PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
DISTRICT JUDGE

DATE OF JUDGMENT05/04/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1994 SCC (4) 737 JT 1994 (3) 629
1994 SCALE (2)822

ACT:

HEADNOTE:

JUDGMENT:
ORDER
1.This appeal arises from a case which had a chequered career. The appellant addressed a letter on 8-2-1968 to the Deputy Commissioner, Udhampur, State of Jammu and Kashmir enquiring about the availability of land for extension of Air Field, Udhampur. The Additional Secretary, Government of Jammu and Kashmir, wrote a letter to the Ministry of Defence that 2027 kanals and 18 marlas of land was available for acquisition at an approximate cost of Rs 12,62,655.32 paise subject to normal rise or decrease in that amount, which may occur on the determination of the market value. The Government had agreed and accorded sanction on 27-7-1970 for a
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sum of Rs 13,34,056 for acquisition of the land. Thereafter the Government of Jammu and Kashmir issued notification under Section 21 on 16-12-1971 requisitioning 2134 kanals of the said land situated in Village and Tehsil Udhampur. A notification under Section 7 of the Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968 (J & K Act 35 of 1968) (for short 'the Act') was published in SRO No. 843 dated 16-12-1972. Thereafter exercising the power under Section 16 of the Act the Deputy Commissioner, Udhampur was appointed as a competent authority under the Act. He determined market value @ Rs 5100 per kanal for Class 'A' lands in all the villages, Rs 4500 per kanal for Class 'B' lands in all the villages and Rs 4800 per kanal for Class 'C' in all the villages. In addition he awarded 15% solatium and interest at 4% from 16-12-1972 to 25-6-1973, the date on which possession was taken. The compensation had come to about Rs 1,21,00,000. A letter was issued to the subordinate officers for their approval. Since the appellants had not approved the determination of the market value at the said rate, they sought a reference under Section 8 of the Act. The District

Judge was appointed as an Arbitrator under Section 8(1)(b). At the beginning of the enquiry proceeding, held by the District Judge to determine the market value, the respondents filed an objection before the arbitrator contending that the award passed by the competent authority was an offer and it was acceptable to them. Since the requisition and acquisition had been made by the competent authority for and on behalf of the appellants they had no right to object to the award made by the competent authority. Therefore, the enquiry to be held by the District Judge as Arbitrator was without jurisdiction. But when the enquiry of the Arbitrator proceeded, without deciding the respondents' objections, they filed a writ petition in 1975. The learned Single Judge in his order dated 22-2-1979 held that the award passed by the competent authority being an offer, when the respondents had accepted that offer, it must be deemed to be one made under Rule 9 read with Section 8(1)(a) of the Act. Therefore, the appellants had no right to object to the offer made by the competent authority. Accordingly he directed the competent authority to enter into an agreement with the respondents in Form 'K'- Dissatisfied with that order the appellants filed LPA No. 35 of 1979. The Division Bench, by its order dated 27-4-1983, while upholding the view of the Single Judge that the award of the competent authority was an offer and that the appellants were bound by the offer, set aside the direction given to enter into an agreement in Form 'K', instead directed the District Judge to decide the objections filed by the appellants. Thereafter, the District Judge overruled the objections and held that the respondents had accepted the offer. Though no direct finding was recorded that the offer became enforceable in consequence of rejecting the reference under Section 8(1)(b), it must be concluded that the appellants were bound by the offer made by the competent authority and it would be one enforceable under Section 8(1)(a) of the Act. The appellants filed WP No. 295 of 1984 and the Division Bench by its order dated 8-5-1985 while affirming the view of the Single Judge and the Division Bench in the earlier
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proceedings held that the order passed by the District Judge is valid and the locus standi of the appellants to file the writ petition was doubted accepting the stand taken by the respondents that the appellants were not the persons interested under Section 2(d) of the Act and dismissed the writ petition. Thus this appeal by special leave.

2. Section 2(b) defines competent authority to mean any person or authority appointed by the Government by notification published in the Government Gazette to perform the functions of the competent authority under the Act for such area as may be specified in the notification. Section 16 of the Act empowers the Government to delegate to the authorised officer the exercise of its powers and duties under the Act, subject to such circumstances and under such conditions, if any, as may be specified in the notification. In pursuance thereof, the competent authority was appointed to exercise the powers of the Government and to perform its duties under the Act. Section 21 of the Act provides the mode and procedure to requisition the immovable property situated in the State of Jammu and Kashmir "required by the Union Government in connection with the purpose of the Union" and when the requisition in this behalf is received by the State Government it shall notify that such property be requisitioned. Exercising the power under Section 21 followed by a notification issued under Section 7(1)(a),

State Government acquired the said property for extension of the Air Field at Udhampur. Section 8 provides the procedure to determine the compensation, which reads thus:

> "8. Principles and methods of determining compensation.- (1) Where any property is requisitioned or acquired under this Act, there shall be given compensation which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say:
> (a)Where the compensation can be fixed by agreement, it shall be given in accordance with such agreement;
> (b)Where no such agreement can be reached, the Government shall appoint as arbitrator a person, who is a District Judge or Additional District Judge;"
> Sub-section (3) of the Act provides:
> "The compensation for the acquisition of any property under Section 7, in the absence of an agreement, shall be-
> (a)the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or
> (b)twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less."

3.The Government framed the rules, namely Requisitioning and Acquisition of Immovable Property Rules, 1969 which came into effect from
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5-1-1970 (for short 'the Rules'). Rule 9 is the relevant rule concerned in this case and reads thus:

> "9. Compensation.- (1) An authority to whom the powers of the Government have been delegated shall, as far as may be associate with itself the local officer of the Government concerned with the property in fixing compensation under clause (a) of sub-section (1) of Section 8, -and obtain the approval of the Government in the Administrative Department concerned (or) any officer authorised by the Government in this behalf.
> (3)The competent authority shall, as soon as may be practicable after the making of a requisitioning order or the service of a notice of acquisition, communicate to each person interested an offer of what in the opinion of the competent authority, is a fair amount of compensation payable to such person in respect of the property requisitioned or acquired.
> (5)(i) Every person interested to whom an offer is made under subrule (3) shall, within fifteen days of the receipt of the offer, communicate in writing to the competent authority his acceptance or otherwise of the offer. If he accepts the offer, the competent authority shall enter into an agreement with him on behalf of the Government in Form 'K'.

(ii)In the following circumstances, the competent authority may at his discretion make to an eligible claimant 'on-account' payment up to 80 per cent of the amount which, in his opinion is likely to be assessed as compensation or recurring compensation, as the case may be:
(a) when there is likely to be delay in assessing compensation;
(b) where the competent authority has made an assessment but there is delay in reaching an agreement though there is a reasonable prospect of agreement being reached; or
(c) where it is clear that an agreement cannot be reached.
(iii)If the competent authority makes an 'on-account' payment under clause (ii), he shall enter into an agreement with the person to whom payment is made on behalf of the Government in Form 'L' with such modification as the nature of the case may require.
(6)If any person to whom an offer is made under sub-rule (3) does not accept the offer or does not within fifteen days of the receipt of the offer communicate in writing to the competent authority his acceptance or otherwise of the offer the competent authority shall, as soon as may be, submit to the Government a report setting forth the full facts of the case. Particularly as regards the nature and extent of disagreement between himself on the one hand and the said person on the other hand and he shall also forward with the report all connected papers. The competent authority shall at the same time deposit in Court the amount offered by him to the said person under sub-rule (3)."
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A reading of Section 8(1)(a) and Rule 9 would clearly indicate that the competent authority appointed under Section 16 is enjoined to associate himself with the local officer of the Government concerned, i.e., when acquired for the Union Government, its officer, in fixing the compensation. The contention of Mr Bhim Singh learned counsel for the respondents that the officer of the Government concerned would necessarily mean only the officer of the State Government who is empowered to act under the Act; the officers of the appellant, Union of India have no right or authority to associate with the competent authority, to determine the compensation, is devoid of substance. The phrase "local officers of the Government concerned with the property" in Rule 9(1) read with Sections 8 and 21 brings out the distinction. Therefore, the delegated competent authority, when is enjoined to determine compensation in association with local officer of the Government concerned when it comes to Union of India, must associate himself with the local officers of the Central Government and obtain the approval of the Department of Central Government or the approval of any officer of the Central Government as may have been authorised.

4.In this case, the compensation was fixed with the association of the local officers of the appellant. The contention that the appellants have no locus standi is equally no longer res integra. In addition he also contends that for the second limb of Rule 9(1) i.e. the approval of

the Government in the administrative department, it is only of the State Government of Jammu and Kashmir or an officer authorised by the State Government in that behalf. Since the competent authority having been authorised in the notification, there is no need for further authorisation or the approval needed in this behalf and that, therefore, the award made by the competent authority is only an offer as held by the High Court in the previous litigation. It binds the appellants and that, therefore, they cannot question the offer made by the competent authority. We find no force in the contention. The language of Rule 9(1), namely, the delegated authority shall "as far as may be associated with itself the local officer of the Government concerned with the property in fixing compensation" would necessarily mean that the local officer of the Government of India that is apparent when we read the language closely with the language used in Section 21 of the Act. Section 21 expressly postulates that when the requisition is sought on behalf of the Union of India, the Government of Jammu and Kashmir acts under Section 21 requisitioning the land for the public purposes of the Union of India. Admittedly when the notification under Section 21 was issued requisitioning the land for defence purpose and the land was acquired under Section 7, association with the competent authority, is only of the local officer of the Government of India and not of the State Government. The reason is obvious that the officers of the appellant are interested to collect the best evidence of the prevailing market value and would place that evidence before the competent authority to fix true and correct compensation.

5.The second limb, namely, the necessity to obtain "the approval of the Government in the administration department concerned" would also

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necessarily mean the approval of the Government of India in its administration department i.e. the department for which requisition was made. The object appears to be that when the compensation determined by the competent authority under Section 8(1)(a) is sought to be made a binding contract on the Union of India or its department for which requisition was done, its approval is a necessary condition precedent so as to bind the department for which requisition was done on the Union of India.

6.The next question which we have to see is whether the High Court was right in its view taken in the earlier proceedings that there was an offer made by the competent authority and the same was accepted. It is not in dispute that after the determination of the compensation by the competent authority, a letter was addressed about the market value determined by him. The local officer had admittedly stated that though he was agreeable to the amount determined, unless the approval of the Government of India is obtained, he cannot give his concurrence. Thereafter no concurrence of the Government of India had been obtained nor was any offer communicated to the respondents for their acceptance. No record has been placed even in the earlier proceedings before the High Court of such a communication by the officer and its acceptance. It is seen that under Rule 9(5) it is mandatory that every person interested in the offer shall "within 15 days of the receipt of the offer communicate in writing to the competent authority his acceptance or otherwise of the offer". It is thereby clear that the communication of the offer to the person concerned and his acceptance within 15 days thereafter from the date of the receipt of the offer are mandatory requirements and

should be complied with. It is seen that the procedure has been prescribed in a mandatory language to ensure that the offer must be made after the approval by the Government concerned or with the approval of its officer specifically authorised in that behalf. The acceptance also should be in writing and must be made within the time prescribed. Otherwise the offer does not bind the requisitioning department for which acquisition was done or the Union of India or the owner whose land had been acquired for the public purpose. The High Court, therefore, was not right in its conclusion that there must be deemed acceptance by the respondents since they had so stated in their objection petitions in the enquiry proceedings held for the determination of the compensation by the arbitrator appointed under Section 8(1)(b) of the Act.

7.The next question, therefore, is whether the appellants have locus standi to object to the compensation determined by the competent authority under Section 8(3) of the Act. Section 2(d) of the Act defines:

> "The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."

This point is no longer res integra. Dealing with a pari materia definition of "person interested" in Central Act this Court in Himalayan Tiles & Marbles
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(P) Ltd. v. Francis Victor Countinho1 had laid down thus: (SCR pp. 242-43: SCC pp. 228-29, paras 13-14)

> "The only case which appears to have taken a contrary view is a Division Bench decision of the Orissa High Court in the case of State of Orissa v. Amarandra Pratap Singh2 where the High Court held that the expression 'person interested' did not include a local authority or a company on whose behalf acquisition is made by the State. At the same time, it was clearly held that it was open to the company in any proceeding before the Collector or court to appear and adduce evidence for the purpose of determining the amount of compensation.
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> Thus, the preponderance of judicial opinion seems to favour the view that the definition of 'person interested' must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a court, he may have to pay a very heavy compensation which, in case he is

> allowed to appear before a court, he could have, satisfied it that the compensation was far too heavy having regard to the nature and extent of the land. We are, therefore, unable to agree with the view taken by the Orissa High Court or even by the Calcutta High Court that a company, local authority or a person for whose benefit the land is acquired is not an interested person. We are satisfied that such a person is vitally interested both in the title to the property as also in the compensation to be paid therefore because both these factors concern its future course of action and if decided against him, seriously prejudice his rights. Moreover, in view of the decision of this Court referred to above, we hold that the appellant was undoubtedly a person interested as contemplated by Section 18(1) of the Act. The High Court, therefore, committed an error in throwing out the appeal of the appellant on the ground that it had no locus to file an appeal before the Bench."

8.This view was reiterated in Neelagangabai v. State of Kamataka3; Krishi Upaj Mandl Samiti v. Ashok Singha14; Union of India v. Sher Singh5 and Bihar State Electricity Board v. State of Bihar6. Thus it is settled law

1 (1980) 3 SCC 223 : (1980) 3 SCR 235
2 AIR 1967 Ori 180: ILR 1967 Cut 510
3 (1990) 3 SCC 617
4 1991 Supp (2) SCC 419
5 (1993) 1 SCC 608
6 Civil Appeal Nos. 1577-1600 of 1994, decided on Feb. 21, 1994

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that the requisitioning authority is a person interested since it is interested in the fixation of the proper and just market value or compensation of the land acquired on its behalf as well as to see that the true extent of the land is acquired -and is free from encumbrances. The participation in the proceedings by the local officers is to enable not only the determination of the proper and just market value or compensation in their presence after laying necessary and relevant evidence but also to secure valid title to the land acquired so that land acquisition officer and the court determine just and proper market value of the lands. It is, therefore, clear that the appellant is a proper and necessary party under Order 1 Rule 10 CPC. It is also the person interested under Section 2(d) of the Act. Accordingly the view of the High Court that the appellants are not interested persons is clearly illegal. It is accordingly set aside.

9.The question then is what is the procedure to be adopted in this case. In view of the fact that there is no agreement between the parties as contemplated under, Section 8(1)(a) read with Rule 9 of the Rules, as seen earlier, the only course open to the authorities is to appoint an arbitrator under Section 8(1)(b) of the Act and the arbitrator is enjoined to determine the market value as contemplated under sub-section (3) of Section 8 of the Act. In that view, necessarily, the matter has to be remitted for the decision by the arbitrator to be appointed by the State Government under Section 8(1)(b) afresh. But on the facts in this case since 23 years have elapsed, we find no justification to remit the matter. The competent authority had fixed the market value at the rate specified earlier and

admittedly local officers had associated themselves with the competent officer at the time of fixation of the market value. This Court had held in Union of India v. Hari Krishan Khosla7 that the property Acquired under the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short the 'Central Act'), the arbitrator has no power to award solatium and interest. The same principle would apply proprio vigore to the principles laid down under Section 8(3) of the Act. Accordingly we conclude that the determination of the solatium at 15% and interest at 4% by the competent authority under Section 8(3) of the Act is illegal. Therefore, to that extent it is set aside. However, fixation of market value at the rates specified above are upheld in the peculiar circumstances of the case. This Court has given interim directions from time to time and directed the-appellant to deposit half of the amount determined together with the solatium and interest etc. In the light of the decision now given, the competent authority is directed to work out the total compensation payable for the lands acquired at the rate specified by it as now upheld; deduct the amount already paid to the respondents in pursuance of the directions issued by this Court from time to time. If any balance amount is found due and payable by the appellant, it would be so determined and would communicate the same to the local officer of the appellant. The competent authority is directed to decide the matters as above within a period of two months from

7 1993 Supp (2) SCC 149

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the date of receipt of this order and the appellant is directed to deposit the balance amount, if any, within a further period of three months from the date of the receipt of the notice by the local officer.

10.The appeal is accordingly allowed as indicated above, but in the circumstances without costs.

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