
(2008) 09 CAL CK 0012
In the Calcutta High Court
Case No : F.A. No. 15 of 2002

District Magistrate (L.A.) Darjeeling

APPELLANT

Vs

Soumitra Devi Jalan

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2008) 09 CAL CK 0012

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : S.C. Bose, for the Appellant; Jaharlal Chakraborty, P. Bhattacharya, Mitali Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.

The Judgment of the Court was delivered by:

This first appeal is at the instance of the State of West Bengal in the proceedings u/s 18 of the Land Acquisition Act and is directed against an award dated 3rd September, 1997 passed by the learned District Judge, Darjeeling, in Miscellaneous L.A. Case No. 9 of 1987 thereby enhancing the compensation fixed by the Collector from Rs. 14,54,211.05p. to an enhanced sum as detailed below appearing from the award itself:

"Market value of land and trees

Rs. 7,11,168.00

30% solatium on the value of land of

Rs. 1,83,350.40

Rs. 6,11,168/-

Rs. 8,94,518.40

Amount already received by the petitioner

under protest, minus

Rs. 1,31,521.50

Rs. 7,62,996.90

Value of structure awarded by this Court

Rs. 19,14,365.00

Total

Rs. 26,77,361.90

Amount of interest 12% p.a. for five years three

Rs. 16,93,877.58

months eight days the excess compensation

awarded by this court of Rs. 26,77,361.90.

Amount of interest 9% for one year from

23.9.86 to 22.9.87 on the excess compensation

awarded by this Court of Rs. 26,77,361.90

Rs. 2,40,962.57

Rs. 46,12,201.05

Amount of Interest already received (minus)

Total

Rs. 2,59,997.27

Rs. 44,53,193.78

Amount of interest @ 15% p.a. from 23.9.87 till

the amount deposited in the Court Market

value of the land and trees

Rs. 7,11,168.00

Amount already received by the petitioner

under protest

Rs. 1,00,000.00

Rs. 6,11,168.00

Value of structure awarded by this Court

Rs. 19,14,365.00

Total

Rs. 25,25,533.00

30% solatium on the value of the land and

Rs. 32,83,192.00

Amount of interest @ 12% p.a. for five years, 3 months eight days from 18.6.81 to 23.9.86 on the excess compensation awarded by this court of Rs. 32,83,192.90.

Rs. 20,77,166.76

Rs. 53,60,359.66

Amount of interest @ 9% p.a. for 1 year from 23.9.86 to 22.9.87 on the excess compensation awarded by this Court of Rs. 32,83,192.90.

Rs. 2,95,487.36

Total

Rs. 56,55,847.02

Misc. Case No. 17/97 (Arising out of Misc. Case No. 9/87)

Market value of land and trees

Rs. 7,11,168.00

Amount already received by the petitioner under protest (-)

Rs. 1,00,000.00 Rs. 6,11,168.00

Value of structure awarded by this Court

Rs. 19,14,365.00

Total

Rs. 25,25,513.00

30% solatium on the value of land and structure awarded by this Court.

Rs. 7,57,659.90 Rs. 32,83,192.90

Amount of interest @ 12% for five years 3
months eight days from 18.6.81 to 23.9.86 on
the excess compensation awarded by this
Court of Rs. 32,83,192.90

Rs. 20,77,166.76

Total

Rs. 53,60,359.66

Amount of interest @ 9% p.a. for 1 years from
23.9.86 to 22.9.87 on the excess compensation
awarded by this Court of Rs. 32,83,192.90.

Rs. 2,95,407.36

Total Rs. 56,65,847.02

Amount of interest @ 15% p.a. from 23.9.87 to
till the amount is deposited in the Court.

2. Being dissatisfied, the State of West Bengal has come up with the present appeal.

3. By virtue of a Notification dated 18th June, 1981 published in the Calcutta Gazette dated 25th June, 1981, 5.305 acres of land equivalent to 2.1468 hectares including the structures standing thereon were acquired by the State of West Bengal for the purpose of the Officers' Institute as well as for providing accommodation for transient Officers in the District of Darjeeling and an award of Rs. 14,54,211.05p. was awarded in favour of the respondent.

4. The respondent made Reference u/s 18 of the Land Acquisition Act which gave rise to L.A. Case No. 1/5 of 1984-85 alleging that the market value of the property at the time of acquisition was approximately Rupees three crore forty lakh or more. Consequently, the respondent prayed for enhancement of the compensation in terms of Section 18 of the Land Acquisition Act.

5. The State of West Bengal did not file any written statement but contested the proceeding.

6. At the time of hearing, three witnesses were examined on behalf of the respondent. The P.W.-1 was the constituted attorney of the respondent while P.W.-2 was a consulting engineer, surveyor and valuer who gave a valuation-report which was marked as Exbt.-2. By the Exbt.-2, the market value of the land in question was shown to be Rs. 8,51,000/-, the valuation of structure to be Rs.

27,50,265/- and that of the trees to be Rs. 1,00,000/-. The P.W.-3 was an employee in the office of the Sub-Divisional Land and Land Reforms Office, Darjeeling, who certified that the acquired land was a Class-I property.

7. Before the learned Land Acquisition Court, it was contended on behalf of the State of West Bengal that in the original deed of lease executed between the Secretary of the State for India and the predecessor-in-interest of the claimant, there being a specific clause being Clause No. 25 stipulating that in case of acquisition, the compensation should be determined by the Deputy Commissioner, the reference at the instance of the respondent was not maintainable.

8. The learned Tribunal below, however, overruled such objection pointing out that the said clause was applicable only if the Government determined the lease and took possession in accordance with the ordinary law of land but when the Government had decided to follow the provision of Section 4 of the Land Acquisition Act, the said clause could not have any application.

9. Subsequently, the learned Tribunal below by accepting the evidence adduced on behalf of the petitioner has enhanced the compensation, as indicated earlier.

10. Being dissatisfied, the State of West Bengal has preferred the present appeal.

11. Mr. Bose, the learned advocate appearing on behalf of the appellant by referring to the decision of the Supreme Court in the case of Sharda Devi Vs. State of Bihar and Another, contended that there was no scope of enhancement by way of reference when the Government was the original owner of the land and the deed of lease specifically provided determination of compensation in case of acquisition; in other words, Mr. Bose has reiterated the submission made on behalf of the State made before the Court below.

12. As pointed out by the Supreme Court in the case of The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, when the Government acquires land under the provision of the Land Acquisition Act, it must be for a public purpose and with a view to put them to that purpose, the

Government acquires the sum total of all private interests subsisting in them. According to the said decision, if the Government has itself an interest in the land, it has only to acquire the other interests outstanding therein, so that it might be in a position to pass it on absolutely for public user. When the Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own. An investigation into the nature and value of that interest will no doubt be necessary for determining the compensation payable for the interest outstanding in the claimants but that would not make it the subject of acquisition.

13. In a subsequent decision, the Supreme Court, in the case of The Special Land Acquisition and Rehabilitation Officer, Special Land Acquisition and

Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another, , specifically held that where certain grants were created by the Government with a condition that in the event of the Government requiring the land for any reason whatsoever, the grantee shall surrender the land to the Government without claiming any compensation but the Government without exercising the power reserved by the terms of the grant adopts the procedure prescribed by the Land Acquisition Act, the Government has to pay compensation for acquisition of the land under the provisions of the Act itself.

14. Even in the case of Sharda Devi (supra), relied upon by Mr. Bose, it was held that the State is not a "person interested" as defined in S.3(2) of the Act and it is not a party to the proceedings before the Collector in the sense, which the expression "parties to the litigation" carries. According to the Apex Court, the Collector holds the proceedings and makes an award as the representative of the State Government and as such, the land or an interest in land pre-owned by State cannot be subject matter of acquisition by the State and consequently, the question of deciding the ownership of State or holding of any interest by the State Government cannot arise in proceedings before the Collector. If it was a Government land, the Supreme Court proceeded, there was no question of initiating the proceedings for acquisition at all because the Government would not acquire the land, which already vests in it. It was further held that a dispute as to pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the Civil Court for determination either under S.18 or S.30 of the Act.

15. We, therefore, find that in this case the land having been acquired under the provision of the Land Acquisition Act, there was no scope of invoking the clause of compensation originally stood in the deed of lease of the predecessor-in-interest of the respondent.

16. Moreover, we find that in view of the fact that the original lease was executed in the year 1920 for a term of 90 years and the claimant/respondent acquired the lessee's interest by fresh deed of assignment with the Government of India in the year 1949, the right acquired by the respondent became that of nonagricultural tenant within the meaning of West Bengal Non-Agricultural Tenancy Act, 1949, and by virtue of the provision of West Bengal Land Reforms Act as amended just before the acquisition, she became direct tenant under the State under the latter Act. Therefore, there is no scope of invoking the clause made in the original deed of lease.

17. We, therefore, find no substance in the aforesaid contention of Mr. Bose.

18. We have already pointed out that the State of West Bengal has not adduced any evidence controverting the evidence given by the referring claimant and having regard to the materials already on record, we find that the learned Trial Judge rightly accepted such report. In fact, before us no argument was advanced as regards the market price of the land assessed by the Tribunal below.

19. We, therefore, find no merit in this appeal and the same is accordingly dismissed. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

20. I agree.