
(1985) 07 GAU CK 0009

In the Gauhati High Court

Case No : First Appeal No. 343 of 1973 analogous to F.A. No's. 344-371 of 1973

Deputy Commissioner, Kamrup

APPELLANT

Vs

Sansita Kaibarta and Others, etc.

RESPONDENT

Date of Decision : 15-07-1985

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8(1)

Citation : AIR 1987 Guw 1

Hon'ble Judges : K. Lahiri, Acting C.J.; K.N. Saikia, J

Bench : Division Bench

Advocate : D.P. Chaliha, for the Appellant; K.R. Pathak and L.N. Barua, for the Respondent

Final Decision : Dismissed

Judgement

Lahiri, Actg. C.J.

1. We propose to dispose of the appeals by a common Judgment as they stem from a common Award and involve common questions of law and facts.

2. These appeals have been preferred by the Deputy Commissioner, Kamrup, against the award made by the District Judge-cum-Arbitrator, Gauhati, appointed under the Requisitioning and Acquisition of Immovable Property Act, 1952 for short "the Act", in Misc. (Arb.) Cases Nos. 95 - 123 of 1971.

3. The Relevant Facts Are As Follows :

Lands owned by the Respondents were requisitioned on 30-6-1963 and possession was taken over on 11-9-1963. In exercise of the power conferred u/s 7 of "the Act" the Collector-cum-Deputy Commissioner, Kamrup, by his order No. RQ. 1684/70 dt. 23-2-1970 acquired the land. There is no dispute that the acquired lands were in a common field situated at Borjhar in Mouza Dakhin Rani within the Greater Gauhati Master Plan Area. Without making any endeavour to determine the compensation by agreement with the land owners, the competent

authority paid ad hoc compensation for compulsory acquisition of the land @ Rs. 3000/- per bighas for Basti land (homestead land) and @ Rs. 2000/- -- 2500/- per bigha for arbable lands. Similarly, the Collector paid ad hoc compensation for Jirats, trees etc. in lump sum. The Collector also paid recurring compensation at the rate of Rs. 70/- per bigha for the first year of requisition and @ Rs. 45/-per bigha for the subsequent years of requisition, which was the recurring payment of a sum equal to the rent which would have been payable for the use and occupation of the lands if it had been taken on lease for that period.

The claimants-respondents were dissatisfied with the quantum of compensation paid and asked for reference. As no agreement could be reached, the Government appointed the District Judge, Gauhati as Arbitrator to determine compensation under the provisions of "the Act". As many as six issues were framed by the Arbitrator. The first issue is whether the payment of compensation made by the Collector was the price which the requisitioned properties would have fetched in the open market, if they had remained in the same condition as they were at the time of requisitioning and been sold on the date of acquisition, vide Section 8(3)(a) of "the Act". The second issue is whether compensation paid for Jirat was fair and adequate. The third issue was whether the claimants-Respondents were entitled to 15% solatium on the total amount of compensation. The fourth issue is whether the amount of compensation paid by the Collector as recurring payment for the period of requisitioning was equal to the rent which would have been payable for the use and occupation of the properties if it had been taken on lease. The fifth issue is whether the claimants were entitled to get interest @ 6% per annum on the amount of compensation. The sixth issue is as to what relief, if any, the claimants were entitled.

4. The Arbitrator after hearing the dispute made an award of compensation, which appeared to him "to be just". It may be stated here that the claimants-respondents put their claim for Jirats as per list submitted by them. They contested the rate at which compensation was paid by the Collector and also claimed that the valuation of all trees and plants was not equal. They claimed compensation @ Rs. 10,000/- per bigha for the acquired lands. They also claimed that they were entitled to recurring compensation @ Rs. 300/- per bigha per annum, that is, the annual recurring compensation for use and occupation of the properties during the requisition period. They further claimed interest @ 6% per annum on the amount of annual compensation payable during the requisition period and at the same rate on the amount of compensation for acquisition of the lands.

5. On behalf of the claimants three witnesses were examined and six documents exhibited, whereas on behalf of the Deputy Commissioner-cum-Collector two witnesses were examined and two documents were exhibited. On conclusion of the enquiry and upon hearing both the parties the Arbitrator rejected the claim of solatium or additional compensation @ 15% per annum made by the claimants holding that "the Act" did not provide for payment of solatium. Accordingly, issue

No. 3 was decided in favour of the Collector. The Arbitrator awarded compensation for acquisition of the land @ Rs. 8,500/- per annum. In short, he determined the price which the requisitioned properties would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, that is, on 23-2-70, and, thus disposed of issue No. 1. The arbitrator awarded compensation for Jirats, trees, etc. at the rate claimed by the claimants. The compensation awarded was lump sum payment against each item and not according to the number of years of fruit bearing capacity of the plants and trees. Thus, he disposed of issue No. 2. However, after the award had been made the arbitrator noticed that there were palpable omissions of some of the items and accordingly he included the omitted items by way of corrections. The arbitrator awarded recurring compensation @ Rs. 200/- per bigha from the date of taking possession of the lands on 11-9-63 till 23-2-1973, the date of acquisition, to all the claimants except the claimants in f.A.no. 93/73, F.A. 349/73, F.A. 350/73, F.A. 354/73 and F.A. No. 355 of 1973. Learned arbitrator allowed interest @ 6% per annum.

6. Mr. D. P. Chaliha, learned Government Advocate, appearing for the appellant, has very faintly argued that the arbitrator had no jurisdiction to award any interest as "the Act" does not provide for awarding interest. In F. A. No. 132 of 1973, Dy. Commr., Kamrup v. Naren Chandra, Kalita, decided on 14-12-1982 (reported in 1983 (2) Gau LR 10) a Division Bench of this Court has held that the arbitrator, acting under "the Act" and "the Rules", has power and jurisdiction to award interest. The view finds support in *The Province of Bengal Vs. Pawn Kissen Law and Co.*, ; *Hari Krishan Khosla Vs. State of Pepsu*, There is no doubt that from the date of requisition, the claimants were entitled to the recurring compensation. Similarly, from the date of acquisition, the claimants were entitled to acquisition compensation. The amount of compensation was personal property of the claimants and they were deprived of the payments. As such, in equity the claimants are entitled to interest. The lands have been taken, the owners have been deprived of the use of the lands and it is a clear case of expropriation. On that ground as well the owners are entitled to interest. In *Inglewood Pulp and Paper Co. Ltd.* AIR 1928 PC 287 : 1928 AC 492 (PC), it has been held that when the owner lost his right to hold and enjoy possession of the property, he is entitled to interest in lieu of his right to retain and enjoy the possession of the lands, unless such a claim is excluded by the statute. "The Act" has not excluded payment of interest. On simple commercial basis as well the claimants-respondents are entitled to interest on the compensation. If the compensation is paid at the appropriate time the recipient can use and utilize the amount, but when such a payment is not made at the appropriate time the claimant is entitled to interest. In *Mahant Narayana Dasjee Varu and Others Vs. Board of Trustees, The Tirumalai Tirupathi, Devasthanam*, it has been held by the Supreme Court that interest is an integral part of the mesne profits and has, therefore, to be allowed in the computation of mesne profits itself. In *Hukumchand Gulabchand Jain Vs. Fulchand Lakhmichand Jain and Others*, the

Supreme Court has held that a trustee using the Trust Fund in his individual capacity is liable to pay interest. In *Satinder Singh v. Umrao Singh*. AIR 1963 SC 908, a question arose as to whether under the East Punjab Requisition of Immovable Property (Temporary Powers) Act, 1948, the owners were entitled to interest on the amount of compensation for the period between deprivation of the property and payment of compensation. Their Lordships relied on *Swift and Co. v. Board of Trade* 1925 AC 520 (532); *Birch v. Joy* (1852) 2 HLC 565 ; *Inglewood Pulp and Paper Co. Ltd.* (supra) and held that the claimants were entitled to interest on the compensation amount. The Supreme Court approved *Surjan Singh Vs. The East Punjab Government*, where such a view had been taken. In *Bishan Devi v. Sirbaksh Singh* , on the same principle their Lordships awarded interest in the Motor Accident Claims Case, although, at the relevant time there was no provision to award interest by the Motor Accident Claims Tribunal. In *National Insurance Co. Ltd., Calcutta Vs. Life Insurance Corporation of India*, , a similar question came up before the Constitution Bench of the Supreme Court where neither the Life Insurance Corporation Act, nor the Rules contained any provision for granting interest Their Lordships awarded 4% simple interest.

7. In our opinion, the power to award interest is inherent in such compulsory purchase transactions. We are of the opinion that the payment of interest is imperative and empirical, if not for anything else but to compel the authority to pay the compensation promptly, otherwise, there would be considerable delay in making payment of compensation. The view that we have taken finds ample support from the decision of the Supreme Court in *Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore*, am *T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, Madras*, In *Deputy Commissioner Vs. Mamat Kaibarta (deceased by L.Rs.) and Others*, a Division Bench of this Court has held that the arbitrators have power to award interest in land acquisition proceedings. As such, we hold that the Arbitrator has power to award interest but we do not express any view as to the relevant date from which such interest can be awarded by the arbitrator for the simple reason that this point has not been taken in the Memo, of appeal nor argued before us.

8. The next contention of the appellants is that the market value of the land at the uniform rate of Rs. 8,500/- per bigha was erroneous and that the market price of the land as awarded was too high. Indeed, the arbitrator awarded compensation at a uniform rate of Rs. 8,500/- per bigha for arable lands as well as for homestead lands. The arbitrator held that the rate at which the Collector had awarded compensation had no basis at all. The arbitrator held that in the awards vide, Exts. 4 and 5, the Collector had awarded compensation for comparable lands @ Rs. 9,000/- per bigha for arable lands. The lands covered by Exts. 4 and 5 were comparable lands and contemporaneously acquired. As such the arbitrator held that the Collector had no reason or justification in awarding compensation @ Rs. 3000/- per bigha for homestead lands and @ Rs. 2,000/- -- 2500/- per bigha for cultivable lands in the present acquisition proceedings.

Notwithstanding proof of Exts. 4 and 5 no material was produced by the Collector to show why the awards of the Collector should not be acted upon. There is no evidence to show that the present acquired lands had any deficiency or shortfall to award lesser compensation. On the basis of the materials the arbitrator has also held that the lands are within the Greater Gauhati Master Plan Area. A number of roads passed by the acquired lands. The lands were near various public Institutions. There were markets and Bazars nearby and it had direct and convenient surface communication with the City of Gauhati. The arbitrator also held that there was a perceptible upswing of land price in the area between 1963 to 1970. Exhibits 2 and 3, the sale deeds establish that the market value of lands sold in the vicinity of the present acquired land was @ Rs. 2,000/- per Bigha in 1963 whereas the price jumped to Rs. 10,000/-per bigha on 10-4-1970. The arbitrator held that the acquired land was in a developing area where various establishments, important development projects had come up to augment upswing of the market price of the land in the area. On the basis of oral as well as documentary evidence the arbitrator reached the conclusion that award of compensation at the uniform rate of Rs. 8,500/- per bigha was fair compensation although the Collector had awarded compensation @ Rs. 9,000/- per bigha for arable lands. A number of acquisition cases from Borjhar area, where lands were acquired in 1970 and 1971, come up before this Court. One amongst them is F.A. No. 132 of 1973, Dy. Commr., Kamrup v. Naren Chandra Kalila, decided on 14-12-1982 reported in 1983(2) Gau LR 10 . The arbitrator had awarded compensation @ Rs. 12,000/- per bigha and also awarded annual recurring compensation @ Rs. 300/-per bigha. The lands which were in the vicinity of the present acquired land having similar characteristics were acquired on 4-6-1971. The said lands were comparable lands and possessing similar advantages. A flat rate of Rs. 12,000/- per bigha for arable lands and homestead lands was awarded by the arbitrator. The award was upheld by this Court. In the said case the award was made on the basis of sale deeds and previous awards. The market value of comparable lands was Rs. 12,000/- per bigha in June 1971, As such, the award of compensation @ Rs. 8,500/- per bigha in the instant case cannot be said to be unreasonable, more so when we find that the sale deed, Ext. 3 itself indicated that the market value of comparable land was at Rs. 10,000/- per bigha on 10-4-1970. In Deputy Commissioner Vs. Mamat Kaibarta (deceased by L.Rs.) and Others, this Court upheld award of compensation for the acquired lands @ Rs. 10,000/-. The land was in the vicinage of the present land and acquired contemporaneously. As such, the award of compensation for compulsory acquisition of the land is fair and just. Be that as it may, in the instance case the Arbitrator relied on Ext. 1, an award. The lands were of Borjhar, Mirzapara, Agchia, etc. These lands are in the neighbourhood of the present land. They were acquired on 19-2-1970 under the provisions of "the Act". The Arbitrator awarded compensation at the uniform rate of Rs. 8,500/- per bigha for all classes of lands (homestead as well as arable lands). To ascertain the market price the Arbitrator relied on sale deeds and awards of comparable lands. There was no appeal against the award and the Collector made the payment as awarded by the

Arbitrator. The lands were in the proximity of the present lands. The acquisition was at or about the same (time) with that of the present land. Ext. 1, the award, is admissible and relevant. On the basis of the sale deeds and awards the Arbitrator determined the market price of those lands at a flat rate of Rs. 8,500/- per bigha. In *Khaja Faizuddin v. State Of Hyderabad*, (Civil Appeal No. 176 of 1962) decided on 10-4-62 (reported in 1963 SC 177), the Supreme Court has held that the awards relating to comparable lands approximately of the same time are the best evidence to determine the market value of the lands acquired subsequently. In *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, the Supreme Court has held that the awards are admissible and relevant in subsequent arbitration proceedings. In our opinion, while ascertaining the market price of the land based on the market value of comparable lands fairly proximate to the relevant date, the Court necessarily ascertains the market price of the adjacent lands possessing similar advantages. One of the main functions of the Court involves ascertainment of market price of adjacent lands similarly situated and fairly proximate to the relevant date of acquisition. We are also of the opinion that when such awards are put in evidence, it is for the other party to show why they should be excluded from evidence. Unless good reasons are made out, such awards must be held to be admissible and relevant. In the instant case the market price was determined on the basis of the sale deeds as well as relevant awards which were relevant and admissible. u/s 6(8)(1)(e) of "the Act", the Arbitrator is to make an award determining the compensation "which appears to him to be just". The market price determined by the Arbitrator is by all standard just and appropriate.

9. Let us now consider the contention of the counsel for the appellants to the effect that award of compensation at the flat rate of Rs. 8,500/- for arable lands and homestead lands was unjust and inappropriate. If we turn to Ext. 4, the award of the Collector, we find that he had himself awarded compensation for acquisition of arable lands at Rs. 9,000/- per bigha by his award dt. 12-4-1971 in respect of comparable lands. We have upheld similar uniform rate of compensation for arable lands and homestead lands in *Naren Kalita 1983 (2) GLR 10 (supra)*, *Deputy Commissioner Vs. Mamat Kaibarta (deceased by L.Rs.) and Others*, The claimants had asked for compensation at a uniform rate. On behalf of the Collector no material could be produced as to why there should be different rates of compensation for arable lands and homestead lands. The nature and quality of both classes of lands were the same. They had equal advantages.

Under these circumstances we hold that the award of compensation at the rate of Rs. 8,500/- per bigha is just and appropriate.

10. We have scrutinised the part of the award relating to payment of recurring compensation and find that the same is just and appropriate. The arbitrator has awarded the recurring compensation @ Rs. 200/- per bigha per annum. The acquired arable lands yielded double crops and the homestead lands were

valuable, having various advantages. In Naren Kalita (supra), annual recurring compensation was awarded @ Rs. 300/- per bigha. The lands were comparable and contemporaneously requisitioned. In Mamat Kaibarta (supra) in respect of similar lands annual recurring compensation was awarded @ Rs. 200/- per bigha, however it was mistakenly awarded @ Rs. 200/- per bigha which ought to have been @ Rs. 300/- per bigha per annum. The lands were comparable and requisitioned contemporaneously. Further, the award of compensation is justified on the basis of awards made in Misc. Case Nos. 2-5, 7, 9-10 of 1970 where recurring compensation was paid @ Rs. 300/- per bigha. We are of the view that fair rent of such land per bigha would have certainly fetched more than Rs. 200/- per bigha per annum. The determination of the compensation is just and fair. As such, we find no justification to disturb the award of recurring compensation.

10A. Insofar as the award of compensation for Jirats, trees and plants, there cannot be any grievance. The owners lost very many valuable trees and plants. There were valuable wood trees apart from fruit bearing trees and plants. The compensation was lump sum payment against each item. The arbitrator refused to pay compensation of trees and plants according to number of years of fruit bearing capacity, as claimed by the owners. A pineapple plant was priced at Re. 1/- and bamboo @ Rs. 2/- per piece. Valuable Mango, Madhuri, Kathal trees were priced very low. Some of the trees were good for furniture and fuel. Be that as it may, on perusal of the rate at which the compensation has been awarded for the plants and trees we find the payment of compensation is very low. As such, the contention fails.

11. The last contention of Mr. D. P. Chaliha, learned counsel for the appellant is that the arbitrator had no jurisdiction vested in him by law to correct even the clerical mistakes in the Award. The arbitrator prepared the award and made a list of trees and plants and the rate at which the compensation was paid by him. Many items, which were admittedly included in the list submitted by the claimants-respondents, were omitted by the arbitrator. When the mistakes were brought to his notice the arbitrator found that those were clerical mistakes. In presence of learned counsel for both the parties learned arbitrator corrected the award and included the items which had been left out in the original award. There is no denial that in the original award some items of trees and plants were omitted. These items found place in the corrected awards. Those were bona fide mistakes committed by the arbitrator. These are also not denied by learned counsel for the appellants. The correction upheld the cause of justice. Learned counsel for the appellant could not point out that any item included in the corrected award was wrong. The arbitrator prepared the final list of compensation for jirats and included in it the items which he had inadvertently omitted to incorporate in his original award. Admittedly, the corrected award of compensation in respect of jirats reflects the true and correct claim preferred by the claimants. After making the corrections, the appellant was served with a copy of the corrected award. As such, the provisions of Rule 10(5) of the Rules framed under "the Act" were duly complied with. The appellant has appealed

against the corrected award. The arbitrator did not review any part of the order but merely corrected the clerical mistakes contained in the list. There is no provision which prohibits the arbitrator to correct bona fide clerical mistakes committed by him. That apart, if the arbitrator would have refused to correct the same the appellant (respondent?) would have come up against the award asking for correcting the same and this Court would have certainly corrected the award, to uphold the cause of justice as admittedly, the omissions were clear and obvious mistakes committed by the arbitrator. In the result, the contention fails.

12. For the foregoing reasons, we hold that there is no merit in the appeals. Accordingly, the appeals are dismissed with cost of Rs. 200/- per appeal against the appellant. We direct the appellant to deposit the compensation awarded if not already done. The cost should be deposited by the appellant into the Court of Arbitrator-cum-District Judge, Kamrup at Gauhati. The claimants-respondents shall be entitled to receive the compensation and costs from the arbitrator when so deposited by the appellant.