
(2017) 06 CAL CK 0022
In the Calcutta High Court
Case No : 1638 of 2016?(CAN 8968 of 2016)

Bimal Chandra Mondal	Vs	APPELLANT
State of West Bengal & Ors.		RESPONDENT

Date of Decision : 15-06-2017

Acts Referred:

National Highways Act, 1956, Section 3G(5) - Determination of amount payable as compensation

Citation : (2017) 06 CAL CK 0022

Hon'ble Judges : Jyotirmay Bhattacharya, Asha Arora

Bench : DIVISION BENCH

Advocate : Amit Pan, Sagar Saha, Bibek Jyoti Basu, ?Uttam Kr, De,?Darshona Mazumdar, Lalit Mohan Mahata,?P.B. Mahata

Final Decision : Disposed off

Judgement

1. This mandamus appeal is directed against the judgement and/or order passed by the learned Single Judge of this Court on 20th July, 2016 dismissing the writ petition filed by the appellant/writ petitioner with costs of 50 G.M.s on the ground that the writ petitioner who was the respondent No. 11 in the earlier writ petition did not disclose the fact relating to the earlier writ petition filed by one of his brothers, viz., Ganesh Chandra Mondal being W.P. No. 22470(W) of 2013 and the order passed therein disposing of the said writ petition by another learned Single Judge of this Court on 20th August, 2014, even though the appellant/writ petitioner was a party to the earlier writ petition as respondent no. 11 therein and he participated in the hearing of the said writ petition and thus, was fully aware about the said proceeding and the order passed therein.

2. The legality and/or validity of the said order is under challenge in this mandamus appeal. Mr. Pan, learned advocate appearing for the writ petitioner/appellant submits that the facts relating to the filing of the earlier writ petition and the order passed therein was admittedly not disclosed in the present writ petition filed by his client. He submits that since the disputed plot of land was not

acquired in the proceeding mentioned in the earlier writ petition or in other words since wrong description of the acquisition proceeding by which the land of the petitioner and his other co-sharers was acquired, was given in the earlier writ petition, his client did not feel it necessary to disclose those facts in the writ petition.

3. In this regard, we have perused the earlier writ petition filed by Ganesh Chandra Mondal and the order passed therein. We find that the said writ petition was disposed of by the learned Single Judge of this Court on 20th August, 2014 with a direction upon the concerned Land Acquisition collector, Burdwan to determine the proportionate shares of the respective brothers and to pay in accordance with law after verifying the record.

4. Fact remains that the land of the petitioner and his other co-sharers was not acquired under the Land Acquisition Act. It was alleged in the earlier writ petition filed by Ganesh Chandra Mondal that the land was acquired under the Land Acquisition Act. Considering the statement made in the said writ petition that the land was acquired under the Land Acquisition Act, the learned Single Judge of this Court while disposing of the said writ petition, directed the Land Acquisition Collector to determine the proportionate shares of the respective brothers and to pay them in accordance with law after verifying the record.

5. Fact remains that the land was acquired under the National Highways Act, 1956. Under the said Act, the land is acquired by the competent authority. The competent authority is defined in Section 3(a) of the said Act which runs as follows:- "Section 3(a)??competent authority? means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification".

6. Here land was acquired by the competent authority appointed under the said Act as per provision of the National Highways Act, 1956. The award passed by the competent authority in favour of the appellant/writ petitioner viz. Bimal Chandra Mondal on 19th February, 2016 was subsequently rectified by the competent authority under the said Act vide his order dated 29th February, 2016 on the application filed by Bimal Chandra Mondal and his two other brothers viz. Ganesh Chandra Mondal and Nirmal Chandra Mondal. The award which was initially passed by the competent authority under the said Act on 19th February, 2016, was amended as it was found by the authority that Bimal Chandra Mondal viz., the writ petitioner/appellant alone was not entitled to get the awarded compensation as he along with his other co-sharers were entitled to get compensation according to their shares.

7. The legality and/or propriety of the said order passed by the competent authority on 29th February, 2016 is under challenge.

8. The subject matter of challenge of this writ petition is different from the subject matter of the earlier writ petition. That apart since the acquisition

proceeding was not correctly mentioned in the earlier writ petition, the order passed in the said writ petition became ineffective as the authority who was directed to comply with the order is not the authority who is required to act in terms of the National Highways Act. As such, the merit of the present writ petition cannot be affected for non-disclosure of the facts relating to the earlier writ petition and the order passed therein.

9. Let us now consider the legality of the said order passed by the competent authority in the facts of the instant case leaving aside the technicalities for which the writ petition was dismissed by the learned Single Judge.

10. Here is the case where we find that piece and parcel of the land measuring about 2.5 decs. in Plot No. 707 of Mouza-Dubchururia was purchased by all the four brothers viz., Bimal Chandra Mondal, Shyamal Chandra Mondal, Nirmal Chandra Mondal and Ganesh Chandra Mondal. Their mother viz. Durgadasi Mondal also purchased 0.5 decs. of land in Plot No. 707. Durgadasi Mondal died intestate leaving behind her surviving her said four sons and two daughters viz., Santi Boasari and Tripti Roy. Thus, all the four sons and two daughters of Durgadasi Mondal inherited the said land on the death of their mother in equal share. Subsequently, one of the brothers of the writ petitioner/appellant viz., Shyamal Chandra Mondal died bachelor leaving behind a Will. By the said Will, he bequeathed his interest in the said landed property in favour of his brother Bimal Chandra Mondal, the writ petitioner/appellant herein. Bimal Chandra Mondal has already applied for grant of probate to the said Will before the Probate Court. The probate proceeding is still pending.

11. There is no dispute as to the shares of all the said brothers and/or sisters in the said landed property which was acquired by the competent authority under the said Act in the said acquisition proceeding. The dispute is with regard to the sharer of compensation payable to Shyamal Chandra Mondal. If ultimately probate is granted in Probate Case No. 16 of 2015 pending before the learned District Judge, Burdwan then the compensation payable to Shyamal Chandra Mondal will be the property of Bimal Chandra Mondal, the writ petitioner/appellant herein.

12. On the contrary, if Bimal Chandra Mondal failed to succeed in the probate proceeding, the compensation payable to Shyamal Chandra Mondal will be payable to all his living brothers and sisters according to Hindu Succession Act, in equal sharer.

13. Since the probate proceeding is pending, we feel that justice will be subserved if the compensation amount payable to Shyamal Chandra Mondal, since deceased is deposited with the Probate Court which will ultimately be disbursed to the persons entitled to receive the said compensation amount in accordance with law and subject to the result of the probate proceeding.

14. As such, we direct the competent authority to deposit the compensation amount payable to Shyamal Chandra Mondal with the Probate Court within four

weeks from the date of communication of this order.

15. We are informed by Mr. Basu, learned advocate appearing for Ganesh Chandra Mondal and Nirmal Chandra Mondal viz., the respondent nos. 5 and 6 that his clients have already received the compensation amount payable to their clients as per their shares from the competent authority. The compensation payable to Bimal Chandra Mondal viz., the writ petitioner/appellant herein and his other two sisters has not yet been disbursed.

16. We direct the competent authority to pay the compensation amount payable to Bimal Chandra Mondal and his two sisters viz. Santi Boasari and Tripti Roy according to their shares within four weeks from the date of communication of this order.

17. The appeal is, thus, disposed of with the above direction with a further rider that the right of the land loser/awardee to seek reference for enhancement of the awarded compensation as provided under Section 3-G(5) of the National Highways Act, 1956 is reserved.

18. The affidavit filed by Mr. Basu, learned advocate on behalf of respondent nos. 5 and 6, be kept with the record.

19. Since no reply is used by the writ petitioner/appellant to the said affidavit, the allegations made in the said affidavit filed by Mr. Basu's clients are deemed to be not admitted by the writ petitioner/appellant.

20. The appeal and the writ petition are thus, disposed of.

21. Urgent Photostat certified copy of this order, if applied for, be supplied to the Learned advocates for the parties immediately.