
(2009) 08 CAL CK 0072
In the Calcutta High Court
Case No : F.A. No. 76 of 2007

A and J Main and Co. Engineering Pvt. Ltd. APPELLANT
Vs
State of West Bengal RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 19, 19(1), 4, 6

Citation : (2009) 08 CAL CK 0072

Hon'ble Judges : Prasenjit Mandal, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This first appeal is at the instance of the Referring claimants and is directed against an award dated 20th February, 2004 passed by the learned L.A. Tribunal, Howrah in L.A. Case No. 24 of 2000 thereby allowing the Reference Proceedings in part. The learned Tribunal below enhanced the rate of compensation for the acquired land to Rs. 52,500/- per cottah from Rs. 11,990/- per cottah awarded by the Collector. The compensation for structure was also enhanced to Rs. 4 lakh from Rs. 1,86,242/- awarded by the Collector. The claimant was given special damages due to severance of the property at the rate of 5% of the land-value together with solatium and interest in terms of the Land Acquisition Act.

2. Being dissatisfied, the Referring claimant has come up with the present first appeal.

3. The L.A. Collector, Howrah acquired 12 cottahs 28 and half sq. ft. of land being the front portion of holding No. 151, Andul Road, Howrah with structure for the purpose of construction of the approach road of Second Hooghly River Bridge and awarded compensation at the rate of Rs. 11,990/- per cottah for land and Rs. 1,86,247/- for the structure.

4. Being dissatisfied, the appellants filed an application for Reference for

enhancement of the compensation.

5. According to the appellants, the property was situated just abutting the main road i.e. Andul Road with valuable structure and building with all amenities and privileges of the nearby G.T. Road and after acquisition and demolition of front portion of the building, the earlier road frontage of 70 ft. was narrowed down to 12 ft. thereby diminishing the value of the rest of the property to a considerable extent and on account of such shortening of the frontage, the remaining part of the property could not be used as godown, factory, etc., as was used earlier, because due to reduction of frontage, no heavy vehicle could be brought there for loading and unloading. According to the appellants, some of the tenants had left the remaining portion of the premises on the abovementioned ground thereby causing loss of rental of Rs. 10,000/-a month. The further contention of the appellant was that at the relevant point of time, the valuation of the land was not less than Rs. 2 lakh per cottah and the valuation of the building acquired was Rs. 11,55,000/- and thus, the appellant prayed for enhancement of the amount of compensation.

6. The State of West Bengal contested the case but no written objection was given.

7. At the time of hearing, the appellant examined one of the officers of the appellant and also a valuer who valued the said property and submitted a report on valuation. None gave evidence on behalf of the State-respondent controverting the evidence adduced by the appellant.

8. As indicated earlier, the learned Tribunal below by the award impugned herein has allowed the reference application in part.

9. Being dissatisfied, the appellant has come up with the present appeal.

10. Mr. Basu, the learned advocate appearing on behalf of the appellant, vehemently contended before us that his client having proved the market value of the property by engaging a chartered valuer who also deposed in support of such report and having successfully faced cross-examination of the State-respondent, the learned Trial Judge should have accepted the report on valuation in the absence of any material to the contrary. Mr. Basu contends that it would appear from the cross-examination of the valuer that neither was any suggestion given to him pointing out that the valuation made by him was an inflated one nor was any valuation suggested to him to be the actual valuation of the land and structure at the relevant point of time. He, therefore, prays for modifying the award accepting the report submitted by the P.W.2.

11. Mr. Biswas, the learned advocate appearing on behalf of the State-respondent, has on the hand, opposed the aforesaid contention of Mr. Basu and has contended that the State-respondent gave suggestion to the P.W.1 regarding valuation although no such suggestion was given to the valuer. Mr. Biswas, however, points out that the appellant itself produced its purchase-deed,

executed 16 years prior to the acquisition, showing that the entire property, a part of which is the subject-matter of acquisition, was acquired by the appellant only at the price of Rs. 5 lakh. Mr. Biswas contends that the aforesaid fact indicates that the learned Tribunal below gave sufficient amount of compensation to the appellant which the appellant acquired at the paltry sum. Mr. Biswas contends that such fact indicates that the property was not at all as valuable as asserted by the appellant; otherwise, the appellant could not acquire property at the price of Rs. 5 lakh 16 years prior to the acquisition in question. Mr. Biswas submits that no other deed of transfer of the surrounding area at the relevant point of time was filed by the appellant. Mr. Biswas contends that onus was upon the appellant to show that the compensation awarded by the Collector was insufficient and in the absence of sufficient material showing the price of the neighbouring land, the appellant could not solely rely upon the report given by the valuer. According to Mr. Biswas, the valuation-report should be rejected as the same is not based on any other deed of transfer of the area at the relevant time of acquisition. He, therefore, prays for dismissal of the appeal.

12. Therefore, the question that arises for determination in this appeal is whether the learned Tribunal below was justified in not enhancing the amount of compensation in accordance with the report given by the valuer even in the absence of any evidence to the contrary adduced on behalf of the State-respondent.

13. In proceedings for Reference under the Land Acquisition Act, the onus is upon the Referring Claimant to prove that the valuation assessed by the Collector is wrong. In this case, the Referring Claimant has adduced evidence before the Court below for the purpose of showing that the valuation assessed was not correct. A chartered valuer has also been examined and he has proved his own report on such valuation and the State had cross-examined him. The State of its own, however, has not adduced any evidence.

14. Therefore, the primary question involved in this appeal is whether on the basis of materials on record, the Court below was justified in passing the award impugned in this appeal.

15. The questions as to what should be the market value of the land acquired at the relevant point of time, or what should be the value of the structure standing thereon or what should be the amount of loss suffered by the Referring claimant for the severance of the acquired property, are all questions of fact and those questions should be answered on the basis of evidence on record after taking into consideration the fact that for the insufficient amount of evidence adduced by the claimant before the Court below, if the same is unable to come to any conclusion that the award passed by the Collector was wrong, it shall dismiss the Reference. In this connection, we may profitably refer to the following observations of the Apex Court in the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another,

The following factors must be etched on the mental screen:

(1) A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the court.

(2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the court unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court.

(3) The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification u/s 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification u/s 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land.)

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

- (i) proximity from time angle,
- (ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-?-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors Minus factors

- 1. smallness of size 1. largeness of area
- 2. proximity to a road 2. situation in the interior at a distance from the road
- 3. frontage on a road 3. narrow strip of land with very small frontage compared to depth
- 4. nearness to developed area 4. lower level requiring the depressed portion to be filled up
- 5. regular shape 5. remoteness from developed locality
- 6. level vis-?-vis land 6. some special disadvantageous under acquisition factor which would deter a purchaser
- 7. special value for an owner of an adjoining property to whom it may have some very special advantage

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10,000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction

by way of an allowance at an appropriate rate ranging approximately between 20 per cent to 50 per cent to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

16. At this stage, we should also bear in mind that for the purpose of assessing the compensation in this type of a case, the Court is required to depend upon some imponderables and probabilities and thus, is compelled to make some guess work. The Supreme Court, in the case of Krishna Yachendra Bahadurvaru v. The Special Land Acquisition Officer, City Improvement Trust Board, Raja Srivalgoti Sarvagna Kumara Krishna Yachendra Bachadurvaru Vs. Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and Others, , has not found any wrong in such guess work or conjectures, as would appear from the following observations:

We are conscious that this process of determination of market value adopted by us may savour of conjecture or guess, but the estimation of market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess.

17. In this case, the appellant alone has given evidence whereas the State has neither adduced any evidence controverting the evidence given by the appellant nor has even proved the materials on the basis of which the Collector based his decision. At this stage, we should not lose sight of the position of law that although the onus is upon the claimant to show that the valuation assessed by the Collector is not correct, yet, a duty is cast upon the Collector in terms of Section 19 of the Land Acquisition Act, to disclose the grounds of his valuation and if there is no evidence of the basis of valuation, the onus of the claimant becomes negligible. We may at this moment profitably refer to the following observations of a Division Bench of this Court in the case of State of West Bengal Vs. Secretary, Union Club, Purulia,

It has, however, been held by a Bench of this Court in Fink v. Secy. of State for India ILR (1907) Cal 599 that when the Collector makes no enquiry or gives no ground for his valuation, the burden of proof on the claimant is nominal. In this connection, we may refer to Clause (d) of Section 19(1) of the Act which provides that in making the reference, the Collector shall state for the information of the Court, in writing under his hand the grounds on which the

amount of compensation was determined when the objection is to the amount of the compensation. In his statement, the Collector has only stated the rates of Bastu I land and Bastu II land. He has not disclosed the basis for the said rates of valuation. In our view, the Collector has not complied with the provision of Clause (d) of Section 19(1). Where the Collector discloses the basis for his valuation, the Court is in a position to consider the same with reference to the evidence adduced by the referring claimant in discharging the onus that lies on him. Omission by the Collector to state the grounds on which the amount of compensation was determined prevents the Court from such consideration and consequently, the onus of the referring claimant becomes negligible. In such a case, only slight evidence adduced by the referring claimant will discharge the onus. Most respectfully we agree with the principle laid down by this Court in Fink's case referred to above. We have already stated that the Collector has not, in his statement u/s 19, disclosed the ground of his valuation. There is no evidence from which the basis for the Collector's valuation can be ascertained. For the reasons aforesaid, the onus of the respondent is negligible and only slight evidence would discharge the said onus. In our opinion, the respondent has been able to discharge their onus that the Collector's valuation was inadequate.

18. The Supreme Court in the subsequent case of Ram Kumar and Others Vs. Union of India (UOI) and Others, reiterated the same view in the following way:

Under Section 19 of the Act while making the reference the Collector was required to state for the information of the court the particulars as mentioned in Clauses (a) to (d) of Sub-section (1) of Section 19 of the Act. Thus it was the duty of the Collector to mention not only the situation and extent of land but even particulars of any trees, buildings or standing crops thereon. The agriculturist whose land is acquired may not be fully conversant with the khasra No. or area as entered in the revenue records and the Union of India or the State acquiring such land should not be allowed to take any advantage of such ignorance of the agriculturists. Once an application is moved for making a reference u/s 18 of the Act it becomes the duty of the Collector to send full information to the court regarding the entire land acquired and it is thereafter the duty of the court to decide the matter in accordance with law.

19. Bearing in mind, the aforesaid principles, we now propose to consider the case in hand.

20. After going through the award impugned herein, we find that the learned Reference Court after noting the submissions of the learned Counsel for the parties, without dealing with those submissions, abruptly jumped at the conclusion by making following observations:

On perusal of all materials on record and consideration of the submissions of the Ld. Advocates of both sides I am of the opinion that justice would be done if compensation is enhanced @ Rs. 52,000/- per cottah for land, 5% of the said land value towards damage for severance and Rs. 4 lakh towards structure. The

petitioner is also entitled to have other entitlement as per rule.

21. First of all, we propose to deal with the question of valuation of the land acquired.

22. We do not find any substance in the contention of Mr. Biswas, the learned Advocate appearing for the State that the appellant having purchased the land with structure at the price of Rs. 5 lakh in the year 1969, we should take that amount as a yardstick for the purpose of assessing the value of the property in the month of December 1985, the time of acquisition. In course of last 16 years prior to the date of acquisition, the area in question had undergone remarkable change and at the same time, the valuation of the land in that area has been increased by leaps and bounds. Thus, we are unable to take into consideration the said valuation of Rs. 5 lakh for a transaction of the year 1969 while assessing the valuation of the property at the time of acquisition.

23. It appears that the Collector awarded compensation at the rate of Rs. 11,990/- per cottah in respect of the land of 12 cottah and 28 1/2 sq. feet of land whereas in respect of 2 Cottah 5 Chittak and 40 1/2 sq. feet of land acquired in respect of 35/6 Balai Mistri Lane, which is situated within 2000 feet from the acquired land, the Collector assessed compensation at the rate of Rs. 50,930/per cottah by the notification issued on the same date. The said plot abuts on Balai Mistri Lane of width of 12 feet only whereas the land involved in this proceeding abuts on Andul Road of which the width is 70 feet and the said road is the extension of Grand Trunk Road and connects the National High Way No. 6. In such circumstances, we are of the view that the valuation of the land in this case should be at least 30% above the valuation of the land in Balai Mistri Lane and as such, the valuation should be Rs. 66,209/- per Cottah, which we make it a round figure of Rs. 66,000/- per Cottah. Although the P.W-2, the chartered valuer has suggested further enhancement of 60% on the above valuation after taking into consideration the fact that the land ultimately is connected with G.T. Road, we are unable to accept the said suggestion for the reason that such factor is too remote to be taken into account and at the same time, Balai Mistri Lane is also not far from G.T. Road. We, therefore, partly accept the report of the expert and hold that the valuation of the land should be Rs. 66,000/- per cottah in view of the uncontroverted materials on record.

24. The next question is what should be the valuation of the structure.

25. We find that the valuer has given valuation of the structure on verification of the extent of the structure in details. No suggestion has been given to the P.W-2 as regards the correctness of measurement of the structure. According to the valuer the structure should be valued at Rs. 12,83,200/- less depreciation of 10% for age and condition of the structure and thus, the same was valued at Rs. 11,54,880/- which was made a round figure of Rs. 11,55,000/-. While arriving at such valuation, the valuer has followed the P.W.D. rate of construction prevailing in the year 1985. We find that there is little scope of disputing the finding of the

valuer as regards the extent of the structure and rate per sq. feet as construction-charge in the absence of any contrary materials on record. However, we are unable to appreciate the percentage of depreciation of only 10% on account of age and condition of the building as suggested by the valuer. In the report, there is no finding as regards the age of those structures and the valuer himself has admitted in the report that the span of a masonry building is taken to be 70 to 80 years subject to the maintenance of the same. The said valuer has not given any indication in the report as to the age of the building but has opined that the same was in habitable condition as the men were living and doing business at the time of acquisition. In the absence of any definite finding as regards the age of the building and stability of the same, we propose to apply the depreciation of 50% on the value of the structure and make it a round figure of Rs. 6 lakh.

26. The last question is as regards the damage caused due to severance.

27. It appears that the land is used for business purpose as godown and heavy vehicles are required to enter the premises. Previously, the opening was from a road of width 70 feet which after acquisition has been reduced to 12 feet only, as a result, the existing tenants are not willing to continue with their tenancy and there is loss of monthly rent of Rs. 10,000/-. It appears that no other evidence has been adduced as regards the exact amount of land and the extent of the remaining land and structure in possession of the appellant at the time of acquisition. For the purpose of assessing the damages due to severance, the principle, which a Court is required to follow, is that it should assess the difference between the market value of the remaining land and structure standing thereon before the acquisition and those after the acquisition. Before the acquisition, the property was one having 70 feet wide entrance and after the acquisition, the balance amount of land and structure in the possession of the appellant has an entrance of 12 feet width. Since the property is being used as godown where big trucks are required to enter for the purpose of loading and unloading of goods, the value of the property as a godown has definitely gone down, but the facts remain that huge amount of property having 12 feet wide entrance can be used effectively for various other purposes e.g. official and residential. We cannot assess such damages unless evidence is laid in details about the quantity and the actual user of the remaining land and structure in the hand of the appellant at the time of acquisition. No such evidence has been adduced on behalf of the appellant. The valuer in his report while granting compensation at the rate of 25% of the value of the land acquired has given the following reasons:

After the acquisition and the construction of flyover, the width of the Andul Road, on which the property abuts have become very narrow compared to the original width of Andul Road. Moreover, due to acquisition of land, the total front portion of the entire factory has lost its privilege and advantage for smooth running of a big concern and consequently the factory has lost its previous commodious

aspects and as such the owner may get compensation as severance which will be minimum 25% of the total value of land as decided by Hon"ble Court.

28. After making the abovementioned observations, the valuer made 25% of the valuation of the "land acquired" as assessed by him as the valuation of the damages for severance. We are unable to accept such reason as sound inasmuch as such damages for severance have no connection with the "amount of land acquired" but those depend on the "reduction of the value of the remaining land in the hand of the owner at the time of acquisition". The appellant, as pointed out earlier, has adduced no evidence on the aforesaid aspect. We, therefore, delete the amount of damages awarded by the Court below on the question of severance of the land at the rate of 5% of the value of the land acquired by the state for want of any reliable evidence on that point.

29. We are quite conscious that the State has not preferred any appeal or cross-objection against the award. Even without filing any cross-objection or separate appeal, a respondent, in a money appeal filed by the plaintiff for enhancement of amount decreed, may contend that a claim under a particular head should not have been awarded against him by the Trial Court and thus, the said amount should be adjusted towards the enhanced amount sought to be decreed by the appellate Court. All that is restricted is that the respondent cannot pray for reducing the total amount decreed by the Trial Court without preferring any appeal or cross-objection. (See: Shri Ravinder Kumar Sharma Vs. The State of Assam and Others,). Therefore, although we enhance the amount on the other heads, we are entitled to reduce a claim on a particular head provided the total amount decreed by the court below is not reduced by us in the appeal preferred by the award holder.

30. We, therefore, set aside the award impugned by enhancing the value of land to Rs. 66,000/- per cottah and that of the structure to Rs. 6 lakh with solatium and interest thereon at the rates as passed by the Reference Court and deleting the amount of damages given by it at the rate of 5% of the value of the acquired land.

31. The appeal is, thus, allowed to the extent indicated above.

32. In the facts and circumstances, there will be, however, no order as to costs.

Bhaskar Bhattacharya, J.

33. I agree.