
(1976) 06 CAL CK 0026

In the Calcutta High Court

Case No : A.F.O.D. No. 601 of 1971 (Analogous to A.O.D. No. 245 of 1972)

Bijoli Prova Nandy Chowdhury

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-06-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 23(2)

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 7(2)

Citation : AIR 1977 Cal 64

Hon'ble Judges : R.K. Sharma, J; Pradyot Kumar Banerjee, J

Bench : Division Bench

Advocate : S.C. Das Gupta, Nani Gopal Das, Tapan Sen Gupta, Chandidas Roy Chowdhury and Birendra Nath Ghose, in F.A. No. 245 of 1972, for the Appellant; Chandidas Roy Chowdhury and Birendra Nath Ghose, S.C. Das Gupta, N.G. Das, Tapan Sen Gupta and Somen Das Gupta, in F.A. No. 245 of 1972, for the Respondent

Final Decision : Partly Allowed

Judgement

Banerjee, J.—This appeal arose out of an application for reference u/s 18 at the instance of the claimant. By notification dated 17th April, 1965, 336.27 dec. of land was acquired out of which the appellant is interested in C. S. Plots Nos. 4091, 4092 and 4095 and the Collector toy his award dated 3rd September, 1968 allowed Rs. 39,263.85 p. The nature of the land in which we are interested in this application are Bill, Bhery and Bhery machchas. The Collector valued the bill and bhery lands at the rate of Rs. 1210/- per acre. Not being satisfied with the award given toy the learned Collector, the appellant referring claimant made an application u/s 18 of the Land Acquisition Act and claimed compensation at the rate of Rupees 2500/- per cottah for the acquisition of the petitioner's property. She also claimed Rs. 2500/- per month for the period of requisition. The learned arbitrator however allowed at the rate of Rs. 80/- per cottah or Rs. 1616/- per bigha and he further gave 6% interest on the land and also 15% statutory allowance on the land value. The award was made on 26th April, 1971.

Thereafter the State Government made an application under Order 47, Rule 1 of the CPC for review of the judgment passed on 26th April, 1971. On review by order dated 14th June, 1971, 15% statutory allowance was disallowed in view of the Supreme Court judgment in AIR 1971 963 (SC) .

2. Mr. Das Gupta on behalf of the appellant contended that the valuations of Beel, Bhery and Bandh were too low on the material date on 26th June, 1965 or at the rate of Rs. 80/- per cottah as fixed by the arbitrator. Mr. Das Gupta contended that the appellant produced number of documents which were not considered at all by the learned arbitrator. The documents produced by the appellant are Exts. 3A, 3B and 3C. The appellant also produced two awards (Exts. 1 and 2) and gave evidence to the effect that he was earning a monthly rent of Rs. 250/- from one Bhusan Naskar before the vesting of the estate in the State of West Bengal. The evidence was given by the witness No. 1 for the claimant that the acquired bhery was about 2 miles from the Bengal Chemicals which is within the Calcutta Corporation. The terminus of the State Bus No. 14 is at the Bengal Chemicals. The V. I. P. Road is about 3/4 miles from the bhery. There was waist-deep water in the beel and that she claimed Rs. 2500/- per cottah in respect of the property in question. Ext. 3 was a document dated 3rd June, 1959 which shows a sale deed of 31 dec. land of plot No. 3558 at the rate of Rs. 3000/- .per cottah. In our opinion, the Court below rightly rejected the said kobala which has no relation with the land in question and is quite long way off from the property under acquisition which is recorded as beel, bhery and bhery machchas. The next document relied upon by the claimant is Ext. 3A, that is also a small plot of garden land and the rate was Ra 15500/- per acre in one case and Rs. 9700/- per acre in other. These plots covered by Ext. 3 are all quite a long way off from the plot acquired in the present case. Ext. 3B was a kobala dated 20th July, 1963, by which 16 cottahs 14 chittacks of land was sold for Rs. 28,000/-. Ext. 3C is also document dated 5th March, 1965 by which 2 cottahs and 15 chittacks and 31 sq. ft. of land were sold at the rate of Rs. 1500/-per cottah. Exts. 1 and 2 are certified copies of judgment and decree passed in L. A. Case No. 34 of 1969 (V). The Kobala produced to the State Government was rejected by the learned arbitrator on the ground that the said Exts. A to A-3 are not relevant for the purpose of value of beel, bhery and bandh land, inasmuch as, they are in respect of transaction 10 years ago from the date. We are concerned with the material date of notification dated 25th June, 1965. He also rejected Exts. 3, 3A and 3B as the nature of lands are of garden lands and sali lands and that cannot be a proper guide for the purpose of valuation of bhery, bhery machchas or beel lands. The learned Judge did not take into consideration the rental method of valuation because the claimant could not produce any evidence excepting the oral evidence of the rent which has been received for the bhery machchas. In the award 25.48 acre beel-cum-paddy land in plot N. 6279 as on 14th February, 1956 was fixed at Rs. 1000/- per bigha and 70 cents of beel land in plot No. 6537 at Rs. 688/- per bigha. From the Map it appears that plot Nos. 6279 and 6537 is nearest to plot Nos. 4091, 4042 and 4095. The date of

notification in case No. 34 of 1969 was however 14th February, 1956 whereas in the present case the date is 24th June, 1965. At the relevant date no evidence has been produced by the parties about the sale transaction of the similarly situate land. Therefore, we are to value the land on the basis of documents and also consider the continuous rise in land value in and around Calcutta from 1941 and onwards. It appears that similar land was valued at Rs. 688/- per bigha in 1956. The said land was near to the V.I.P. Road whereas the present land is not so near the V.I.P. Road. It appears that the beel and paddy land were assessed at Rs. 1000/-per bigha and that assessment cannot be taken into consideration in view of the evidence of the appellant that the land in question was under waist deep water. In that view of the matter, the learned arbitrator was right in taking Rs. 688/-per bigha as value of the beel land on 15th February, 1956 and thereafter took into consideration of the trend of rise in the land value between 1956 to 1965 in and around Calcutta while the scheme of Salt Lake already in operation and considered the appreciation of 15% allowance per year in respect of the value of the land under acquisition and fixed the rate of Rs. 1616/- per bigha. In our opinion, nothing has been stated by Mr. Das Gupta by which we can hold that the valuation arrived at by the arbitrator was wholly inadequate. In our view, taking into consideration the fact that the petitioner, assuming for a moment was getting a rental of Rs. 250/- per month is correct even if the rental method is applied, he could not have got what has been given. The valuation fixed at the rate of 15% per bigha as on 24th June, 1965 is & correct reasonable and adequate compensation for the acquisition. Mr. Das Gupta next contended that the appellant is entitled to 15% solatium, in view of the fact, Section 7 (2) (a) of the Act, 1948 has been declared ultra vires by this Court and the learned arbitrator was wrong in refusing the 15% solatium as is entitled u/s 23(2) of the Land Acquisition Act.

3. The learned Arbitrator referred to AIR 1971 963 (SC) and on the basis thereof reviewed the decision and held that the claimant is not entitled to the solatium. It appears however that the point which arose in this case is whether the requisition is ultra vires of the Constitution of India under Article 19(1)(f) read with Article 19(5) of the Constitution. The point which has been urged by the learned Advocate appearing for the appellant is to be found in paragraph 2 of the judgment which is as follows:--

"2. The learned counsel for the appellants, Shri Arun Kumar Dutta, challenges the West Bengal Land (Requisition and Acquisition) Act, 1948--hereinafter referred to as the impugned Act on the ground that it does not impose reasonable restrictions within Article 19(5) of the Constitution. He urges three grounds in this respect. First, he says, that there is no provision for a notice to the owner or the occupier of the property before an order of requisition is passed. Secondly, there is no provision for an appeal against the order of requisition, and thirdly, a civil suit is barred u/s 11 of the impugned Act." In repelling the argument of the appellant, the Supreme Court considered the scheme of the Act and in doing so the Supreme Court only referred to the

different provision of the Act. The Supreme Court had no occasion to consider whether Section 7 (2) (a) is ultra vires of the Act. In our opinion, therefore, the learned arbitrator was wrong in his reading of the effect of the Supreme Court's judgment in so far as the solatium is concerned. Under the West Bengal Act II of, 1948 it has been provided that for the purpose of compensation the market value of the land has to be decided in accordance with Section 23 of the Land Acquisition Act and thereafter the Land Acquisition Act provides for payment of statutory compensation by way of solatium at the rate of 15% u/s 23(2) of the said Act. u/s 7 (2) (a) however the Act II of 1948 provides for non-payment of statutory solatium or in the other words though compensation will be provided under the Land Acquisition Act, the provision for statutory solatium u/s 23(2) will not be available. The Supreme Court had to consider the effect of such provision in respect of Nagpur Improvement Act and struck down the similar provision of the said Act as ultra vires. This Court also considered the similar provision under the Calcutta Improvement Act and struck down it as ultra vires. Following these decisions, in our opinion, Section 8 (2) (b) (7 (2) (a)?) of the Act, in so far as it provides for non-payment of statutory solatium, cannot be upheld. We, therefore, set aside the order passed by Arbitrator disallowing the claim for 15% statutory allowance a9 modified by the judgment dated 14th June, 1971.

4. The appeal is, therefore, allowed in part. The judgment dated 14th June, 1971 is set aside. The award passed by the Special Land Acquisition Judge on 26th April, 1971 is affirmed.

There will be no order as to costs. Re:-- F. A. No. 245 of 1972

5. In view of our judgment passed in F. A. No. 601 of 1971, this appeal is disposed of. There will be no order as to costs.

R.K. Sharma, J.

6. I agree.