

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **L.A. APPEAL NO. 738 OF 2008**

+ Date of Decision: 13th October, 2009

UNION OF INDIA ...Appellant

! Through: Mr. Sanjay Poddar, Advocate

Versus

\$ **SHAUKAT RAI (D) THROUGH LRS & ANR.** ...Respondents

^ Through: Ms. Ritu Singh Mann, Advocate

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

JUDGMENT

P.K.BHASIN, J:

The present appeal has been filed by the Union of India against the order dated 19/10/2006 passed by the Additional District Judge in a Reference under Section 18 of the Land Acquisition Act, 1894 in respect of the Award no. 883 pertaining to the revenue estate of the village Mohd. Pur Munirka, Delhi.

2. The relevant facts for the purpose of the present appeal may be noted. The land of the respondents was acquired by the Government and an award was passed in pursuance thereof and compensation was

awarded. Feeling dissatisfied by the quantum of compensation awarded, a Reference under section 18 of the Land Acquisition Act was sought by the claimants and the Land Acquisition Collector made the Reference to the District Judge.

3. The Reference was however dismissed in default on 27/05/1976 due to non-appearance on behalf of the claimants. Upon an application dated 4/8/1980 made by the respondents herein the reference petition was restored on 6/8/87. (Copy of the order dated 6/8/87 was shown to me by the counsel for the respondent during the course of hearing of this appeal). While restoring the Reference, the Reference court also ordered that no interest under Section 28 of the Land Acquisition Act would be awarded to the claimants, in the event of their succeeding finally in getting enhanced compensation and becoming entitled to get interest, for the period from 27/05/1976 till 29/04/1986 during which the Reference had remained dismissed. While deciding the Reference finally and enhancing the compensation the learned Additional District Judge, however, passed directions for payment of interest also as provided under Sections 28 and 34 of the Land Acquisition Act even for the aforesaid period of non-pendency of the Reference proceedings relying upon the judgement of Supreme Court in **“Khazan Singh (Dead) by LRs v. UOI”, AIR 2002 SC 726**, wherein the Supreme Court had held that a Reference made by the Land Acquisition Collector cannot be dismissed in default and it is

the duty of the Court to answer the Reference even in the absence of parties.

4. Feeling aggrieved with the Award of the Reference Court only to the extent that it granted interest to the claimants even for the period when the Reference was not pending because of its dismissal-in-default, the Union of India has come up in appeal. Mr. Sanjay Poddar, learned counsel for the appellant, submitted that the Reference Court had while restoring the Reference, which was earlier dismissed in default due to non-appearance in the matter on behalf of the claimants seeking enhancement in compensation, specifically put a condition for restoration that the claimants in the event of succeeding finally in getting enhancement in compensation would not be entitled to get interest on the enhanced amount for the period during which the proceedings were not pending and that order was not challenged by the claimants and so the successor Judge could not have ignored that order and awarded interest for the period the Reference was not pending. Mr. Poddar submitted that the direction for payment of interest in the impugned order could not have been passed on the principles of *res-judicata*. It was also contended that the claimants having not challenged the earlier order of the Court disentitling them to get interest were estopped from claiming the same subsequently in the same proceedings since in fact it was impliedly on their representation to the Court that they would not claim interest if their Reference was restored, that the Reference was restored by the

Court. It was also contended that even if the Reference could not have been dismissed in default, as observed in the impugned order and the Court could not have passed an order at the time of restoration of the proceedings that the claimants seeking enhancement in compensation would not be entitled to claim interest for the delayed payment even in the event of their succeeding finally, the claimants having not challenged that order can be said to have waived their right to get interest. In support of these submissions Mr. Poddar also cited some judgments of the Supreme Court which are reported as 2005 (7) SCALE 187, "Union of India v. Pramod Gupta (D) by LRs and Ors."; AIR 1964 Supreme Court 993, "Arjun Singh v. Mohindra Kumar and others"; AIR 1960 Supreme Court 941, "Satyadhyan Ghosal and ors. v. Smt. Deorajin Debi and another". One judgment of this Court reported as 122 (2005) DLT 517, "Chander v. Union of India" was also cited in addition to some unreported decisions of this Court. Those decisions were given in RFA No. 517/1998(decided on 17/09/2007); RFA No. 623/1988, "Jagmohan and others v. UOI and others" (decided on 25/07/2006); and in WP(C) No.1282/1978, "The Radha Soami Satsang Beas and Anr. v. The Delhi Administration and Anr." (decided on 15/10/2004).

5. On the other hand, learned counsel for the respondents supported the impugned decision of the Reference Court awarding interest to the respondents even for the period during which the Reference had remained dismissed and reliance was placed on the decision of the

Supreme Court in **“Khazan Singh (dead) by LRs. V. Union of India”, AIR 2002 Supreme Court 726**, which has been relied upon by the Reference Court also while holding that the Reference could not have been dismissed in default and so for the fault of the Court the claimants could not be allowed to suffer by denying them the benefit of interest. Counsel also cited another judgment of the Supreme Court in **“Jet Ply Wood Private Ltd. & Anr. v. Madhukar Nowlakha & Ors.”, reported as JT 2006 (3) SC 60**, wherein it was held that the Courts can act *ex debito justitiae* for doing real and substantial justice.

6. After giving my thoughtful consideration to the rival submissions and having gone through the judgments cited from both the sides I do not find any merit in this appeal filed by the Union of India. The grant of interest for the period during which the Reference had remained dismissed by the Reference Court in the final award has been impugned on the ground that the earlier order of the Reference Court passed while restoring the Reference had attained finality and subsequently while disposing of the Reference the learned Additional District Judge could not have recalled that order of the predecessor Judge since the principles of *res-judicata* get attracted in this fact situation. However, I do not find any merit in this contention. At the time when the Reference came to be restored by the Reference Court the question of grant or rejection of interest to the claimants was not the point in dispute between the parties and so there can be no question of applicability of the principles of *res-*

judicata. The two judgments of the Supreme Court cited by Mr. Poddar in support of his contention regarding applicability of the principle of *res-judicata* (**AIR 1964 SC 993** and **AIR 1960 SC 941**) do not help the appellant in any way since in those cases the question was not as to whether the Court can or cannot rectify its own mistake to prevent injustice being caused to one of the parties before it by invoking the maxim *Actus curiae neminem gravabit*. The Reference Court has in the impugned judgment relied upon the decision of the Supreme Court in Khazan Singh's case (*supra*) wherein it has been observed that a Reference cannot be rejected because of non-appearance of the parties and the Reference Court is supposed to give its award one way or the other whether the parties chose to appear in the matter or not. So, no fault can be found with the decision of the Reference Court in following the said judgment of the Supreme Court and preventing injustice being caused to the claimants because of the fault of the Court itself by denying them the benefit of interest on the enhanced compensation which invariably is awarded to the successful claimants seeking enhancement in compensation awarded by the Land Acquisition Collector. The following observations made in a Full Bench decision of this Court in the case of **Chander Vs. Union of India**(*supra*) which was cited by the learned counsel for the appellant himself also supports the view taken by me:

"25. One has to bear in mind the distinction between inviting an order of the Court and the Court making an order of its own. In a case where the Court has made an order of its own of staying the proceedings, then the claimant should not be asked to suffer. In such a situation it was open to

the other side to move the higher forum with the request to proceed with the matter so as to avoid the payment of amount of interest for the interregnum. In the case of M/s. Lekh Raj and Co. v. Union of India and Others, Civil Appeal No. 5690 of 1985 decided on 24.3.1992, the Apex Court in a somewhat similar situation, where the Court had stayed proceedings of its own and refused to grant interest during the interregnum for the period 17.11.1968 to 23.7.1974 as there was a stay order, pointed out that, "Though the grant of interest under Section 28 of the Land Acquisition Act is discretionary with the Court but in the facts and circumstances of this case, we are of the view that the discretion has wrongly been exercised by the High Court. A dispute of apportion of compensation under Section 30 of the Act is the progeny of the Act and since the Court thought to stay the proceedings for enhancement of compensation, the act of the Court in these circumstances could not go to prejudice the accrual of interest on compensation which was kept retained by the State in the interval". It is in view of this the Apex Court allowed interest for the period for which it was declined. On behalf of the Union of India it was submitted that in the instant case it is not an act of the Court, but the claimant being not certain about his entitlement made an application to the Court, inter alia, requesting to stay the proceedings, with a further condition that he would not claim the amount of interest and under these circumstances the interest was denied and, therefore, the claimant is not entitled to claim any interest."

7. There is also no force in the argument of the learned counsel for the appellant that the claimants were estopped from claiming interest for the period during which Reference had remained dismissed because of their having not challenged the order passed by the Reference Court at the time of restoration of the Reference denying them the benefit of interest in advance. Learned counsel for the appellant had not stated before me that it was on the representation of the claimants that they would not claim interest in future even if they succeed that Reference Court passed the direction to that effect while restoring the Reference. So, there was no question of principle of estoppel also coming in the way of the claimants in claiming interest from the Reference Court when the stage to claim the same reached.

8. I have gone through all the judgments cited by Mr. Poddar and I find that none of them helps the appellant. In none of those decisions the question whether a Reference petition under Section 18 of the Land Acquisition Act can be dismissed because of non-appearance of the claimants had come up for consideration. In some of the decisions interest was denied to the claimants because on their request Reference proceedings were stayed by the Reference Court and for that reason it had been held that the claimants were not entitled to interest for the period the Reference proceedings had remained in abeyance at request of the claimants. In the present case, as noticed already, the claimants had not been instrumental in the delay caused in the disposal of the Reference petition. The delay occurred because of the fault of the Reference Court in dismissing the Reference petition for non-prosecution instead of deciding the same on merits and so the Reference Court did nothing wrong in giving the benefit of interest to the claimants while finally disposing of the Reference.

8. This appeal is accordingly dismissed.

P.K. BHASIN,J

October 13, 2009