

THE UNION OF INDIA
v.
SHRI SUBE RAM AND ORS.

A

AUGUST 26, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

B

Land Acquisition Act, 1894 :

Sections 2(d), 23(2) and 28—Enhanced solatium and interest under the Amendment Act 68 of 1984—Held : Claimants would be entitled to only if proceedings were pending before the Land Acquisition Officer or Court—Entertaining of application by High Court—Order 47 Rule 1 CPC.

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Union of India v. Raghubir Singh, [1989] 2 SCC 754, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 11913-14 of 1996.

D

From the Judgment and Order dated 24.7.94 of the Delhi High Court in R.F.A. No. 33 of 1977.

K. Lahiri, B.K. Prasad, S.A. Meeta and S.N. Terdol for the Appellants.

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Pankaj Kalra and Brij Bhushan for the Respondents.

The following Order of the Court was delivered :

Leave granted.

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We have heard learned counsel for both the parties.

Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the "Act") was published on March 8, 1957 acquiring the land for planned development of Delhi city. The Land Acquisition Officer awarded compensation on October 3, 1974 under Section 11 of the Act. The Additional District Judge enhanced the compensation on October 5, 1976. On appeal, the High Court further enhanced the compensation on July 24, 1984 to Rs. 10 per square yard with solatium and interest at old rates, namely, solatium at 15% under Section 23 (2) and interest at 6%

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- A under proviso to Section 28 of the Act on the enhanced compensation. Consequently, the respondents filed the petition under Sections 151 and 152 of the Code of Civil Procedure, 1908 and the High Court by the impugned order dated March 22, 1985 allowed the benefits under the Amendment Act 68 of 1984 and awarded solatium at 30% on the enhanced compensation and interest under the proviso to Section 28 at 9% for one year from the date of taking possession for one year and @ 15% thereafter till date of deposit into court on the enhanced compensation. Subsequently, that view was reversed by this Court in *Union of India v. Raghbir Singh*, [1989] 2 SCC 754. The application came to be filed for review of the judgment and the High Court in the impugned order dated December 1, 1993 dismissed the review application. Thus these appeals by special leave. Appeal also was filed against the original appellate order with a delay of 3379 days.

- D Shri Pankaj Kalra, learned counsel for the respondents with his usual vehemence, contended that the review application came to be filed eight years after the order was passed by the Division Bench and five years after the judgment of this Court in *Raghbir Singh's* case. The High Court, therefore, was right in refusing to entertain the review petition. In view of the Explanation to Order 47 Rule 1, CPC, he also contended that change of law as interpreted by Court would not be a ground for review. There is an inordinate delay in filing the special leave petition against the original order and the delay has not been properly explained. Therefore, the orders of the courts below are not vitiated by any error of law. We find no force in the contentions.

- F It is now settled legal position that the claimants would be entitled to the enhanced solatium and interest only if the proceedings were pending either before the Land Acquisition Officer or Court. The word "Court" defined under section 2(d) of the Act as on the date the Amendment Bill was introduced and the Act made by the Parliament, was Civil Court. Therefore, the question that arises is: whether the High Court has jurisdiction to entertain the application for enhancement after the Amendment Act 68 of 1984 came into force. It is true that if it were a case of a superior Court having interpreted the law and the law having become final, by Order 47 Rule 1, CPC it could not constitute a ground for review of the judgment. But here is the case of entertaining the application itself; in other words, H the question of jurisdiction of the Court. Since the appellate Court has no

power to amend the decree and grant the enhanced compensation by way of solatium and interest under Section 23(2) and proviso to Section 28 of the Act, as amended by Act 68 of 1984 it is a question of jurisdiction of the court. Since courts have no jurisdiction it is the settled legal position that it is a nullity and it can be raised at any stage. A

The learned counsel sought to place reliance on an order passed by this Court on July 31, 1995 in SLP (C) No. 22639 of 1994 dismissing the special leave petitions *in limine*. In view of the settled legal position, the order dismissing the special leave petition *in limine* does not constitute *res judicata*; that too in a dispute which was not even between the parties in this case. The above decision may not stand in the way of this Court's exercising the power under Article 136 of the Constitution. B C

The learned counsel has contended that the Court has power to grant or to refuse to grant the relief and if having gone into the question and decided the same on merit, *it can be said* that the High Court committed no error of law. So the order is valid in law. In view of the facts and circumstances, we condone the delay and entertain the appeal filed against the original order dated March 22, 1985 and also the review petition. D

The appeals are accordingly allowed. The award of the solatium @ 30% under Section 23(2) of the Act and interest @ 9% for one year from the date of taking possession and 15% thereafter till the date of deposit under proviso to Section 28 stands set aside and the original order of the High Court dated July 24, 1984 stands restored. But in the circumstances without costs. E

G.N.

Appeals allowed.