

(2003) 01 CAL CK 0038
In the Calcutta High Court
Case No : F.A. No. 131 of 2001

Debendra Nath Kar Sharma		APPELLANT
	Vs	
The State of West Bengal		RESPONDENT

Date of Decision : 17-01-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4, 6, 9

Citation : (2003) 3 CALLT 555

Hon'ble Judges : Tarun Chatterjee, J;Provandu Narayan Sinha, J

Bench : Division Bench

Advocate : Chandra Sekhar Das and Sridhar Panja, for the Appellant;Soumen Dasgupta and Kalyanmoy Modak, for the Respondent

Judgement

P.N. Sinha, J.—This appeal preferred by the referring claimant is directed against the judgment and decree dated 17th February, 2002 passed by the learned Additional District Judge, 5th Court, Midnapore in L.A. Misc. Case No 1 of 2000 arising out of L.A. Case No. 15 of 1999-2000. The claimant appellant has preferred the instant appeal being aggrieved by and dissatisfied with the valuation of the acquired land assessed by the learned Judge and in not awarding proper valuation of trees and structures standing on the land along with other grounds.

2. It appears that the claimant appellant made a reference u/s 18 of the L.A. Act - I, 1894 being dissatisfied with the award made by the L.A. Collector, Midnapore in connection with L.A. Case No. 15 of 1999-2000. It appears that the L.A. Collector acquired 0.10 acres of land of Mouza Garhmoyna in plot No. 395 under J.L. No. 207 within P.S. Moyna, District Midnapore for construction of Prajabarh to Bhagwnpur Road and it was acquired vide declaration No. 5431/LA/2R-4/98 dated 29.12.1998 which was published in part 1 of Calcutta Gazette dated 30.3.1998 which was subsequently published in the locality dated 30.6.1998. In the reference made by the claimant it was alleged that the L.A. Collector gave compensation on the valuation of the acquired land @Rs. 2,01,000.00 per acre

i.e., @Rs. 2,1000/-per decimal which was grossly under valued ignoring the actual market price. The claimant received the award under protest " and made the reference. It has been contended by the claimant that at the relevant time of acquisition of land in question the price of similar type of land of same locality was not less than Rs. 13,000/- per decimal. It was further contended that the L.A. Collector assessed value of structures standing on the acquired land as Rs. 8,656.68p. which is also under valued and the value of the structures with boundary wall ought to have been Rs. 40,432/-. It was further contended by the claimant that the L.A. Collector assessed value of standing trees on the acquired land at Rs. 2,768/- only but value of the six coconut trees standing on the acquired land should have been Rs. 9,000/-. It was further alleged that the L.A. Collector should have assessed rent value of Rs. 1,22,072/- for taking illegal possession of the said bastu land since 4.2.1983 without publishing plot No. 395 in Gazette Notification which was subsequently published in the locality of 30.6.1998. Besides that, the claimant claimed 40% additional compensation and 18% interest over the total amount from date of notification till date of actual payment.

3. The reference made by the claimant u/s 18(1) of the L.A. Act was sent to the District Judge, Midnapore and it was heard and disposed of by the judgment and decree dated 17th February, 2001 passed by the learned Additional District Judge, 5th Court. It appears from the judgment and decree passed by the learned L.A. Judge that he assessed valuation of the acquired land @Rs. 9,000/- per decimal. He allowed solatium @ 30% p.a. over the calculated amount less the amount already paid by the L.A. Collector and also awarded @ 12% p.a. on the market value of the land for the period from the date of notification till the date of award made by L.A. Collector. He further awarded interest @ 9% p. a. over the principle amount of compensation from date of acquisition till payment of the compensation amount.

4. Learned advocate Mr. Chandra Sekhar Das, appearing for the claimant appellant contended that the learned L.A. Judge erred in law and fact in assessing the market value of the acquired land @Rs. 9,000/- per decimal in spite of coming to the observation in his judgment that at the relevant time of notification the average price of land should have been @ Rs. 14,000/- per decimal. Learned Judge made error in the calculation by adding value of trees and structure with the land value and making average value to arrive at the value of land. Learned Judge ignored the sale deeds produced by the claimant to show average price of lands at the relevant time in that area. Learned Judge should have separately assessed value of standing trees and structures which were standing on the acquired land. It has further been contended by him that the learned Judge erred in law by not allowing 15% interest p.a. till payment. It has also been contended that the learned Judge did not consider the damages sustained by the claimant by reason of compulsory acquisition which resulted into severance of his property from his adjoining other land. Learned Judge was in error by not allowing damage from the date of taking over possession of the

acquired land in 1983 and was also in error by not considering the monthly rental of the plot. Learned Judge did not allow potential land value as the acquired land is by the side of pitch road and there is big business centre, cooperative marketing society, post office, bank, bus stand, police station, panchayat office, schools, college etc. near the acquired land. Accordingly, the judgment and decree passed by the learned Judge was not in accordance with law and materials on record and the learned Judge failed to assess proper valuation of the acquired lands and the trees and structures which were standing on it.

5. Learned advocate Mr. Soumen Dasgupta appearing for the respondent State of West Bengal contended that out of the deeds produced by the claimant before the learned Judge two deeds were before the date of notification. Three deeds produced by claimants were relevant in time regarding date of notification. Possession was taken under L.A. Act-II and after the Act-II was lapsed, notification was made under Act-I. The valuation made by the valuer being engaged by the claimant cannot be relied upon as it was done in absence of the State or officers representing the State. Therefore, the claimant is not entitled to receive valuation for the standing trees and structures on the acquired land as claimed by him. He frankly conceded that when the learned L.A. Judge himself opined in the body of judgment that at the relevant time of notification it would be judicious and proper if the average price of the land be assessed and calculated @Rs. 14,000/- per decimal, the valuation of acquired land could have been assessed for the purpose of awarding compensation @Rs 14,000/- per decimal.

6. We have been perused the materials on record and duly considered the submissions made by the learned advocates of both parties. We find that in the proceeding before the learned L.A. Judge only two witness were examined on behalf of the referring claimant namely P.W. 1 Sujit Dutta and P.W.2 Debendra Nath Kar Sharma. The opposite party State of West Bengal did not examine any witness before the learned Judge. The referring claimant produced certain documents including the report of the valuer i.e., P.W. 1 marked as Ext. 1. He also produced a copy of the report containing signature of the Executive Engineer and the L.A. Collector which is Ext. 2 and copy of sketch map which is Ext.3. The claimant also produced five deeds to show valuation of the lands adjacent to acquired land at the relevant time which are Ext.4 series. The State did not adduce any document and relied upon a letter dated 12.7.1999 sent by the referring claimant to the L.A. Collector which is Ext. A. From the five deeds produced by the referring claimant we find that two deeds are dated 14.11.1994 and 10.10.1995 i.e., before publication of the notification. Three other deeds are corresponding to date of notification and after that as out of the said three deeds two deeds are dated 27.3.1998 and the other deed is dated 18.8.1997. The deed dated 18.8.1997 shows bastu land was sold at a rate of Rs. 13,000/- per decimal. The other two deeds dated 27.3.1998 shows that lands were sold at a valuation of Rs. 10,000/- and 17,000/- per decimal respectively. One of the deed dated 27.3.1998 is in respect of plot Nos. 394 and 396 of mouza Garhmoyna and

the other deed is in respect of plot. Nos. 348 and 350 of mouza Garhmoyna. The deed dated 18.8.1997 is in respect of plot No. 348 of mouza Garhmoyna. The acquired land was in plot Nos. 395 the total value of these three deeds which are relevant to date of notification is Rs. 40,000 and if average valuation of these three deeds is calculated it comes to Rs. 13,333/- per decimal. It is well-known that value of lands are increasing day by day and the Court can take judicial notice of the fact of rise of inflation and value of increase of land and in this connection I rely upon the decision reported in State of Bihar Vs. S.K. Thacker and Others etc., . Moreover, we find that the learned L.A. Judge in his judgment observed that it would be judicious and proper if the average price of the land indicated in Ext-4 series at the relevant time of notification be assessed and calculated at Rs. 14,000/-per decimal. Mr. Dasgupta appearing for the State of West Bengal also conceded that in view of such finding land value may be assessed at Rs. 14,000/- per decimal. Accordingly, considering the documents produced by the referring claimant we are of the view that it would be proper and reasonable to assess price of the acquired land at the relevant time of notification @Rs. 14,000/- per decimal.

7. We are of the view that the learned L.A. Judge was in error by adding value of the standing trees and structures with the price of the land value and making an average thereof and thereby reducing value of the land to Rs. 8,750/- and finally assessing @Rs. 9,000/- per decimal. The value of the trees and structures standing on the acquired land should be assessed separately and for the trees and structures the referring claimant is entitled to a separate valuation,

8. It appears that the L.A. Collector gave valuation of standing trees amounting to Rs. 2,768/-. The referring claimant has claimed Rs. 9,000/- as the value of standing trees. In his evidence he stated that there are six coconut trees standing on the acquired land whose value would be @Rs. 1,500/-X 6 trees = Rs. 9,000/-. It is common knowledge that the claimants have a tendency to increase valuation of standing trees, crops etc. No other independent witness was examined to prove the value of trees. The valuer P.W. 1 made valuation almost ex-parte in absence of officers of the State. Similarly, we are of the view that the L.A. Collector gave inadequate value of the standing trees. Accordingly, we think that it would be reasonable to assess value of the standing trees @ Rs. 1,000 per tree X 6 trees = Rs. 6,000/-.

9. The L.A. Collector awarded value of structures amounting to Rs. 8,656.68p. The valuer assessed the value of the structures and boundary walls at Rs. 40,432/-. It further appears to us that the valuer observed in his report marked as Ext. 1 that the life of the building standing on the acquired land is 40 years. It appears from his report that he allowed some depreciation in respect of building, boundary wall and gate and we are of the view that the depreciation given by him was not proper and he allowed rather low depreciation when is almost @ 10%. Depreciation should be higher and at least 15% to 20%. Similarly, at the same time we are of the view that the L.A. Collector awarded inadequate value

of the structures including walls standing on the acquired land. Allowing higher depreciation as indicated by us the value of the structures standing on the acquired land could come approximately to Rs. 34,000/-. We are of the view if we allow Rs. 34,000/- to the referring claimant as the value of the structure standing on the acquired land it would meet ends of justice.

We agree that the referring claimant is entitled to potential value to some extent and Courts generally allow 10% potential value. It appears from evidence and materials on record that bus stand, market, bank cooperative marketing society, police station, boys' and girls' schools are near to the acquired land. Therefore, the acquired land was to some extent was within area of developing land and as such the referring claimant is entitled to get 10% as potential value. The amount of potential value should be added with the value of land to assess the actual valuation of the acquired land. We have assessed that the probable price of the acquired land at the relevant time of notification was Rs. 14,000/- per decimal. Allowing potential value @ 10% to it would add Rs. 1,400/- more to the value of the land. Therefore, the referring claimant is entitled to get compensation for the land value of the acquired land at the relevant time @Rs. 14,000/- + Rs. 1,400/- = Rs. 15,400/- per decimal. As there was delay in making notification we make it clear that the referring claimant is entitled to obtain compensation of the acquired land @ Rs. 15,500/- per decimal.

10. The above discussion makes it clear that the learned L.A. Judge did not make assessment of valuation land properly and accordingly his findings and the judgment and decree passed by him are set aside. It further appears that the learned L.A. Judge did not award interest and compensation properly. In view of the decision of the Supreme Court in the case of *Sunder Vs. Union of India*, the referring claimant is entitled to get interest over the entire amount of solatium. Accordingly, we modify the award made by the L.A. Collector. In the result the appeal stands allowed.

The referring claimant do get compensation for the land value of the acquired land @Rs. 15,500/- per decimal for the entire acquired land less the amount already awarded by the L.A. Collector.

11. The referring claimant do get compensation of Rs. 6,000/- for the standing trees and Rs. 34,000/- for the value of structures standing on the acquired land less the amount awarded by the L.A. Collector.

12. The referring claimant do get solatium or statutory allowances @Rs. 30% over the entire value of the land and structure calculated by us less the amount already awarded by the L.A. Collector.

13. The referring claimant do get additional compensation @ 12% p.a. over the entire valuation from the date of publication of notification till the date of award less the amount already awarded by the L.A. Collector.

14. The referring claimant do get interest over the entire compensation @ 9%

p.a. from the date of possession for the first year i.e., from 4.2.1983 to 3.2.1984 and thereafter, @15% till payment in full.

15. The referring claimant do also get interest over the amount of solatium in view of the decision of the Supreme Court as indicated above.

The award of the L.A. Collector thus stands modified. The compensation amount shall be deposited or be sent to the Court of the learned L.A. Judge within six months from this date.

16. The appellant is at liberty to withdraw the decretal amount deposited with the Registrar General, High Court, Appellate Side, Calcutta without furnishing any security.

Drawing up of formal decree be dispensed with.

There will be no order as to costs.

Urgent xerox certified copy be given to the parties, if applied for, expeditiously.

Later:

Learned advocate for the appellant submitted orally for return of the original documents/deeds lying the case file. Considering the submission we direct that the appellant is at liberty to take back the original documents/ deeds lying in the case file those are deposited in the High Court by making an affidavit after observing the usual formalities.

T. Chatterjee, J.

17. I agree.