

RAMESH DUTT
v.
STATE OF PUNJAB

AUGUST 21, 1996

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

Land Acquisition Act, 1894 : Sections 4(1), 23(1), 23(1-A), 23(2) and 28(As amended by Amendment Act, 68 of 1984.

Land Acquisition—Determination of compensation—Acquisition of large extent of land—Claim for loss of business of Poultry farm—Landowner remained in illegal possession and carried on the business—Not suffering any loss in earnings—Held not entitled to compensation on account of loss of business—Held High Court erred in directing compensation for one year for dislocation of claimants business—The State having not questioned this amount in appeal finding of High Court not disturbed—Landowner held not entitled to the benefits of provisions under the amended Act.

CIVIL APPELLATE JURISDICTION : Civil Appeal no. 4148 of 1989 Etc.

From the Judgment and Order dated 27.5.88 of the Punjab & Haryana High Court in R.F.A. No. 1005 or 1979.

K.K. Mohan for the Appellant.

H.S. Munjra, for Manoj Swarup for the Respondent.

The following Order of the Court was delivered :

Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the "Act") was published on October 16, 1970 acquiring a large extent of land admeasuring 180 acres in revenue estate of Bhatinda. The award was made under Section 11 on March 24, 1978. The appellant claimed compensation for the land and also for loss of business of poultry farm run in the land. The compensation @ Rs. 10 per sq. yd. was awarded by the Additional District Judge which was affirmed by the High Court as enhancement thereof was not pressed. Thus, as far as the quantum of compensation for the land is concerned, the determination at market value

A of Rs. 10 per sq. yd. has become final.

The only question in the appeal of the claimant is : whether the claimant would be entitled to compensation for loss of business? As per clause fourthly of Section 23(1) of the Act, in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall also take into consideration the damages, if any sustained by the person interested at the time of the Collector's taking possession of the land for loss of his earnings. The yardstick, therefore, is the compensation for the loss of business as on the date of taking possession. It is seen, as found by the reference Court, that the appellant remained in possession upto April 26, 1977 and continued his business. It was admitted in the cross-examination by the appellant that he was disposing of the birds in poultry farm even at the time of his adducing the evidence. Accordingly, the District Judge recorded the finding thus :

"In cross-examination he admitted that he started disposing of the birds in the Poultry Farm and that the acquisition of Poultry Farm could not have made any difference for the disposal of the broilers, which were otherwise to be disposed off. According to him, he disposed them of in routine business. Besides this, he produced on record Exh. PX, copy of the judgment of Shri Saranjit Singh Greal, District Judge. Roop Nagar, dated 26.4.1977, Exh. P copy of the Judgment dated 22.9.1975 passed by Shri Shamshad Ali Khan District Judge, Ropar. These copies of the judgments were produced with view to prove that he is entitled to compensation on account of loss of business."

F Having illegally remained in possession and carried on the business he did not suffer any loss in earnings. On the other hand, he had reaped the benefits. So he is not entitled to get further compensation.

The High Court obviously was in error in directing payment of compensation for one year for the dislocation of his business at the rate of Re. 1 for one month per bird for 12,000 birds. However, since the State has not questioned this amount in this appeal and since the connected appeal is confined only to the additional benefits under the Amendment Act 68 of 1984, we need not disturb the findings of the learned Single Judge in awarding compensation at that rate, though we find it illegal. The appeal of the claimant, therefore, merits on further consideration. It is accordingly

dismissed. No costs.

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As far as the State appeal is concerned, in view of the fact that the award of the Collector is of March 24, 1978, the Amendment Act 68 of 1984 granting solatium u/s 23(2), additional amount at 12% per annum from the date of the notification till date of award or taking possession, whichever is earlier under Section 23(1-A) and enhanced interest under Section 28 proviso clearly has no application. Accordingly, the additional amounts granted stand set aside. Instead, the award of the District Judge granting solatium @ 15% on enhanced compensation and interest at 6% on the enhanced compensation from the date of taking possession till date of deposit stands upheld.

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C

The appeal of the State is accordingly allowed. No costs.

T.N.A.

Appeal allowed.