
(1966) 09 CAL CK 0020
In the Calcutta High Court
Case No : A.F.O.D. No's. 132 and 133 of 1965

Charu Prokash Ghosh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 27-09-1966

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 25(1)

Citation : AIR 1967 Cal 631 : 72 CWN 235 : (1967) 2 ILR (Cal) 1

Hon'ble Judges : P.N. Mookerjee, J;A.C. Sen, J

Bench : Division Bench

Advocate : Bikash Chandra Mallick and Rewanta Krishna Majumdar, in No. 132 of 1965 and Bankim Chandra Dutta, in No. 133 of 1965, for the Appellant; Bankim Chandra Dutta in No. 132 of 1965 and Bikash Chandra Mallick and Rewanta Krishna Majumdar, in No. 133 of 1965, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—These two appeals arise out of a Land Acquisition proceeding. The property under acquisition was, premises No. 26 Dixon Lane, which comprised an area of 11 cottahs with a three-storied building thereon. The Land Acquisition Collector awarded compensation at the average rate of Rs. 9,400 per cottah for the land and Rupees 1,39,000 for the structures.

2. In addition to the above, he also awarded a sum of Rs.2,000 on account of costs of removal and the usual statutory allowance. and his total award came up to Rs. 2,80,760.

3. The claimant was dissatisfied with the Collector's award and took a reference before the Land Acquisition Judge. In the petition of reference the claim appears to have been made for a minimum amount of Rs. 2,82,000 for the entire property, the claim for the land being valued at least at Rs. 12,000 per cottah, and, for the structures, the claim was Rs. 1,60,000.

4. The learned Land Acquisition Judge has enhanced the award by fixing the

compensation including statutory allowance at Rupees 3,24,300 in place of the Collector's award of Rs. 2,80,760, the enhanced award thus coming up to Rs. 43,640.

5. The claimant was still dissatisfied, and he preferred F. A. No. 132 of 1966 to this Court against the said award. The State also felt aggrieved by the enhancement over the Collector's award and filed a cross-appeal, F. A. No. 133 of 1966. Both these appeals are now before us for decision.

6. On the question of land valuation, the learned Land Acquisition Judge has accepted the rate of Rs. 10,500 per cottah on a consideration of the various circumstances and the materials before him. And, for the structures, his assessment was a value of Rupees 1,87,495 although in his view, having regard to the claim, made by the claimant in his petition of reference, from which he deduced the total figure of Rs. 2,82,000, a sum of Rs. 1,66,600 was allowed for the said structures.

7. Both the above assessments for land as well as building or structure have been assailed before us by the learned Additional Government Pleader, and on behalf of the claimant, those figures were sought to be further enhanced.

8. The evidence, so far as land value is concerned really turns on two Exhibits, Exts. 8 and 3A, Ext. 3 relating to neighbour-ing premises. No. 1/2 Gimesh Lane and Ext. 3A to another neighbouring premises No. 16, Dixon Lane. These two documents are respectively dated 17th May, 1952 and 16th August, 1962.

9. It has been urged by the Additional Government Pleader that the relevant date of valuation for the purpose of the instant acquisition was September, 1961, and accordingly, the above two documents would not be relevant, as they would be of the year 1962, about nine years prior to the said relevant date. It appears, however, that no other material of any comparable value is available, and accordingly, the learned Land Acquisition Judge has relied on the above two Exhibits, 3 and 3A, after necessary adjustments in the light of the evidence on record.

10. In our view, in the circumstances of this case, the learned Land Acquisition Judge has taken the correct view on the question of value of land, as derived from the said documents. As regards structures, the evidence of valuation is practically one sided, and the evidence of the claimant's expert in this behalf, as analysed by the learned Land Acquisition Judge, seems to be acceptable in the circumstances of this case.

11. A point was raised on behalf of the State that there were two other documents on record, Exts. B and C, which related to the property under acquisition and were good evidence of valuation of the same nearabout the relevant time. These exhibits, however, as has been observed by the learned Land Acquisition Judge, would not afford any reliable index of the valuation of the disputed property for reasons, given by the learned Judge, and indeed, they

were not relied upon by the Land Acquisition Collector also. The only other document, on which the State relied, was Ext. A, which was an award in respect of a premises in the neighbourhood, but, as pointed out in the judgment under appeal, that award was not an accepted award, but was challenged before the higher Tribunal and there was no evidence in this case adduced by the State as to the fate of that reference. In the circumstances, the objection of the State against the view, taken by the learned Land Acquisition Judge on the question of valuation of land and the structures, comprised in the property under acquisition, cannot be sustained.

12. It was urged further on behalf of the State that, in any view, the claimant was not entitled to any amount beyond Rs. 1,50,000 for the structures as that was the figure, mentioned by the claimant for the said structures in his petition of reference. This objection was overruled by the learned Land Acquisition Judge upon the view that the claimant was not restricted to the different valuations for the different items in his petition of reference, although he might be held limited to the amount, claimed for the entire property in the said petition. This view appears to us to be well supported by the decision of this Court, reported in *Province of Bengal v. P. L. Nun and K. C. Pal*, Receivers appointed by the High Court in Suit No. 262 of 1927 AIR 1946 Cal 312 explaining the earlier decision of this Court, reported in *Province of Bengal Vs. Ram Chandra Bhotika and Others*, , in the light of the two Privy Council decisions, reported in AIR 1930 64 (Privy Council) and AIR 1939 98 (Privy Council) . We are, accordingly, of the view that the State's objection to the award of the learned Land Acquisition Judge is unsustainable and its appeal F. A. No 133 of 1965, would fail.

13. As regards the claimant's appeal, the position has been simplified by the attitude, taken up by the claimant's learned Advocate in this Court. It appears from the record that the claimant's original claim before the Collector for the entire property was Rs. 3,25,000. In the petition of reference, as read by both the parties and the learned Judge in the Court below, this claim was Rs. 2,82,000. Before the learned Land Acquisition Judge, the claimant, on this footing, applied for amendment of his petition of reference and sought to raise his claim to Rs. 3,26,000, the original figure claimed before the learned Collector. The learned Land Acquisition Judge rightly held that the reference Court had power and was entitled to allow an amendment of the claim, made in the petition of reference, relying upon the above-cited decision of this Court reported in *Province of Bengal Vs. P.L. Nun, K.C. Pal*, Receivers appointed by High Court, . But he rejected the claimant's petition of amendment upon the view that it was not sustainable on the merits, as the reason, given for seeking this amendment, was not acceptable. We were not very much satisfied with this approach of the learned Land Acquisition Judge, and it seemed to us that, in the circumstances of this case, the amendment might well have been allowed, the more so, when, as we read the petition of reference, under it, the claimant's claim was not restricted to Rs. 2,82,000, as the land value claimed there at the rate of Rs. 12,000 was the minimum figure, claimed under that heading, and obviously, both

the parties in the court below and the learned Judge there missed the crucial words, "at least", preceding the said rate of Rs. 12,000 in the said petition. We felt, however, that, if the said amendment petition was to be allowed, the matter had to be remanded having regard to the common approach, made in the court below before the learned Land Acquisition Judge.

14. In these circumstances, Mr. Mallick on behalf of his client, intimated to us that his client would prefer to accept the award, made by the learned Land Acquisition Judge, if the same could be otherwise maintained or accepted by this Court and would not press for the amendment, if, to allow the same, would mean a remit of the matter to the court below for further consideration.

15. In the premises, we are relieved of the duty of considering the matter of the said amendment further, as from what we have already said above, on the evidence before the court, the award of the learned Land Acquisition Judge--the total award at any rate,--was perfectly justifiable, and even if the land value may reasonably be reduced to a lower figure, say, to the Collector's award for the same, or, between the Collector's figure and the figure, accepted by the learned Land Acquisition Judge, the value of structures would, obviously, make up the difference, so as to maintain the award in the same figure, as given by the learned Land Acquisition Judge, namely, Rs. 2,82,000, plus, of course, the statutory allowance, as granted by him.

16. In the above view, the claimant's appeal would also fail.

17. In the result, both the above appeals would be dismissed and the award, made by the learned Land Acquisition Judge, would be upheld.

18. There will be no order for costs, so far as this Court is concerned.

A.C. Sen, J.

19. I agree.