

(1972) 08 CAL CK 0018

In the Calcutta High Court

Case No : Appeal From Original Order No. 331 of 1971

Bose Manna and Company Pvt. Ltd.

APPELLANT

Vs

Additional Land Acquisition Officer and Another

RESPONDENT

Date of Decision : 07-08-1972

Acts Referred:

Land Acquisition Act, 1984 — Section 11

Citation : AIR 1974 Cal 1

Hon'ble Judges : B.C. Mitra, J;Amiya Kumar Mookerji, J

Bench : Division Bench

Advocate : Amarendra Nath Gupta and Sumit Ghose, for the Appellant;Kashi Nath Mitra, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This appeal is directed against a judgment and order dated April 21, 1971. A rule nisi was obtained by the appellant for quashing an Award relating to acquisition of the appellant's land under the Land Acquisition Act, 1894, hereafter referred to as the Act. The appellant purchased some land including a tank at Howrah and set up a Factory on this land. The Howrah Improvement Trust initiated proceedings for acquisition of the appellant's hinds which were included in C. S. Plots Nos. 1296. part of 1297 and 1298 for an improvement scheme of that locality in Howrah. Of these plots, plot No. 1296 contains a tank. The appellant filed claims in respect of the plots and an award was made in respect of plot No. 1297 (part) and plot No. 1298 on March 26, 1966. Possession of the plots was taken on March 30, 1966, by the Collector. Thereafter, another award was made on August 19, 1966, with respect to plot No. 1296 which was a tank. On August 24, 1966, the Collector's representative came to take possession of the tank, but the appellant refused to give possession and filed a petition before the Collector asking that possession should not be taken as the award was illegal. On September 1, 1966, the appellant obtained a rule nisi on a petition under Article 226 of the Constitution, which was discharged

by the judgment and order under appeal.

2. Mr. Gupta appearing for the appellant contended before us, as he did also in the trial Court, that piecemeal acquisition or two or more awards in respect of one acquisition could not be made. It appears, however, that the award in respect of the plot No. 1296 which contains a tank was delayed by the conduct of the appellant itself. In the first place, it wanted total exclusion of the tank as it needed the water for the purpose of its factory. In the second place, the appellant claimed compensation of Rupees One Lac for severance and injurious affection u/s 23 of the Act. It is also to be noticed that the appellant has withdrawn the compensation awarded in respect of the acquisition of plots Nos. 1298 and 1297 (part). It has therefore affirmed, adopted and accepted the benefit under the acquisition proceedings. Mr. Gupta however, submitted, relying upon a Bench decision of this Court reported in *Corporation of Calcutta Vs. Omeda Khatun Bewa*, that a piecemeal award could not be made. This decision, to our mind, is no authority for any such proposition. Lahiri, J. recognised that a separate award in certain cases could be made, namely, where the land belonged to different persons and where the acquisition proceedings were stayed by an order of a competent Court which was subsequently dissolved. To our mind, the instances mentioned in the judgment are not exhaustive as was made clear by Chakerabarti, C. J. I shall revert to this decision later.

3. In a case, such as this, where the party affected prays for exemption of a plot from acquisition on the ground of necessity and subsequently claims a larger compensation for the same plot, we think that there is sufficient justification for making a separate award for that plot. Furthermore, the acquisition proceedings being one, and the appellant having withdrawn the compensation awarded in respect of two of the plots, it cannot be allowed to turn round and challenge the acquisition proceedings on the ground that a separate award cannot be made in respect of one of the plots, though it was itself responsible for the situation which it had brought about.

4. Turning now to the facts in this case, it appears that the appellant filed a statement u/s 9 of the Act. In paragraph 6 of this statement, it claimed that the tank in plot No. 1296 was the main source of supply of water, and that huge quantity of water was necessary for the running of the factory, and this water came from the tank. It claimed market value of land measuring 1.31 Acre at Rs. 3,00,000/- per Acre. It also claimed damages for severance and injurious affection at Rs. 1,00,000/- u/s 23(1) of the Act, and additional statutory allowance at 15% over the market value. Two notices of awards both dated March 26, 1966, for Rs. 34,790.58 and Rupees 1211.00 were served upon the appellant. As I noticed earlier, the appellant has withdrawn the compensation mentioned in these two notices. A supplementary award for Rupees 13,636.20 was made in respect of the tank in plot No. 1296 and it is this award which was the subject-matter of challenge in the writ petition. On September 1, 1966, the appellant filed another petition before the Special Land Acquisition Officer

praying that possession should not be taken of the plot No. 1296, which included the tank, although an award has been made for acquisition of the same.

5. The acquisition of the appellant's land, comprised in three plots numbers mentioned above, was the subject-matter of one police u/s 4 of the Act, and one declaration u/s 6 of the Act. The appellant, it is to be noticed, did not challenge the acquisition proceedings, but has challenged the award made in respect of plot No. 1296, and the only ground of this challenge is that a separate award cannot be made in respect of one acquisition proceedings. In other words, it was argued, that the separate award made in respect of plot No. 1296 was invalid as such the award could not be made.

It seems to us that there is no warrant for the proposition that more than one award cannot be made in respect of one acquisition proceedings. In dealing with this question, reference should be made firstly, to the decision of the Judicial Committee: AIR 1932 102 (Privy Council) . In that case, it was held that the whole of the land at any time to be acquired need not necessarily be dealt with in one award. This question also came up for consideration before the Division Bench of this Court in Corporation of Calcutta Vs. Omeda Khatun Bewa, . In that case, dealing with the question of more than one award in one acquisition proceedings Chakrabarti, C. J. observed at p. 334 of the Report as follows :

The real point in the objection against piecemeal acquisition, however, is not that it involves a plurality of awards, but that it involves a succession of awards, each relating to a portion of the same land held in the same ownership for which there is no warrant in the Act. Nor is there any warrant for successive acquisitions by successive proceedings of different portions of the land covered by a declaration u/s 6, although such portions may belong to different owners. There may be, and indeed have to be separate award cases and separate inquiries with regard to claims concerning different parcels of land belonging to different owners, where the land covered by the declaration comprises such parcels. Such separate inquiries may also be needed in respect of separate holdings owned by the same person. But such separate cases are all parts of one acquisition proceedings, stemming out therefrom after the stage of Section 9 of the Act, carried on simultaneously as far as possible and covering between themselves the entirety of the land when they terminated in awards. The plurality of awards made in such circumstances which is coupled with simultaneity can furnish no argument in favour of separate acquisition proceedings, each relating to a portion of the land, initiated at successive points of time and producing a succession of awards."

6. These observations, to our mind, furnish a complete answer to the contention of Mr. Gupta in this case. Admittedly, a supplementary and separate award was made in this case with regard to plot No. 1296, which included a tank, but this was necessitated by reason of inquiries that had to be made on the appellant's grievance that the tank ought not to be acquired as it was the only source of supply of water to its factory. But for the objections raised by the appellant itself, there is no doubt that one award would have been made in respect of all the

three plots. The second and supplementary award had to be made solely and only because of the appellant's objections. The second award made in these circumstances, and keeping in view the observations of Chakrabarti, C. J. quoted above, cannot but be held to be valid and binding. The only other decision to be noticed in this connection is a Bench decision of this Court reported in R.C. Sen Vs. Trustees for the Improvement of Calcutta and Another, . In that case, it was held that where there was one holding, there could not be piecemeal acquisition, as the Act contemplated only one notice, one proceeding and one award regarding one holding under one ownership. This decision is plainly of no assistance in this case, because admittedly in this case there were three different and distinct holdings bearing three distinct plot numbers and the decision in the above case was limited to a single holding under one ownership.

7. The appellant has not challenged the acquisition proceeding itself, and indeed it could not challenge such proceeding as it had accepted and affirmed the award made in respect of the two other plots and had withdrawn the compensation awarded in respect of the same. Its only challenge is to the second or supplementary award made in respect of Plot No. 1296. In our view, the contention of the appellant cannot be sustained and must be rejected.

8. In our opinion, the appellant has failed to make out any ground for interfering with the judgment and order under appeal. The appeal is therefore dismissed. There will be no order as to costs.

As prayed for, let operation of this order remain stayed for a period of four weeks from date.

Amiya Kumar Mookerji, J.

9. I agree.