

BAI SHAKRIBEN (DEAD) BY NATWAR MELSINGH AND ORS. A

v.

SPECIAL LAND ACQUISITION OFFICER AND ANR.

MAY 6, 1996

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

*Land Acquisition Act, 1894 :*

*Ss. 23(1-A), 23(2) and 28—Award made by Land Acquisition Officer on 19.5.1980—Reference court enhanced compensation by its award and decree dated 20.8.1983—Claimant not availing appellant remedy and allowing the decree to become final—Claimants filing applications under Order 47 Rule 1 and s. 151 CPC for amendment of decree to award benefits of the provisions as amended by Act 68 of 1984—Held, omission to award additional amounts u/s. 23(1-A), enhanced compensation u/s. 28 and solatium u/s. 23(2) are not clerical or arithmetical mistake crept in the award passed by reference court but amounts to non award—Reference court was in error in entertaining the application.* C D

*Code of Civil Procedure, 1908 :*

*S. 151, Order 47, Rule 1—Land Acquisition proceedings—Claimants allowing award and decree of reference court dated 20.8.1983 to become final—Later filing applications for amendment of decree to allow benefits u/ss.23(1-A), 23(2) and 28 of Land Acquisition Act—Held, executing court or reference court cannot go behind the decree which became final to amend it by exercising power under Order 47, Rule 1 and s. 151.* E F

*State of Maharashtra v. Maharau Srawan Hatkar, [1995] 3 SCC 316 and Urban Improvement Trust, Jodhpur v. Gokul Narain & Anr., JT (1996) 4 SC 446, relied on.*

*Union of India v. Raghubir Singh, [1989] 2 SCC 754 and Raja Shatrunji v. Mohammad Azmat Azim Khan, [1971] Supp. SCR 433, referred to.* G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8284-8315 of 1996.

From the Judgment and Order dated 11.10.95 of the Gujarat High H

A Court in F.A. No. 1303-17 and 1322-93, 163-77 and 182 of 1994.

D.A. Dave and Ms. Meenakshi Arora for the Appellants.

Ms. Nandini Mukherjee and Mrs. H. Wahi for State .

B K. Parasaran, P.S. Shroff, Sunil Dogra, S.S. Shroff for the Respondents.

The following Order of the Court was delivered :

Leave granted.

C We have heard learned counsel on both sides.

D Notification under Section 4(1) of the land Acquisition Act (1 of 1984) for short, the 'Act') was published on January 2, 1975. The Land Acquisition Officer in his award under Section 11 determined the compensation on May 19, 1980. On reference under Section 18 the Asstt. Judge enhanced the compensation by his award and decree made under Section 26 on August 20, 1983. Thereafter the State carried the matter in appeal but the claimants did not. The High Court by judgment dated August 22, 1984 dismissed the appeals. Subsequently, the appellants came to file applications under Order 47 Rule 1 and Section 151 CPC for amendment of the decree to award benefits of Section 23(1-A), 23(2) and 28 of the Act as amended by Central Act 68 of 1984. Though the Court has amended the decree, the High Court in revision set aside the order by judgment and order dated October 11, 1995 made in F.A. Nos. 1303-1317 and batch. Thus these appeals by special leave.

F Shri Dushyant Dave, learned senior counsel for the appellants, contended that in view of the ratio laid down in *Raja Shatrunji v. Mohammad Azmat Azim Khan*, [1971] Supp. SCR 433, it must be held that the reference Court has jurisdiction under Order 47 Rule 1 read with Section 151 CPC to amend the decree though the decree has become final. We are unable to accept the contention. The controversy is no longer *res integra*. This Court in *State of Maharashtra v. Maharau Srawan Hatkar*, [1995] 3 SCC 316, had considered the similar situation. Therein, the award of reference Court was on October 25, 1983, i.e. after the Amendment Act was introduced in the Parliament. Thereafter, the order became final after the Amendment Act had come into force. Subsequently, an application was made for

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awarding enhanced solatium, interest and the additional amount under the aforesaid provisions. This Court had considered the controversy and held in paragraph 8 thus :

"Thus, it would be seen that a decree having been made under Section 26(2), the civil court is left to correct only either clerical or arithmetical mistakes as envisaged expressly under Section 13-A of the by LAO Act or under Section 152 CPC. Though Section 151 CPC gives inherent power to the Court, it is intended only to prevent abuse of process of the court or to meet the ends of justice. The present is not a case of such nature. Further, since Section 23 is an express power under which the civil court has been conferred with the jurisdiction to determine compensation, and in addition to the market value certain percentage of the amount is directed to be awarded as envisaged under Sections 23(1-A) and 23(2) and the interest component under Section 28, the invocation of Section 151 CPC by necessary implication stands excluded."

In *Urban Improvement Trust, Jodhpur v. Gokul Narain & Anr.*, JT [1996] 4 SCC 446, this Court once over considered the entire gamut of controversy regarding the power of the executing Court to grant relief under the Act including the above judgment and held that payment of additional amount, solatium or interest are independent components payable while enhancing the compensation. The executing Court cannot travel behind the award and award amended benefits.

A Constitution Bench of this Court in *Union of India v. Raghubir Singh*, [1989] 2 SCC 754, came to consider the effect of sub-section (2) of Section 30 of the transitory provision on which strong reliance was placed by Shri Dave. In paragraphs 33 and 34, the Constitution Bench had held that if the proceedings are pending in appeal, the amendment Act has no application and all it would be applicable only to the proceedings if they are pending before the Collector or reference Court between April 30, 1982 to September 24, 1984. It would thus be seen that if the proceedings are pending between these dates, indisputably the appropriate course or LAO is required to apply the provisions as amended under Act 68 of 1984. But having allowed the decree to become final, the question emerges whether it would be open to the executing Court or the reference court to go behind the decree which become final to amend the self-same decree

- A by exercising the power under Order 47 Rule 1 and Section 151 CPC. We feel that the executing Court cannot go behind the decree. It would have been appropriate for the claimants to have gone in appeal and have the matter corrected, but unfortunately they did claim of the appellate remedy and allowed the decree to become final. The omission to award additional amounts under Section 23(1-A), enhanced interest under section 28 and solatium under Section 23(2) are not clerical or arithmetical mistake crept in the award passed by the reference Court but amounts to non-award. Under those circumstances, the reference Court was clearly in error in entertaining the application for amendment of the decree and is devoid of power and jurisdiction to award the amounts under Section 23(2), 23(1-A) and 28 of the Act.
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The appeals are accordingly dismissed. No costs.

R.P.

Appeals dismissed.