A PREM CHAND & ORS.

v.

UNION OF INDIA

(Civil Appeal No. 2856 of 2010)

MARCH 30, 2010

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[V.S. SIRPURKAR AND CYRIAC JOSEPH, JJ.]

Land Acquisition Act, 1894 – ss. 4 and 23(1A) r/w. s. 30(1)(b) – Land acquired – Claim for compensation – High C *Court relying on its previous judgment, awarded compensation @ Rs. 39,300/- per bigha and denied benefit u/s. 23(1A) –In another case in respect of identical land, High Court had awarded compensation @ Rs. 3.45 lacks per bigha, which was scaled down to Rs. 76,550/- per bigha by* D *Supreme Court – Held: Claimants are entitled to the compensation u/s. 23(1A) r/w. s. 30(1)(b), since the award had not been made on or before 30.04.1982 – In view of the judgment in the case of identical land, compensation @ Rs.39,300/- not justified – However, the compensation is* E *scaled down by deducting 10% of the rate of Rs.76,550/- considering the fact that the lands have been already developed into plots.*

The High Court in the impugned order, relying on its previous judgment, awarded compensation @ Rs. 39,300/ F **- per *bigha* for the land acquired under Land Acquisition Act, 1894. However, it specifically denied the claimants' entitlement to the benefit u/s. 23(1A).**

In appeal to this Court, claimants contended that G **High Court was wrong in denying benefit u/s. 23(1A); and that High Court had wrongly fixed the compensation at Rs. 39,300/- per bigha, as in *Bali Ram Sharma's* case wherein the land acquired was also from the same village as in the present case, High Court had awarded**

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compensation @ 3.45 lacks, which was scaled down to Rs. 76,550/- per bigha by Supreme Court in appeal and that the claimants were at least entitled to the compensation @ 76,550/- per *bigha*.

Partly allowing the appeal, the Court

HELD: 1. The claimants would be entitled to the compensation u/s. 23(1A) r/w. Section 30(1)(b) of Land Acquisition Act, 1894, since the award had not been made on or before 30.04.1982. The claimants would, therefore, be entitled to that benefit, though the benefit seems to have been rejected by the High Court without giving any reasons. [Para 5] [1132-B-C]

K.S. Paripoornan v. State of Kerala and *Ors.* **1994 (5) SCC 593, followed.**

2. On the question of parity, the lands at the villages in *'Bali Ram Sharma's* case are identically circumstanced. It would, therefore, not be proper to grant the compensation at much lesser rate of Rs.39,300/- per *bigha*. However, it is correct that the rate of Rs.76,550/- is in respect of the Notification dated 17.11.1980 and the Notification in the present case was published only on 22.03.1978 and, therefore, some allowance would have to be given for that. Therefore, the compensation is scaled down by deducting 10 per cent of the rate of Rs.76,550/- considering the fact that the lands in this case have been found to be already developed into plots. The compensation shall be paid @ Rs.69,550/- plus the benefit u/s. 23(1-A) r/w. Section 30(1)(b) of the Act. [Para 8, 9] [1133-D-G-H; 1134-A-B]

Delhi Development Authority v. Bali Ram Sharma and Ors.* **2004 (6) SCC 533; *Union of India v. Harpat Singh and Ors.* **2009 (8) SCALE 201, relied on.**

Karan Singh and Ors. v. Union of India **1997 (8) SCC 186, referred to.**

A **Case Law Reference:**

1994 (5) SCC 593	**followed.**	**Para 4**
2004 (6) SCC 533	**relied on.**	**Para 6**
B **1997 (8) SCC 186**	**referred to.**	**Para 6**
2009 (8) SCALE 201	**relied on.**	**Para 8**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2856 of 2010.

C From the Judgment & Order dated 11.12.2003 of the High Court of Delhi at New Delhi in R.F.A. No. 149 of 1997.

P.H. Parekh, Mohit Choudhary, Puja Sharma, P.K. Mohapatra, Ramesh Gopinathan for the Appellant.

D P.P. Malhotra, ASG, Shailender Sharma, Sadhana Sandhu (for Anil Katiyar) for the Respondent.

The Judgment of the Court was delivered

E **V.S. SIRPURKAR, J.** 1. Leave granted.

2. This is an appeal against the judgment of the High Court wherein the High Court has awarded the land acquisition compensation @ Rs.39,300/- per bigha. The High Court relied F on its earlier judgment without citing the same wherein it had fixed the land acquisition compensation @ Rs.34,150/- per bigha in respect of the Notification under Section 4 of the Land Acquisition Act dated 19.08.1976. On that basis, the High Court, considering the difference of 1-1/2 years, enhanced the G amount at the rate of 10 per cent per year and thus granted compensation @ Rs.39,300/- per bigha.

3. The concerned lands are from village Dallupura which have been acquired by the Notification under Section 4 of the Land Acquisition Act dated 22.03.1978 which ripened into the H

Notification under Section 6 dated 27.09.1978. The High Court, however, specifically ordered that the appellants would not be entitled to the benefit under Section 23 (1-A) of the Land Acquisition Act (hereafter 'the Act'). A

4. Shri P.H. Parekh, learned Senior Counsel pointed out firstly that the claimants in this case could not have been deprived of the benefit under Section 23 (1-A) of the Act since the award was passed on 25.02.1983 and it was pending on 24.09.1984. He invited our attention to the Constitution Bench decision of this Court in *K.S. Paripoornan v. State of Kerala & Ors.* [1994 (5) SCC 593] wherein this Court had culled out the ratio in paragraph 110 as follows: B C

> "110. For all these reasons the questions raised in these petitions are answered as below:
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> (1) Section 23(1-A) providing for additional compensation is attracted in every case where reference was pending under Section 18 before the Court [Section 23(1-A)]. D
>
> (2) No additional compensation is payable in appeals pending on or after 24-9-1984 either in High Court or this Court. E
>
> (3) Additionalcompensation under Section 23(1-A) is also payable in all those cases where the proceedings were pending and the award had not been made by the Collector on or before 30-4-1982 [Section 30(1)(a)]. F
>
> (4) Similarly every landowner is entitled to additional compensation where the land acquiring proceedings started after 30-4-1982 whether the award by the Collector was made before 24-9-1984 or not [Section 30(1)(b)]. G

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A (5) XXX"

5. Accordingly as per the sub-para (3) of paragraph 110, it is clear that the claimants would be entitled to the compensation under Section 23 (1-A) read with Section 30 (1) (b) since the award had not been made on or before 30.04.1982. The claimants would, therefore, be entitled to that benefit though the benefit seems to have been rejected by the High Court without giving any reasons. That direction of the High court is, therefore, set aside and it is held that the claimants would be entitled to the benefit under Section 23 (1-A) of the Act.

6. However, Shri P.H. Parekh argued that the High Court had erred in fixing the compensation @ Rs.39,300/- per bigha. He further pointed out that the claimants herein had moved an application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, enhancing their claim before the High Court to Rs.350 per sq. yds. He pointed out that in the case reported as *Delhi Development Authority v. Bali Ram Sharma & Others* [2004 (6) SCC 533] in respect of the villages Kondli, Gharoli and Dallupura, this Court had awarded compensation @ Rs.76,550/- per bigha. In that case, this Court, relying on *Karan Singh & Ors. v. Union of India* [1997 (8) SCC 186] had scaled down the compensation to Rs.76,550/- per bigha from the one awarded by the High Court @ Rs.3.45 lakh per bigha. Shri Parekh, therefore, suggests that even the claimants in this case whose lands have been acquired in Dallupura would be entitled at least to the compensation @ Rs.76,550/- per bigha. The lands at Dallupra, Kondli and Gharoli have been held to be identically circumstanced. In fact, in *Bali Ram Sharma's* case (cited supra), the Court was dealing with the lands at Gharoli, Kondli and Dallupura where the High Court had awarded the compensation @ Rs.3.45 lakhs. This Court did not agree with that and scaled it down to Rs.76,550/-. It is, therefore, the learned Senior Counsel claims the compensation at least at that rate. It is to be noted that even

in this case, the claimants had claimed the compensation @ Rs.350/- per bigha by way of an amendment. Shri Parekh pointed out that the Notification in *Bali Ram Sharma's* case (cited supra) was dated 17.11.1980 which is comparable to the Notification in the present case which is dated 22.03.1978. He further pointed out that there is evidence that the lands at Dallupura, compensation of which is in question in the present appeal, were actually converted into the plots. He, therefore, claims compensation @ Rs.76,550/-.

7. On the other hand, Shri P.P. Malhotra, learned Counsel appearing for the Union of India disputes this and claims that the High Court was right in fixing the compensation @ 39,300/- per bigha.

8. On the question of parity, there can be no dispute that the lands at Kondli, Dallupura and Gharoli are identically circumstanced, as held by this Court in *Bali Ram Sharma's* case (cited supra). It would, therefore, be not proper to grant the compensation at much lesser rate of Rs.39,300/- per bigha. The learned Counsel also pointed out a decision of this Court to which one of us, (Cyriac Joseph, J.) was a party reported as *Union Of India v. Harpat Singh & Ors.* [2009 (8) SCALE 201]. This Court followed the judgments in *Karan Singh's* case (cited supra) and *Bali Ram Sharma's* case (cited supra) and approved them. These judgments were in respect of Gharoli, Kondli and Dallupura, where the compensation was paid @ Rs.76,550/-. He, therefore, urged to maintain the parity in this case also.

9. However, it is pointed out by Shri Malhotra that the rate of Rs.76,550/- is in respect of the Notification dated 17.11.1980 and the Notification in the present case was published only on 22.03.1978 and, therefore, some allowance would have to be given for that. Shri Malhotra is undoubtedly right. We, therefore, scale down the compensation by deducting 10 per cent of the rate of Rs.76,550/-. Ordinarily, we would have scaled down by

A 20 per cent but considering the fact that the lands in this case have been found to be already developed into plots, we would choose to scale down the compensation by 10 per cent to the round figure of Rs.69,550/- The compensation shall be paid @ Rs.69,550 plus the benefit under Section 23 (1-A) read with
B Section 30 (1) (b) of the Act.

10. With these directions, the appeal is allowed in part.

K.K.T. Appeal partly allowed.