

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **LA. APP. 874/2008**

Date of decision: 21.04.2010

IN THE MATTER OF :

SHRI SHANTI SARUP & ORS Appellants
Through : Mr. H.K. Chaturvedi, Adv.

versus

UOI & ORS. Respondents
Through : Mr. Sanjay Poddar with
Mr. Ramesh Ray, Adv. for UOI.

CORAM

* **HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (ORAL)

1. The present appeal is directed against the judgment dated 28.4.2007 passed by the Reference Court in respect of the land situated in village Gharonda Neemka Bangar, Delhi, covered under Award No.6-C/1971-72(supplementary) made on 31.3.1977. The limited grievance of the appellants in the present appeal is that while passing the impugned judgment, they were not granted interest on the enhanced compensation for the acquired land at the market value as fixed by the Reference Court, for the period from the date of death of

appellant No.1, Shri Shanti Sarup, i.e., from 5.2.1988, till the date of filing of an application by his legal heirs under Order 22 Rule 3 and Section 151 CPC read with Section 53 of the Land Acquisition Act, 1894 (in short '**the Act**'), i.e., till 5.7.2006, while excluding the period of 90 days granted for filing such an application. Similarly, the legal heirs of the deceased appellant No.2, Shri Surender Nath, were held dis-entitled to interest on the enhanced compensation from the date of his death, i.e., from 30.4.1979, till the filing of the application by his legal heirs under Order 22 Rule 3 and Section 151 CPC read with Section 53 of the Act, i.e, till 5.7.2006, while excluding the period of 90 days granted for filing such an application.

2. Before dealing with the contentions raised by the counsel for the appellants, certain undisputed relevant dates are necessary for consideration. On 11.5.1977, a reference petition was filed by the predecessors-in-interest of the appellants under Section 18 of the Act. On 19.1.1979, a separate reference was forwarded by the Land Acquisition Collector under Sections 30 & 31 of the Act. On the same date, the Land Acquisition Collector also forwarded the amount as per the award made on 31.3.1977, to the Reference Court under Sections 30 & 31 of the Act. However, the reference under Section 18 of the Act was received by the Reference Court on 25.3.2006. On 5.7.2006, two applications were filed by the legal heirs of the appellants under Order 22 Rule 3 and Section 151 CPC read with Section 53 of the Act

stating *inter alia* that they are predecessors-in-interest of appellant No.1, Shri Shanti Sarup, who expired on 5.2.1988, and of appellant No.2, Shri Surender Nath, who expired on 30.4.1979. Consequently, the legal heirs sought impleadment as appellants in the pending proceedings before the Reference Court.

3. The aforesaid applications were disposed of by the Reference Court, vide order dated 2.4.2007. While allowing the said applications, the learned Additional District Judge held that the appellants would not be entitled for the interest on the enhanced compensation for the intervening period, from the date of death of their predecessors-in-interest, namely, Shri Shanti Sarup and Shri Surender Nath, till the date of filing of the applications under Order 22 Rule 3 CPC, i.e., till 5.7.2006, except for the period of 90 days granted for filing of such applications. The aforesaid order was assailed by the appellants by preferring a petition under Article 227 of the Constitution of India, registered as **CM(M) No.540/2007**, entitled "Shri Shanti Sarup & Ors. vs. UOI & Ors". However, the appellants (petitioners therein) sought to withdraw the said petition in view of the fact that in the interregnum, the impugned order dated 28.4.2007 came to be passed. Vide order dated 8.8.2008, the petition was permitted to be withdrawn, while granting liberty to the appellants herein to assail the order dated 28.4.2007 as per law.

4. Counsel for the appellants submits that the Reference Court erred in holding that the appellants were not entitled to interest on the enhanced compensation for the intervening period from the date of the death of their predecessors-in-interest, till the date of filing of the applications under Order 22 Rule 3 CPC, i.e., till 5.7.2006, for the reasons that the proceeding before the Land Acquisition Collector cannot be treated as one pending before a civil court and hence, the provisions of Order 22 Rule 3 CPC do not apply to such proceedings. In support of the aforesaid submission, he draws support from a judgment dated 3.2.2009 in the case of Dayanand Deceased (through LRs) vs. UOI in **CM(M) No.1369/2007**.

5. In the aforesaid case, the question which arose for determination, was as to whether the application preferred under Order 22 Rule 3 CPC for impleading legal heirs could have been filed before the Collector or should the petitioners therein have waited, for a reference petition to be filed by the Collector before the Court. While discussing the provisions of Section 3(c) and (d) of the Act, which define the expressions, "Collector" and "Court", respectively, read along with Section 53 of the Act, which specifies that the provisions of Code of Civil Procedure would apply to proceedings before the Court under the Land Acquisition Act, the learned Single Judge, relied on two judgments of the Supreme Court in the case of Mahadeo Bajirao Patil vs. State of Maharashtra & Ors., reported as **(2005) 7 SCC 440** and

Kailash vs. Nanhku & Ors., reported as **(2005) 4 SCC 480**, to hold that the petitioners therein were not legally bound to file an application under Order 22 Rule 3 CPC, till the proceedings were pending before the Collector and as the Land Acquisition Collector is not a court, therefore the provisions of Order 22 Rule 3 CPC do not apply to the proceedings pending before him. The said conclusion was arrived at by drawing parity from the aforesaid two judgments of the Supreme Court, wherein it was observed that provisions of Section 5 of the Limitation Act do not apply to the proceedings before the Collector as he is not a court.

6. Counsel for the appellants further contends that while passing the order dated 28.4.2007, reliance placed by the Reference Court on the order dated 25.8.2005 passed by a Division Bench in RFA No.107/1986, was mis-conceived for the reason that unlike the proceedings in the case in hand, which were pending before the Land Acquisition Collector, in the aforesaid case, the proceedings were pending before the Court. He submits that Section 53 of the Act would come into play only if proceedings are pending before the civil court and hence his clients could not be deprived of the interest payable on the enhanced compensation as awarded by the Reference Court.

7. In the present case also, the appellants are justified in submitting that they could not be deprived of the interest on the enhanced compensation as fixed by the Reference Court till the date 25.3.2006, when the reference under Section 18 of the Act was received by the Reference Court. The appellants are also entitled to claim interest on the enhanced compensation as granted by the Reference Court to the respondent No.3 herein (original petitioner No.2 before the Reference Court).

8. Counsel for the respondent has no quarrel with the aforesaid conclusion, but he submits that as the amount under the award was forwarded on 19.01.1979 by the Land Acquisition Collector to the Reference Court under Sections 30-31 of the Act, the respondent cannot be held liable to pay interest on the said amount. In this regard, he draws the attention of this Court to Section 34 of the Act. Section 34 stipulates that when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon @ 9% per annum from the time of so taking possession, until it shall have been so paid or deposited. Section 28 of the Act, however, stipulates that the Collector may be directed to pay interest on excess compensation @ 9% per annum from the date on which he took possession of the land to the date of payment of such excess compensation into court. Accordingly, the present appeal is disposed

of by modifying the operative para of the impugned order dated 28.04.2007, as below :-

"The appellants shall be entitled to market value of the land acquired by notification dated 13.11.1959 under Section 4 of the Act @ Rs.8,064/- per bigha. They shall also be entitled to enhanced compensation as per the details mentioned in the statement under Section 19 of the Act and also on the basis of judgment dated 22.11.1985 passed in **LAA No.16/1979** entitled UOI vs. Smt. Saroj Malik & Ors. Besides the above, the appellants shall be entitled to get of solatium under Section 23 (2) of the Act @ 30% per annum on the enhanced amount of compensation, and interest under Section 28 of the Act @ 9% per annum for the first year from the date of dispossession and @ 15% per annum on the difference between the enhanced compensation awarded by the Reference Court and the compensation awarded by the Land Acquisition Collector for the subsequent period till the payments. The appellants shall also be entitled to grant of interest @ 6% per annum on the market value, w.e.f., 13.11.1962 till the date of tender of the compensation awarded by the Collector, in terms of Section 4(3) of the Land Acquisition (Amendment & Validation) Act, 1967, till 19.1.1979. The appellants shall be further entitled to interest on solatium in terms of the judgment of the Supreme Court in the case of Sunder vs. UOI, reported as **DLT 2001 (SC) 569**. However, the appellants shall not

be entitled to interest on the enhanced compensation, w.e.f., 25.3.2006, the date when the reference under Section 18 of the Act was received by the Reference Court, till 5.7.2006, the date when the appellants filed two applications under Order 22 Rule 3 CPC.”

9. The aforesaid modifications in the impugned order shall be taken into consideration, when the appellants approach the Executing Court. While the appellants shall be awarded interest on the compensation in terms of Section 34 of the Act and interest on the enhanced compensation in terms of Section 28 of the Act, but the period, w.e.f., 25.3.2006 till 5.7.2006 shall be excluded for the purposes of calculating interest on the compensation awarded under Section 34 of the Act. The Executing Court shall also take into consideration the fact that as per the award, the Land Acquisition Collector deposited the amount with the Reference Court under Sections 30 & 31 of the Act on 19.1.1979.

10. The appeal is partly allowed and disposed of on the aforesaid lines, while leaving the parties to bear their own costs.

11. A modified decree sheet shall be drawn in terms of the aforesaid orders.

(HIMA KOHLI)
JUDGE

APRIL 21, 2010
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