(2002) 12 GAU CK 0019

In the Gauhati High Court

Case No : First Appeal No''s. 95 and 109 of 1994

Bijan Behari Bhattacharjee APPELLANT

Vs

Collector and Another RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:
Land Acquisition Act, 1994 — Section 18, 4, 4(1)

Citation : (2003) 2 GLT 286

Hon'ble Judges : P.P. Naolekar, C.J;Amitava Roy, J

Bench : Division Bench

Advocate : N.M. Lahiri, N. Choudhury, H.S. Thankhiew and S.C. Kayal, for the Appellant; B. Choudhury, for the Respondent

Judgement

Amitava Roy, J.—These appeals arise out of the judgment and award dated 4.7.94 passed by the learned District Judge, Hailakandi in Misc. (LA) Case No. 2/93 and Misc. (LA) Case No. 3/93 disposing of applications u/s 18 of the Land Acquisition Act, 1994 (as amended) (hereinafter referred to as "the Act") filed by the Appellant and the proforma-Respondent. As the appeals involve common questions of law and facts, these were heard analogously and we propose to dispose of the same by this common judgment.

2. We have heard Mr. N.M. Lahiri, learned senior advocate assisted by Mr. S.C. Kayal for the Appellant and Mr. B. Choudhury learned additional senior Govt. advocate, Assam for the Respondent.

3. Shorn of details, the relevant facts are, that an area of 5 Bighas 0 Kathas 0 Chattak of land covered by Dag No. 627 of 2nd R.S. Patta No. 298 and that of Dag No. 589, 590 of 2nd R.S. Patta No. 145 situated at Mouza Hailakandi Town, District Hailakandi was notified to be required for the construction of Automatic Telephone Exchange at Hailakandi Town. The related acquisition proceeding was registered as L.A. Case No. 2/87. The First Appeal No. 95/94 arises out of the judgment and award passed by the reference Court in connection with the same. The Appellant and the proforma Respondent are the owners of 4B, 12K, 11 Ch. 6

1/2 Gondas. According to the Appellant and the proforma Respondent there was a house and many fruits bearing timber trees on the land as described in Schedule 1 and 2 of the reference application. The notification u/s 4(1) of the Act was dated 21.10.89 and was published in the issue dated 29.11.89 of the Assam Gazette. The Collector awarded compensation for the land at the rate of Rs. 2 (two) lakhs. Compensation for the trees etc was also awarded as per the existing price rate. Being dissatisfied, the Appellant and the proforma Respondent filed an application u/s 18 of the Act to refer the claim to the reference Court for assessment and payment of enhanced compensation. This application was registered as Misc. (LA) Case No. 3/ 93.

4. The Respondent filed written objection before the reference Court contending inter alia that the market value of the land, trees etc had been correctly assessed and the amount of compensation awarded was adequate and proper.

5. By notification dated 14.9.89 u/s 4(1) of the Act, published in the issue dated 29.11.89 of the Assam Gazette, land measuring 1B, 17K, 4 Ch. covered by Dag No. 589 and 590 included in 2nd R.S. Patta No. 145 situated in Hailakandi Town was notified for acquisition for setting up Satellite Earth Station at Hailakandi. The connected proceeding was registered as L.A. Case. No. 3/87. The Appellant and the proforma Respondent in F.A. No. 109/94 were the owners in respect of 1B, 14K, 8 Ch. 11 Gondas out of the above area notified to be acquired. They claimed that there were amongst Ors. fruit bearing trees on the land. The Collector awarded compensation for the land at the rate of Rs. 2 (two) lakhs per bigha. Further compensation for trees etc was also assessed at the approved rate of the Government and paid to the land owners. Being aggrieved, by the amount of compensation awarded by the Collector the Appellant, and the proforma Respondent filed the application u/s 18 of the Act for referring their claim to the Reference Court for enhanced compensation. This application was registered as Misc. (LA) Case No. 2/93.

6. The Respondent after entering appearance in the reference proceeding filed his written objection, wherein he contended inter alia that the value of the land, trees etc had been correctly assessed and a fair and just amount of compensation had been awarded to the Appellant and the proforma Respondent.

7. The two reference applications, namely, Misc. (LA) Case Nos. 2/93 and Misc. (LA) Case No. 3/93 were analogously heard by the reference Court. From the side of the Appellant and the proforma Respondent No. 3 witnesses were examined. Several documents were also exhibited in support of their claim. One witness was examined on behalf of the Respondent who also proved and exhibited several documents.

8. By the impugned judgment and order the learned reference Court accorded an enhancement to the, amount of compensation assessing the market value of the land to be Rs. 2 (two) lakhs 40,000/- (forty thousand) per bigha. It, however, rejected the claim of the Appellant and the proforma Respondent for

enhancement under other heads including one relating to value of trees, timber etc. It is this judgment and order which is under challenge before this Court.

9. Mr. Lahiri, learned Senior Counsel for the Appellant has advanced his arguments on two principle counts. Firstly, that the learned reference Court had mis-directed itself in assessing the market value of the land acquired, by leaving out of consideration the evidence on record both oral and documentary, to that effect and secondly, though new rates for assessment of the value of the timber, trees etc had been announced in the year 1989, the learned Court below had upheld the amount of compensation therefore assessed on the basis of the approved list of 1969. Elaborating his arguments, the learned senior counsel contended that keeping in view the date of the notification u/s 4(1) of the Act, the learned reference Court ought to have assessed the market value of the land in terms of the Ext. 4, a sale deed dated 20.9.89 wherefrom it is apparent that the value of the acquired land per bigha should be Rs. 5,74,359.00. According to the learned senior counsel, the learned reference Court wrongly discarded the said sale deed on the ground that it was subsequent to the date of notification u/s 4(1) of the Act and came to the unsustainable finding that the market value of the acquired land was Rs. 2,40,000/- per bigha and that too by over looking the oral evidence on record. He further urged that as the new rates for assessing the value of timber, trees etc had already been announced in the year, 1989, the reference Court ought to have granted enhanced compensation for the same by accepting the new rates and is not doing so, the impugned judgment and award is vitiated by an illegality rendering it unsustainable in law and on facts.

10. As against this, Mr. B. Choudhury, learned additional senior Govt. Advocate, Assam, for the Respondent argued that the learned reference Court had arrived at its findings after a detailed consideration of the evidence on record and those in any view of the matter cannot be said to be perverse or erroneous and, therefore, the same are not liable to be interfered with in the present appeal. He maintained that the sale deed Ext. 4, in view of the size of the land sold thereby and the location thereof could not be said to provide a safe for the purpose of assessing the market value of the acquired land and, therefore, the said document was rightly rejected by the learned reference Court. He further argued that there being no evidence on record that the new rates for assessing the value of the trees, timber etc had been approved by the Government, the claim of the Appellant for enhanced compensation on that count on the basis of the new rates had no legs to stand.

11. Before taking up for consideration the rival contentions of the parties, it would be proper to examine the reasons recorded by the learned Court below in support of its conclusions on the above two aspects of the case. While dealing with the issue of the market value of the acquired land, the learned reference Court, while noticing that the notifications u/s 4 of the Act had been issued on 14.9.89 and 21.10.89 left out of consideration the sale deed Ext. 4 and 5 on the ground that those were subsequent to the dates of the notification. The reference

Court also did not place reliance on the sale deed Ext. 1, 2 and 3 on the ground that those involved land situated in Ward Nos. 9, 8 and 4 respectively, whereas as deposed by P.W. 1, the Appellant''s acquired land was situated in Ward No. 3 of Hailakandi Town. The sale deed Ext. 4 was also discarded by the learned reference Court on the ground that the land conveyed thereby, was a small plot of land purchased for commercial purposes. It further held that the acquired land was covered by Dag No. 489 and 627 out of which as per Ext. 8, the trace map of the area land, Dag No. 627 was contiguous to Ratanpur Road and the rest of the land was at the back side of the land under Dag No. 627. The reference Court held that the land under Dag No. 589 and 590 was situated at the remote end of Dag No. 627 in a closed and circumscribed area not approachable from public/ municipal road. With reference to sale deed Ext. 1, 2 and 3 the reference Court held that those related to Dag No. 902, 903, 75 and 2057 respectively and, therefore, those were not adjacent to the land acquired. It further noticed that the land covered by Exhibit-1 was a plot for commercial purposes. Referring to Ext. 7 the revenue map, the reference Court concluded that the land under Dag No. 679 was adjacent to the acquired land under Dag No. 589, 590 and 627. It therefore took into consideration the sale deed No. 680 of 1986 relating to land under Dag No. 679 relied upon by the Collector to assess the market value of the land acquired at the rate of Rs. 2,40,000 per bigha.

12. The learned reference Court rejected the claim for enhanced compensation for trees, timber etc. on the ground that the Appellant had failed to produce the list of new approved rates for the assessment of the value thereof. Further it also took into consideration the stand of the Collector that the new rates had not come into force before finalisation of the award and that, therefore, the claim of the Appellant on the basis thereof was not tenable.

13. The principle of law regarding the burden to be discharged by the applicant in a proceeding u/s 18 of the Act had been succinctly laid down by the Apex Court in The Collector, Raigarh Vs. Harisingh Thakur and Another, It was held therein that in a reference u/s 18 of the Act, the burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant, and he must show affirmatively that the Collector had proceeded on a wrong basis.

14. The same view was taken by a Division Bench of this Court in the Collector, East Khasi Hills, Shillong (Union of India v. K.A. Millis Mowri and Ors. reported in (1984) 1 GLR 21. It was observed therein that in a proceeding before the reference Court the claimant''s position is that of a Plaintiff and he has to prove his own case. When the matter comes up before the reference Court at the instance of the party which challenged the award, it is for the party to prove the infirmity, if any, in the award to substantiate its claim for enhancement of the compensation awarded.

15. The statement of law regarding determination of the market value of an acquired land by applying "comparable sales method" has been elaborately

minuted in the decision of the Apex Court in M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, It was held therein that evidence of prices fetched by sales of lands similar to the acquired land can be taken by the Court to be the price which a willing purchaser would have paid for the acquired land, if the same had been sold to him in the open market. The Apex Court, however, further held that if the price under comparable sale is to be taken by the Court, as furnishing the ''price basis'' for determination of the market value of the acquired land, the comparable sale must, firstly be genuine, secondly it must have taken place at a time proximate to the date of publication of the preliminary notification u/s 4(1) of the Act, thirdly the land sold under the sale must be similar to the acquired land and fourthly the land sold under the sale must be in the vicinity of the acquired land. It observed, that if any differing feature or factor in a land covered by comparable sale admits of adjustment in terms of money, depending on whether it is a plus factor or a minus factor, the market value of the acquired land is determined either by increasing its price or decreasing its price vis-a-vis the price fetched for land under comparable sale. It held further that if the location, shape and size, tenure, use or potentiality of land under comparable sale cannot be compared with the acquired land, price fetched under comparable sale cannot be furnish the ''price basis'' for determining the market value of the acquired land.

16. The same view was taken by the Apex Court in its recent decision in Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others, wherein it further held that if there is a dissimilarity in regard to locality, shape, size or nature of land between land covered by sales and land acquired, it is open for the Court to proportionately reduce the compensation for the acquired land than what is reflected in the sales, depending upon the disadvantages attached to the acquired land.

17. The question which inter alia, fell for consideration of the Apex Court in Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, was whether the transactions with regard to smaller property could be taken as a real basis for fixing the compensation for larger tracts of property. It was held that the proposition that a large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not an absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. It, however, added that in fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. But if the larger tract of land, because of its advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for the purpose of comparison is not warranted. The competing claims of the parties

thus will have to be tested in the touchtone of the proposition of law enumerated in the above decisions. Has the Appellant in the reference proceeding been able to discharge his burden under the law?

18. The Appellant is his deposition admitted that the land acquired was situated in Ward No. 3 of Hailakandi Town. He while claiming that the market value of the land acquired was Rs. 5 lacs per bigha, exhibited the sale deeds Ext. 1, 2, 3, 4 and 5. He stated that the acquired plot was adjacent to Ratanpar Road and is located in the heart of Hailakandi Town. The Public High School was situated within 300 feet of the land. There were shops in the neighbourhood and the land was also near the Hailakandi-Silchar Road. He claimed the land was in the first class residential and commercial area and that it was at the time of its acquisition in a developed stage. He stated that in 1989 a fresh list of rates for trees and plants had been prepared.

19. P.W. 2 stated that Ext. 4 was a certified copy of the sale deed by which she had purchased the land involved therein. According to the witness, the Telephone Exchange was situated near her land.

20. P.W. 3 stated in his evidence that the land acquired for the Telephone Exchange was to the South East of his holding and that walls have been raised on all four sides of acquired land.

21. Sri Bijoy Kumar Nath, who was examined on behalf of the Respondents inter alia stated that as per the assessment made, the market value of the land was fixed at Rs. 2 lacs per bigha and the value of the trees etc. was computed on the basis of 1969-70 list. He however admitted that in 1989 the Government had revised the value of some items.

22. It is noticeable that none of the sale deeds Ext. 1, 2, 3, 4 and 5 involve land situated in Ward No. 3 as in case of the land acquired. There is no cogent and convincing evidence to establish that the land acquired abuts or is in the close vicinity of the land sold by Ext. 1, 2 and 3. We thus cannot persuade ourselves to hold that the learned reference Court was in error in leaving out of consideration the said sale deeds while assessing the market value of the acquired land.

23. As already hereinabove, and as admitted by Respondents, the dates of notification u/s 4(1) of the Act are 14.9.89 and 21.10.89. Viewed from that angle, the sale deed Ext. 4 which is date 20.9.89 is proximate in point of time to the said notifications. In view of the calendar of dates as above, we cannot concur with the reasoning of the learned Court below that the sale deed Ext. 4 cannot be taken note of as it records a sale subsequent to the date of notification u/s 4(1) of the Act. The land of the said sale deed however, is situated in Ward No. 9. Though there is a stray sentence in the evidence of P.W. 2 that the land involved therein was near the land where the Telephone Exchange had been set up, the Appellant did not adduce any further evidence to establish as to how the land which was conveyed by Ext. 4 was comparable to the acquired land for the purpose of assessing the market value thereof (land acquired) taking the "price

basis" in terms of the said sale deed. In other words, the Appellant failed to adduce sufficient cogent and clinching evidence with regard to the location, shape, size and features (advantages and disadvantages) of the land covered by Ext. 4 vis-a-vis the acquired land so as to accept the sale price evidenced by Ext. 4 to be the basis for calculating the market value of the land to be acquired. We are of the view that the Appellant had in the facts and circumstances of the case, failed to discharge his burden to justify his claim for enhanced compensation on the basis of the sale deed Ext. 4. The necessary pre-conditions laid down by the Apex Court in M/s. Printers House Pvt. Ltd. (supra) not being satisfied we cannot uphold the contention of the learned senior counsel for the Appellant in this regard.

24. One aspect of the matter, however, cannot be overlooked. The learned reference Court assessed the market value of the acquired land on the basis of a sale deed of the year 1986. Admittedly the notification u/s 4(1) of the Act had been issued in the year 1989. The flow of events between the year 1986-89, in our opinion, cannot be totally ignored in the matter of fixation of the market value of the land acquired, more particularly when under the law the same has to be as on the date of notification u/s 4(1) of the Act. The statement of P.W. 2, one of the purchasers of the land involved in Ext. 4 that it was situated near the Telephone Exchange abutting the road has not been assailed in her cross-examination. The two plots of land covered by the notifications are adjacent to each other and those had been acquired for construction of Automatic Telephone Exchange and Satellite Earth Station at Hailakandi. The evidence of P.W. 2, therefore, indicates the proximity of the acquired land to the land transferred by the sale deed Ext. 4. We are, therefore, of the considered view, that having regard to the materials on record the Appellant is entitled to some enhancement in the market value of the land acquired for the purpose of compensation under the Act. We consider, on a moderate estimate, that the market value of the acquired land, in the attending facts and circumstances should be assessed at Rs. 2,65,000/- per bigha. The finding of the learned reference Court on this issue, therefore, stands modified to the above extent.

25. With regard to the claim for enhanced compensation for trees, timber, etc, in course of, hearing as well, the attention of this Court could not be drawn to any material on record to suggest that the new rates as announced in 1989 had been approved by the Government for the purpose. No additional evidence was also produced before this Court in support of such claim. In that view of the matter, in absence of any such evidence, the claim of the Appellant for any additional amount towards trees, timber etc cannot be entertained. The conclusion of the learned reference Court on this issue, having regard to the reasons in support thereof, thus cannot be faulted with.

26. In the light of the above discussion, we are, therefore, of the considered view that the Appellant is entitled to receive enhanced compensation towards the acquisition of his land computed at the rate of Rs. 2,65,000/- per bigha together

with the incidental amounts by way of solatium interest etc. under the Act. The claim for enhanced compensation on account of trees, timber etc is rejected. The findings and conclusions of the learned reference Court except to the extent as those relate to the computation of market value of the land acquired are upheld. The Appellant is entitled to compensation for the land acquired at the rate of Rs. 2,65,000/- per bigha.

The appeals are thus partly allowed.

Office would prepare the decree accordingly. Considering the facts and circumstances of the case, there would be no order as to costs.

