

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 15041 OF 2017
(Arising out of SLP (C) No. 28069 of 2010)

UNION OF INDIA AND ORS.

... Appellants

VERSUS

HARI SINGH AND ORS.

... Respondents

WITH

Civil Appeal No. 15040/ 2017
(Arising out of SLP(C) No. 28070/2010)

Civil Appeal No. 15042/ 2017
(Arising out of SLP(C) No. 227/2011)

Civil Appeal No. 15043/ 2017
(Arising out of SLP(C) No. 20100/2012)

Civil Appeal No. 15044/ 2017
(Arising out of SLP(C) No. 23614/2011)

Civil Appeal No. 15045/ 2017
(Arising out of SLP(C) No. 13942/2011)

Civil Appeal No. 15046/ 2017
(Arising out of SLP(C) No. 16832/2011)

Civil Appeal No. 15047/ 2017
(Arising out of SLP(C) No. 18566/2011)

Civil Appeal No. 15048/ 2017
(Arising out of SLP(C) No. 28127/2011)

Civil Appeal No. 15070/ 2017
(Arising out of SLP(C) No. 19703/2011)

Civil Appeal No. 15071/ 2017
(Arising out of SLP(C) No. 23602/2011)

Civil Appeal No. 15073/ 2017
(Arising out of SLP(C) No. 22457/2011)

Civil Appeal No. 15072/ 2017
(Arising out of SLP(C) No. 22456/2011)

Civil Appeal No. 15078/ 2017
(Arising out of SLP(C) No. 29048/2011)

Civil Appeal No. 15074/ 2017
(Arising out of SLP(C) No. 22459/2011)

Civil Appeal No. 15075/ 2017
(Arising out of SLP(C) No. 26558/2011)

Civil Appeal No. 15092/ 2017
(Arising out of SLP(C) No. 31941/2013)

Civil Appeal No. 15076/ 2017
(Arising out of SLP(C) No. 27268/2011)

Civil Appeal No. 15081/ 2017
(Arising out of SLP(C) No. 29050/2011)

Civil Appeal No. 15080/ 2017
(Arising out of SLP(C) No. 29049/2011)

Civil Appeal No. 15077/ 2017
(Arising out of SLP(C) No. 27269/2011)

Civil Appeal No. 15079/ 2017
(Arising out of SLP(C) No. 30287/2012)

Civil Appeal No. 15083/ 2017
(Arising out of SLP(C) No. 33942/2011)

Civil Appeal No. 15082/ 2017
(Arising out of SLP(C) No. 30644/2011)

Civil Appeal No. 15085/ 2017
(Arising out of SLP(C) No. 10186/2012)

Civil Appeal No. 15093/ 2017
(Arising out of SLP(C) No. 25873/2013)

Civil Appeal No. 15039/ 2017
(Arising out of SLP(C) No. 34011/2011)

Civil Appeal No. 15084/ 2017
(Arising out of SLP(C) No. 226/2012)

Civil Appeal No. 15088/ 2017
(Arising out of SLP(C) No. 11465/2012)

C.A. No. 15041/ 2017 (@ SLP (C) No. 28069/ 2010)etc.

Civil Appeal No. 15087/ 2017
(Arising out of SLP(C) No. 224/2012)

Civil Appeal No. 15086/ 2017
(Arising out of SLP(C) No. 225/2012)

Civil Appeal No. 15089/ 2017
(Arising out of SLP(C) No. 2734/2012)

Civil Appeal No. 15094/ 2017
(Arising out of SLP(C) No. 19887/2014)

W.P. (C) No. 590/2016

W.P. (C) No. 405/2017 (X)

Civil Appeal No. 15145/ 2017
(Arising out of SLP(C) No. 18495/2017)

O R D E R

Leave granted.

In all these appeals the short question of law which needs consideration is as to whether the tax at source is to be deducted on the amounts which are paid as compensation or enhanced compensation, etc., on account of compulsory acquisition of land under the provisions of Land Acquisition Act, 1894.

An admitted fact which is common in all these appeals is that while disbursing the compensation, the Land Acquisition Collector had deducted the tax at source and deposited the same with the Income Tax Department. These appellants preferred the writ petition in the High Court stating that no such deduction at source was permissible in

view of the provisions of Section 194LA of the Income Tax Act, 1961, since the land which was acquired was agricultural land and this provision categorically mentions that in respect of agricultural land, tax at source is not to be deducted.

There is no quarrel about the position of law mentioned above. After examining this provision, the High Court had passed an order directing the Income Tax Department to refund the amount to the Collector with a direction to the Collector to determine whether the compensation is paid for property other than agricultural land or otherwise and whether deduction of tax at source was permissible under any provision of law. The manner in which the Land Acquisition Collector has to proceed further after determining the aforesaid issue is contained in paragraph 8 of Writ Petition No. 9912 of 2009 decided on 11.01.2001, which is reproduced below:

"8. Accordingly, we allow this petition and direct the Income Tax Department to refund the amount to the collector within one month from the date of receipt of a copy of this order. Thereafter, the Collector will determine whether compensation paid is for property other than agricultural land or otherwise and whether deduction of tax at source was permissible under any provision of law. Whether deduction is permissible or not will be decided by the Collector within two months from the date of receipt of a copy of this order. If deduction is found not permissible the amount will be refunded to the petitioners not later than three months from receipt of a copy of this order. It is made clear that this order will not affect the right of income tax department to take such action as may be permissible under the law."

Similar directions are given in the other case as well.

It is submitted by Mr. Maninder Singh, learned Additional Solicitor General, that the direction to refund the amount and calling upon the Collector to determine as to whether the compensation paid is for property other than agricultural land or not, is not in accordance with the provisions of the Income Tax Act. He submitted that the matter should have been remitted to the Assessing Officer to decide the nature of the land acquired in each case, inasmuch as, it is the Assessing Officer who is to come to the conclusion whether the land is agricultural land or not keeping in view the definition thereof as contained in Section 2(14)(iii) of the Income Tax Act and other incidental provisions.

He has also drawn our attention to the judgment of the Kerala High Court in the case of '*Nalini v. Dy. Collector, Land Acquisition*' [2006 (4) ILR Kerala 229] wherein the High Court spelled out the following modalities which should be undertaken in such cases.

"6. The learned counsel appearing for the petitioner has argued that at present there is no practice of giving notice to the party regarding his liability to pay income tax from the amount of compensation awarded by the Land Acquisition Officer. It is argued that the parties are not even aware of any such deduction and there is no practice of issuing Tax Deduction Certificate by the Land Acquisition Officer under the relevant rules. It is argued that even when the enhanced compensation is awarded by the

court the parties are not informed about the quantum of income tax deducted and also no certificate is issued. It is not disputed by the learned Senior Government Pleader that at present no notice is issued by the Land Acquisition Officer to the claimant informing him about the liability to pay income tax. I am of the view that it is only just and proper that the parties are given advance notice regarding the liability to pay income tax. The Land Acquisition Officer can note this fact also, in the notice issued to the claimant under Section 9 of the Land Acquisition Act. The claimant shall be informed about this fact during award enquiry stage. In the award, the income tax deducted shall be separately shown.

7. If the claimants are told about their liability to pay income tax before deducting the same they will have an option to get a certificate of exemption from payment of tax, reduced rate of tax etc., from the competent officer under Section 197 of the Income Tax Act. So it is only just and proper that the State Government issues necessary directions to the Land Acquisition Officer to give notice regarding the liability of the claimants to pay income tax even before passing of the award."

Learned counsel appearing on behalf of the respondents have submitted that in some of the cases tax which was deducted has already been refunded to them. They have also referred to Circular dated 13.04.2011 issued by the Department of Land Resources, Ministry of Rural Development, Government of India, on this subject and submitted that this Circular is binding on the Income Tax Department.

We find force in the submission of the learned Additional Solicitor General insofar as the challenge to the direction given to the Land Acquisition Collector to determine as to whether the land in question is agricultural land or not. Since the Land Acquisition Collector had

already deducted tax at source and deposited with the Income Tax Department, in such circumstances, better course of action, which is in consonance with the provisions of Income Tax Act, is for the respondents to approach the concerned Assessing Officer(s) and to raise the issue that no tax is payable on the compensation/enhanced compensation which is received by them as their land was agricultural land. Once such an issue is raised before the Assessing Officer(s), it is for the Assessing Officer(s) to examine the facts of each case and then apply the law as contained in the Income Tax Act to determine the aforesaid question. Insofar as these cases are concerned, we allow these appeals by setting aside the directions contained in paragraph 7 and substitute the same with the following directions:

- (1) The respondents shall file appropriate returns before the Assessing Officer(s) in respect of Assessment Years in question within a period of two months from today in case they feel that the compensation in respect of land belonging to them which had been acquired was agricultural land, and claim refund of the tax which was deducted at source and deposited with the Income Tax Department. On the filing of these returns, the Assessing Officer(s) shall go into the aforesaid question and wherever it is found that the compensation was received in respect of

agricultural land, the tax deposited with the Income Tax Department shall be refunded to these respondents.

- (2) While determining as to whether the compensation paid was for agricultural land or not, the Assessing Officer(s) will keep in mind the provisions of Section 28 of the Land Acquisition Act and the law laid down by this Court in '*Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF)*' [2009 (8) SCC 412] in order to ascertain whether the interest given under the said provision amounts to compensation or not.
- (3) The direction to refund the amount of Tax Deducted at Source (TDS) to the Land Acquisition Collector is, accordingly, set aside. However, in those cases where the amount has already been refunded, no interference is called for and it will be for the Income Tax Department to proceed in accordance with the provisions of Income Tax Act.
- (4) Where such notices have not already been issued or assessments have not already been made, if such an action is taken within a period of two months from today, issue of limitation would not come in the way of the Income Tax Department. This order is passed having regard to the fact that the present proceedings

were pending in this Court because of which it was not possible for the Income Tax Department to issue these notices earlier.

(5) In future, Land Acquisition Collectors shall follow the procedure as stipulated by the High Court of Kerala in *Nalini's* case, which is reproduced above.

All these appeals and writ petitions are disposed of with the aforesaid observations.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
September 15, 2017.

ITEM NO.1

COURT NO.6

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 28069/2010

(Arising out of impugned final judgment and order dated 11-01-2010 in CWP No. 10123/2009 passed by the High Court of Punjab & Haryana at Chandigarh)

UNION OF INDIA AND ORS.

Petitioner(s)

VERSUS

HARI SINGH AND ORS.

Respondent(s)

WITH

SLP (C) No. 28070/2010 (IV-B)
SLP (C) No. 227/2011 (IV-B)
SLP (C) No. 20100/2012 (IV-B)
SLP (C) No. 23614/2011 (IV-B)
SLP (C) No. 13942/2011 (IV-B)
SLP (C) No. 16832/2011 (IV-B)
SLP (C) No. 18566/2011 (IV-B)
SLP (C) No. 28127/2011 (IV-B)
SLP (C) No. 19703/2011 (IV-B)
SLP (C) No. 23602/2011 (IV-B)
SLP (C) No. 22457/2011 (IV-B)
SLP (C) No. 22456/2011 (IV-B)
SLP (C) No. 29048/2011 (IV-B)
SLP (C) No. 22459/2011 (IV-B)
SLP (C) No. 26558/2011 (IV-B)
SLP (C) No. 31941/2013 (IV-B)
SLP (C) No. 27268/2011 (IV-B)
SLP (C) No. 29050/2011 (IV-B)
SLP (C) No. 29049/2011 (IV-B)
SLP (C) No. 27269/2011 (IV-B)

(With IA 3/2017 - FOR SUBSTITUTION, IA 4/2017 - FOR CONDONATION OF DELAY IN FILING SUBSTITUTION APPLN. and IA 5/2017 - FOR EXEMPTION FROM FILING O.T.)

SLP (C) No. 30287/2012 (IV-B)
SLP (C) No. 33942/2011 (IV-B)
SLP (C) No. 30644/2011 (IV-B)
SLP (C) No. 10186/2012 (IV-B)
SLP (C) No. 25873/2013 (IV-B)
SLP (C) No. 34011/2011 (IV-B)
SLP (C) No. 226/2012 (IV-B)
SLP (C) No. 11465/2012 (IV-B)
SLP (C) No. 224/2012 (IV-B)

SLP(C) No. 225/2012 (IV-B)
SLP(C) No. 2734/2012 (IV-B)
SLP(C) No. 19887/2014 (IV-B)
W.P. (C) No. 590/2016 (X)
W.P. (C) No. 405/2017 (X)
(With IA No.46762/2017-INTERVENTION/IMPLEADMENT, IA
No.46119/2017-CLARIFICATION/DIRECTION and IA
No.46763/2017-CLARIFICATION/DIRECTION)
SLP(C) No. 18495/2017 (III)
(With IA No.51421/2017-CONDONATION OF DELAY IN FILING)

Date : 15-09-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Parties

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Ms. Anubha Agrawal, AOR

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Mr. Ardhendumauli Kumar Prasad, AOR

Ms. Anantha Narayana M.g., AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals and writ petitions are disposed of in
terms of the signed order.

Applications for impleadment/ intervention/
substitution are allowed.

Pending applications stand disposed of.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed order is placed on the file.]