solatium at the time of acquisition of his property, to which he is entitled under the Land Acquisition Act, will be hit by Article 14 of the Constitution of India 1950 and those principles are applicable to all Acts under which property is to be acquired. The provisions of the Punjab Development of Damaged Areas Act 1951 and those of the Punjab Town Improvement Act 1922 are almost similar with the only difference that in the former Act the land can be acquired in a 'damaged area' as defined under the Damaged Areas Act, while in the latter Act any land within the jurisdiction of the Municipality can be the subject matter of acquisition. Thus, the Land Acquisition Tribunal is fully justified in granting solatium in its award to the claimants. If solatium is not granted the order can be successfully challenged.

(Paras 4 and 5).

Held, that the act of taking possession of immovable property generally implies an agreement to pay interest on the value of the property and it is on this principle that a claim for interest is made against the State. When a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily he is not making claim for damage properly or technically so called; he is basing his claim on the general rule that if he is deprived of his property he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation. A perusal of section 25 of the Act shows that payment of interest has been excluded only on the amount awarded by the Collector in his award. It has no reference to the

payment of compensation as may be enhanced by the Tribunal under section 23 of the Act. Even under the Land Acquisition Act, interest is made payable on the amount enhanced by the Court over and above the amount of compensation as awarded by the Collector. Thus claimants are entitled to interest on the amount of enhanced compensation as awarded by the Tribunal from the date of their dispossession of the property acquired.

(Para 9).

Petition under Articles 226 and 227 of the Constitution of India praying that this petition be allowed, the award of the Tribunal Annexure 'B', enhancing the amount of compensation including the Award of solatium money, be set aside with costs throughout and the Award of the Collector Annexure 'A' may be restored as binding on the Petitioner Trust. Any other order may be passed which may be just and proper.

H. S. Gujral, Advocate, for the petitioner.

D. N. Awasthy, Advocate, for Respondents Nos. 1 to 7.

JUDGMENT

Harbans Lal, J.

(1) This order will dispose of Civil Writ Petitions Nos. 3961, 3963, 3964, 3966, 3968, 3969, 3971, 3972 and 3976 of 1973 and Civil Revisions Nos. 625 and 912 of 1973 as identical questions of fact and law are involved in all these cases and in which the same order of the Land Acquisition Tribunal has been impugned.

(2) In order to appreciate the points in controversy the facts in Civil Writ No. 3967 of 1973 are briefly summarised. By a notification of the Punjab Government, dated 11th October, 1957, a development scheme known as Bazar Ram Bagh Gate Area, situated within the walled city of Amritsar, was sanctioned under section 5(3) of the Punjab Development of Damaged Areas Act, 1951 (hereinafter to be called the Act). On the request of the Chairman of the Amritsar, Improvement Trust, Amritsar (hereinafter to be called the Trust) made on 20th November, 1957, an area measuring 9073 sq. yards situated in Amritsar City was acquired by the Land Acquisition Collector and notices under section 9 of the Act were issued to the persons interested to file their claims. The Land Acquisition Collector announced his award on 17th February, 1961 (Annexure 'A') and awarded a sum of Rs. 50,860 for the entire land under acquisition.

**Amritsar Improvement Trust v. Narinder Nath Bhatia Advocate
and others (Harbans Lal, J.)**

Respondents Nos. 1 to 7 got made a reference to the Land Acquisition Tribunal (hereinafter to be called the Tribunal), who modified the award of the Land Acquisition Collector, and gave his award, dated 12th January, 1973 by which the rate of compensation in respect of 337 sq. yards of the land was enhanced from Rs. 50 to Rs. 120 per square yard (Annexure 'B'). The Tribunal also awarded 15 per cent as solatium on account of compulsory acquisition. The Trust feeling aggrieved against the award of the Tribunal filed the present petition under Articles 226 and 227 of the Constitution, challenging the award on the following two grounds:—

- (1) The Tribunal had no basis to enhance the value of the land which was in belt 'B' comprising of 337 sq. yards of land from Rs. 50 to Rs. 120 per sq. yard as the same was on the back side of the Hall Bazar, Amritsar, and there was a difference between the potential and commercial values of different parts of this property; and
- (2) there is no provision for the grant of solatium in the Act, which is a complete Code in itself and its provisions are different from the provisions of the Land Acquisition Act or the Punjab Town Improvement Act, hence no solatium could be granted under the provisions of the Act.

Respondents Nos. 1 to 7 have in their reply controverted the pleas of the petitioner Trust and have contended that the award of the Tribunal regarding grant of solatium as well as the enhancement of the value of the land was perfectly in accordance with law and the evidence on the record.

(3) In Civil Revision No. 625 of 1973, the revision-petitioners, who are respondents 1 to 7 in Civil Writ No. 3967 of 1973 have challenged the award of the Tribunal claiming that the value of the land should have been enhanced to Rs. 190 per sq. yard instead of Rs. 120 per sq. yard, and that the interest on the enhanced amount of compensation and solatium should also have been granted. In Civil Revision No. 912 of 1973, the petitioners have claimed not only the interest but also the solatium at 15 per cent, which was not granted to them by the Tribunal. However, they have not claimed any enhancement in the amount of compensation as awarded by the Tribunal.

(4) It is contended by the learned counsel for the writ petitioner that the provisions of the Act are materially different from the provisions of both the Punjab Town Improvement Act and the Land Acquisition Act and, therefore, the Tribunal was not competent to grant solatium at the rate of 15 per cent over and above the amount of compensation awarded. According to the learned counsel the ratio of the Full Bench judgment in *Devinder Kaur v. Ludhiana Improvement Trust, Ludhiana and others*, (1), is not applicable to the facts of the present case. In the aforesaid Full Bench judgment clause (2) and clauses (a), (d) and (f) added to sub-section (3) of section 23 of the Land Acquisition Act by clause (3) of para 10 of Schedule to the Town Improvement Act, depriving the owners of property of the grant of solatium at the rate of 15 per cent, which was imperative under the provisions of the Land Acquisition Act, was held to be *ultra vires* Article 14 of the Constitution, and it was also held that solatium at the rate of 15 per cent has to be granted even if the land is acquired not under the Land Acquisition Act but under the Town Improvement Act. In support of this decision reliance was placed on *Balammal and others v. State of Madras* (2), and *Nagpur Improvement Trust and another v. Vithal Rao*, (3). In both these cases their Lordships of the Supreme Court expressly held that any provision under the Madras City Improvement Trust Act or the Nagpur Improvement Trust Act which deprived the owners of property of solatium at the rate of 15 per cent on the market value of the land, which was otherwise available to them under the Land Acquisition Act, was invalid and that the owners of land whose property was compulsorily acquired were entitled to this solatium. According to the learned counsel for the petitioner, the ratio of the Full Bench judgment or the two Supreme Court decisions referred to above is not applicable to the present case as the property has been acquired under the provisions of the Act, the scheme of which is quite different from that of the Land Acquisition Act or the Punjab Town Improvement Act. Reference in support of this proposition has been made to *Bachan Singh v. State of Punjab* (4) in which the various provisions of the Act were challenged as violative of Article 14 of the Constitution. In the said case some area belonging to the writ petitioners in Amritsar City had been acquired under the

(1) 1975 P.L.R. 527.

(2) A.I.R. 1968 S.C. 1425,

(3) A.I.R. 1973 S.C. 689,

(4) A.I.R. 1971 S.C. 2164.

Amritsar Improvement Trust v. Narinder Nath Bhatia Advocate
and others (Harbans Lal, J.)

the Act. It was contended that section 2, sub-clause (d) offended Article 14 of the Constitution inasmuch as "damaged area" as defined in that section furnished no guidelines and was arbitrary and unguided, and the State Government was free to pick and choose any area and declare it to be a damaged area. Notification under section 2(d) was challenged as vague. The provision regarding compensation was also challenged as discriminatory because the property could be acquired at the discretion of the Improvement Trust either under the Punjab Town Improvement Act or under the Act, though the provision for compensation under the former Act was more advantageous. It was also disputed that the acquisition under the Act could not be said to be for a public purpose as nothing was contributed by the Government and the entire contribution was made by the local authority. All these contentions were repelled by their Lordships of the Supreme Court and it was held that the provisions of the Act did not suffer from any vice. After perusing the various provisions of the Act it was further observed as under:—

"The provisions of the Act it may be noticed clearly indicate that they are reasonable and are designed to serve the interest of the general public namely to execute schemes in a planned manner for the improvement of the damaged areas of the city of Amritsar. They do not in any way violate the provisions of Article 19(1)(f) and (g)."

While discussing the scheme disclosed in the various provisions of the Act it was also held as under:—

"The compensation payable to them is more in the nature of a profit sharing scheme in that the minimum that they would be entitled for payment is the market value of the property which has come under the scheme and may even be entitled to something more depending upon the income of the scheme and expenditure incurred therefor. The total amount of compensation for any land so acquired under section 13(2) is the difference between the income of the scheme which is to include the estimated value of the buildings and the material thereon that remains to be sold, the profits on the plots sold and the other source of the income of the scheme as notified in the statement

under section 12, subject, as we have pointed out earlier, to the compensation in any case not being less than the market value of his interest as determined by the Collector under section 11(d) minus the cost of the demolition and removal incurred by the Trust.”

This observation was based on the interpretation of section 13 of the Act. The learned counsel for the petitioner has based his argument mainly on the said observation and has urged that the scheme of the Act is based on principles drastically different from those forming the foundation of the Land Acquisition Act or the Punjab Town Improvement Act inasmuch as it is only under the Act that the claimants are entitled to market value of the property under acquisition as well as the difference in the income of the scheme after deducting the relevant expenditure under the provisions of the Act in addition. As the claimants will be entitled to share in the profits of the scheme, it is argued, they cannot claim solatium. Perusal of the aforesaid judgment makes it clear that the question of grant of solatium and the absence of the same resulting in discrimination as against the provisions of the Land Acquisition Act and the Punjab Town Improvement Act was not before their Lordships of the Supreme Court and the observation was made while discussing the various provisions of the Act, to find out the underlying idea of the scheme in a general manner. Even if the claimants under the Act are entitled to share profits in the scheme, the same may prove illusory as in fact no profit may accrue. Generally the schemes are formulated by the Government or the local authority on “No profit no loss” basis. In any case, there are likely to be cases in which the claimants may not be, in actual fact, getting more than the market value. According to the ratio of the decisions in *Balammal's case* and *Nagpur Improvement Trust's case* (supra) by the Supreme Court and of the Full Bench decision of this Court in *Devinder Kaur's case* (supra), any provision in the Punjab Town Improvement Act or such like Acts which deprives the owner of solatium at the time of acquisition of his property, to which he is entitled under the Land Acquisition Act, will be hit by Article 14 of the Constitution. This ratio is applicable not only in the case of the Acts, the provisions of which were under consideration in the aforesaid cases, but also to all Acts under which the property is to be acquired. The provisions of the Act and those of the Punjab Town Improvement Act are almost similar with the only difference that in the former Act land can be acquired in a “damaged area”

**Amritsar Improvement Trust v. Narinder Nath Bhatia Advocate
and others (Harbans Lal, J.)**

as defined under the Act, while in the latter Act any land within the jurisdiction of the Municipal Committee can be the subject-matter of acquisition. The similarity between the two Acts is further made clear from sub-section (5) of section 5 of the Act, according to which the provisions of the Punjab Town Improvement Act, 1922, have been made applicable to all schemes framed and sanctioned under the Act in so far as they are not in conflict with or are not inconsistent with the provisions of the Act.

(5) The learned counsel also relied upon *State of Gujarat v. Shantilal*, (5) *Ramtanu C. H. Socy. v. State of Maharashtra*, (6) and *Sarwan Singh v. State of Punjab*, (7). In *Shantilal's case* (supra), the vires of sections 53 and 67 of the Bombay Town Planning Act was under challenge on the ground that they were violative of Article 31(2) of the Constitution, and further that they denied the equal protection of the laws. Both the contentions were repelled and it was held that the principles for determination of compensation had been specified in the said provisions and, therefore, they were not hit by Article 31 of the Constitution. It was also held that the land under the Land Acquisition Act could be acquired by the State Government whereas the local authority could acquire the same under the Bombay Town Planning Act and that the local authority had no option to adopt any alternative method and, therefore, the said provisions did not violate the equality clause as incorporated in Article 14 of the Constitution. In *Ramtanu C. H. Socy's case* (supra) it was held that there was no procedural discrimination between the Maharashtra Industrial Development Act and the Land Acquisition Act and that the former Act was a special one having the specific and special purpose of growth, development and organisation of industries in the State of Maharashtra. In *Sarwan Singh's case* (supra) it was held that the denial of right of appeal under section 59(a) of the Punjab Town Improvement Act, which was available in the case of acquisition under the Land Acquisition Act is not hit by Article 14 of the Constitution. In none of the above-mentioned cases the question regarding the effect of absence of provision relating to grant of solatium was before the Supreme Court. This question was specifically dealt with in *Balamma's case*, *Nagpur Improvement Trust's case* and *Devinder Kaur's case* (supra). In

(5) A.I.R. 1969 S.C. 634.

(6) A.I.R. 1970 S.C. 1771.

(7) A.I.R. 1975 S.C. 394.

view of these decisions it must be held that the Tribunal was fully justified in granting solatium in its award to respondents Nos. 1 to 7. If solatium had not been granted, the order could be successfully challenged.

(6) It was then contended that the Tribunal has arbitrarily and without any evidence enhanced the value of the land in belt 'B' comprising of 337 sq. yards of land from Rs. 50 to Rs. 120 per sq. yard. This contention is also without any substance. The Land Acquisition Collector in his award (Annexure 'A') had assessed the value of the land in belt 'A' at the rate of Rs. 190 per sq. yard on the ground that the same was a commercial property and the land in belt 'B' was valued at the rate of Rs. 50 per sq. yard holding the same to be a residential property. According to the learned Tribunal the statement of Shri N. N. Bhatia (A.W. 6) before the Collector was categorical that the property in dispute had been burnt down during the communal riots in 1947 at the time of partition of the country and thereafter the area was converted into a commercial area by constructing shops thereon and it was designated as Balmokand Bhatia market. This was also described as a Horse-shoe Market with only one approach from the Hall Bazar. The other witnesses also corroborated the same. There being no evidence to the contrary, the learned Tribunal arrived at the firm finding that the property which had been purchased by the claimants several years before the acquisition was definitely being used for commercial purposes. Consequently it was held that the Collector was wrong in categorising part of the land as residential. The learned counsel for the petitioner has not been able to lay his hands on any evidence on the record which could be pressed into service to conclude that this finding of the learned Tribunal was in any way wrong.

(7) After having reached this conclusion that the entire land was being used for commercial purposes at the time of the notification, the next question is as to whether the entire property should be assessed at the same value, that is, at Rs. 190 per sq. yard or the property in belt 'B' which is the land in dispute, and is admittedly at the back of the Hall Bazar, Amritsar, should be assessed at a different value. According to the statement of Shri Narinder Nath Bhatia, which has been relied upon by the learned Tribunal, shops in the front portion of the disputed property which open in the Hall Bazar fetched rent of Rs. 72.50 per month whereas the other shops at the back of the Hall Bazar yielded monthly rent between Rs. 30

Amritsar Improvement Trust v. Narinder Nath Bhatia Advocate
and others (Harbans Lal, J.)

and Rs. 60. There is no evidence on the record to the contrary. The lands under the shops in the front portion were assessed by the Tribunal at Rs. 190 per sq. yard and this value has not been challenged in these writ petitions. This being the position, the value of the land under the shops at the back of the Hall Bazar (comprised in belt 'B') can be assessed keeping in view the comparative monthly rents in both parts of the market. According to the statement of Mr. Bhatia, the shops at the back of the Hall Bazar in belt 'B' fetch monthly rent between Rs. 30 and Rs. 60. The average of the same will be Rs. 45 per month. As against this, the monthly rent of the shops in the front portion of the Hall Bazar was Rs. 72.50. If the value of the land between the two portions is also worked out in this proportion, the value of the land in belt 'B' comes to roughly Rs. 120 per sq. yard. This amount has been worked out by the learned Tribunal by applying a different method, the details of which need not be gone into as the net result is the same as has been worked out above. Thus no infirmity can be found in the finding of the learned Tribunal so far as the value of the land in dispute was enhanced from Rs. 50 to Rs. 120 per sq. yard.

(8) Here it may be mentioned that the learned counsel for the respondents 1 to 7 and the petitioners in Civil Revision No. 625 of 1973 stressed that the entire land in belt 'A' and belt 'B' was of the same quality and was in the same market and the passage was also the same. It was contended that in these circumstances the entire land including the land in belt 'B' should be assessed at Rs. 190 per sq. yard instead of Rs. 120 per sq. yard. There is absolutely no evidence to warrant such a conclusion. In support of this proposition reliance was placed on the decision of Bains, J., dated 22nd December, 1975, in Civil Writ No. 3199 of 1972, in which the division of the land into various belts was set aside. That was a decision on the facts of its own case and besides that a Letters Patent appeal has also been filed against the same which is pending. The present is a case of land which is being used for commercial purposes. It cannot be disputed that in case of commercial property its value is governed by the locality in which it is situated. It is the admitted case of respondents Nos. 1 to 7 that shops in the front portion fetch higher rent than those in the back portion. In view of this the land in dispute in belt 'B' cannot be evaluated at the same price for the purposes of compensation as the land in the front portion. It is consequently held that the value of the land

in dispute at the rate of Rs. 120 per sq. yard has been correctly assessed by the learned Tribunal.

(9) The learned counsel for the petitioners in Civil Revision No. 625 of 1973 and Civil Revision No. 912 of 1973 have also stressed that the learned Tribunal has wrongly and illegally not allowed interest to the claimants. It is, however, conceded that there is no provision in the Act for the grant of interest as in section 28 of the Land Acquisition Act. But it is urged that the claimants are entitled to interest under the general principles of law. Reliance has been placed on *Maganbhai v. Collector, District Mehsana*, (8) *Kuldip Raj v. State*, (9) *A. S. Krishnamurti v. Revenue Divisional Officer*, (10) and *Satinder Singh v. Umrao Singh*, (11) In *Satinder Singh's case* (supra), land had been acquired under the East Punjab Requisition of Immovable Property (Temporary Powers), Act, 1948. There was no dispute that there was no provision for allowance of interest along with the compensation on acquisition of property. In this situation it was observed by their Lordship of the Supreme Court as under:—

Therefore, it is necessary to examine this question on general grounds and principles without assuming that the application of these general considerations is excluded by any of the provisions of the Act (of 1948)."

Regarding the payment of interest it was observed thus :—

"Stated broadly the act of taking possession of immovable property generally implies an agreement to pay interest on the value of the property and it is on this principle that a claim for interest is made against the State."

After discussing the various decisions on the subject, it was then held as under :—

"When a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily

(8) AIR 1968 Gujarat 1.

(9) AIR 1969 J & K 142.

(10) AIR 1971 Mad. 236.

(11) AIR 1961 S.C. 908.

Amritsar Improvement Trust v. Narinder Nath Bhatia Advocate
and others (Harbans Lal, J.)

he is not making claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation. In our opinion, therefore, the fact that section 5(1) deals with compensation both for requisition and acquisition cannot serve to exclude the application of the general rule to which we have just referred."

According to the learned counsel for the writ-petitioners the payment of interest is excluded specifically under section 25 of the Act, which is reproduced below :—

"25. The Trust shall not be required to pay interest on any amount awarded as compensation and tendered in accordance with the order of the Collector."

Perusal of this section shows that payment of interest has been excluded only on the amount awarded by the Collector in his award. It has no reference to the payment of compensation as may be enhanced by the Tribunal under section 23 of the Act. Even under the Land Acquisition Act, interest is made payable on the amount enhanced by the Court over and above the amount of compensation as awarded by the Collector. In view of the above discussion, it is held that the petitioners in the two civil revisions (Nos. 625 and 912 of 1973) are entitled to interest on the amount of enhanced compensation as awarded by the Tribunal at 4 per cent per annum from the date of their dispossession of the land acquired.

(10) For the reasons mentioned above, all the writ petitions are dismissed with costs. Civil Revision No. 625 of 1973 is allowed to the extent that the revision-petitioners will be entitled to interest at 4 per cent per annum from the date of dispossession on the amount of enhanced compensation awarded by the learned Tribunal. Similarly, the revision-petitioners in Civil Revision No. 912 of 1973 will be entitled to interest in the like manner. As these petitioners were not allowed solatium, though the same was allowed to other claimants, they will also be entitled to solatium at the rate of 15 per cent on the amount of compensation awarded. These two revision petitions are accordingly allowed with costs.

K.T.S.