

A

JASPAL SINGH AND ANR.

v.

UNION OF INDIA AND ANR.

DECEMBER 18, 1996

B

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

*Land Acquisition Act, 1894 : Section 23(1) Clause Fourthly and Fifthly.*

C

*Land Acquisition—Compensation—Principle for determination of—Acquisition of large track of land for extension of cantonment in Amritsar—Compensation for loss of profits to appellant's poultry—The mere fact that the claimant was displaced on account of acquisition and could not resuscitate himself by establishing a poultry farm business anywhere, cannot be a ground under clause fourthly of Section 23(1) to determine the compensation on that basis—His loss of earnings till date of resettlement should not be determined in that behalf—Clause fifthly is only consequence of acquisition of the land by the Collector—Transport charges incurred for the displacement and carrying the material due to displacement are required to be awarded, in addition to the compensation determined—But the mere fact that the claimant happened to secure alternative land at a far off place and that too said to be an insecure place, cannot be a ground to contend that he is also entitled to compensation under clause fifthly due to change of business and setting up of the business in an insecure place.*

D

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1741 of 1986.

F

From the Judgment and Order dated 15.11.85 of the Punjab & Haryana High Court in L.P. A. No. 1056 of 1985.

Raju Ramachandran and Sudarsh Menon for the Appellants.

G

Mrs. Shashi Kiran for C.V.S. Rao for the Respondents.

The following Order of the Court was delivered :

H

This appeal by special leave arises from the judgment and order, made on November 15, 1985 by the Punjab & Haryana High Court dismissing *in limine* LPA No. 1356 by confirming the judgment of the learned

single Judge dated November 9, 1979 in RFA No. 779/75.

Notification under Section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the 'Act') was published on July 11, 1977 acquiring a large track of land including the land in question for extension of the cantonment in Amritsar. The award under Section 11 was made and on reference under Section 18 of the Act came to be filed in the civil Court on June 15, 1983 which determined the compensation for loss of profits to the appellant's poultry at Rs. 6,54,637. Since the Assistant Director of Poultry Farm had notified to the Land acquisition Officer that the rate of return per bird was at Rs. 1.38 per month and there were 2500 birds in the poultry farm, the Additional District Judge applying 15 years' multiplier, came to determine the above amount. In writ petition, the learned single Judge of the High Court reversed the said finding and held that the appellant at best would be entitled to Rs. 31,050 for loss of business for a reasonable period of 5 and 6 months. That was confirmed by the Division Bench. Thus this appeal by special leave. This appeal, on behalf of the respondent, seems to have been filed due to which we need not go into merits to the extent upheld by the High Court.

Shri Raju Ramachandran, learned senior counsel appearing for the appellant, contends that under clause fourthly of sub-section (1) of Section 23 of the Act, if the damage sustained by the appellant, at the time of the Collector' taking possession of the land, by reason of the acquisition is such as is injuriously affecting his other property, movable or immovable, in any other manner or his earnings, the appellant is entitled to the compensation. Equally, compensation is claimed under clause fifthly, since as a result of the acquisition, he was made to travel 5 Kms. from the border of the State to Pakistan and could secure the land in an insecure place as a result of the search and held to shift his business to other place. Taking all these factors into consideration, the amount awarded in the award by the civil Court cannot be said to be unjustifiable or arbitrary warranting interference by the High Court. We find no force in the contention.

Sub-section (1) of Section 23 itself envisages that in determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration the loss of earnings as a component for the acquisition of the property. The mere fact that the claimant was displaced on account of acquisition and could not resuscitate himself by

- A establishing a poultry farm business anywhere, cannot be a ground under clause fourthly of Section 23(1) to determine the compensation on that basis and his loss of earnings till date of resettlement should not be determined in that behalf. We find that it is difficult to give such a construction to clause fourthly of Section 23(1). What it contemplates of is
- B that as a consequence of acquisition, if any damage is sustained by the claimant or interested person at the time of Collector's taking possession of the land injuriously affecting the other property, movable or immovable, in any other manner or his earning from the property, the Collector is required to determine the compensation as is available on the date when the compensation is awarded. The mere fact that after the acquisition, the
- C interested person or claimant has quickly rehabilitated himself or set up business once over, or could not start his business lately would not be a ground to increase the compensation for the loss of business as a component of determination of the compensation on "loss of profit".
- D Equally, clause fifthly is only consequence of acquisition of the land by the Collector. If the person is compelled to change his residence or place of business by reason of the acquisition, reasonable transit expenses incidental to such change, in other words, transport charges incurred for the displacement and carrying the material due to displacement are required to be awarded, in addition to the compensation determined. But
- E the mere fact that the claimant happened to secure alternative land at a far off place and that too said to be an insecure place, even if it is assumed to be so, cannot be a ground to contend that he is also entitled to compensation under clause fifthly due to change of business and setting up of the business in an insecure place. Under these circumstances, the
- F learned single Judge perhaps may be right in granting the amount only for a reasonable period of 6 to 7 months on the facts in this case. We are not expressing any concluded opinion on it. But it cannot be laid as a principle of law that loss of business till the claimant is resuscitated in his business in securing a place and the expenses incurred in that behalf also should always be a component of the determination of the compensation under
- G Section 23(1).

The appeal is accordingly dismissed. No costs.