
(1992) 02 CAL CK 0016
In the Calcutta High Court
Case No : C.O. No. 1399 of 1991

In the Matter of Amalgamated Development Limited	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 13-02-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 18, 19, 20, 21, 22

Citation : (1992) 1 CALLT 459 : 96 CWN 696

Hon'ble Judges : Samir Kumar Mookherjee, J; Abani Mohan Sinha, J

Bench : Division Bench

Advocate : S.B. Bakshi, Sumit Ghose and S.N. Dutt, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Samir Kumar Mookherjee, J.—This Revisional application was moved before us on 10th of May, 1991 when it was directed to appear as a contested application four weeks after the Summer holidays and the petitioner was directed to serve a copy of the application on the opposite party viz., State of West Bengal through the Land Acquisition Collector and affirm an affidavit of service. In pursuance of that direction, the matter was called on 29th of January, 1992 when an affidavit of service was filed on behalf of the petitioner, but since none appeared on behalf of the Opposite Party (State), we directed the petitioner to serve a written notice on the office of the learned Legal Remembrancer, West Bengal, conveying the fixation of the matter, once again by us on the Wednesday following. The matter was appearing in the list and has been called on today for being heard out when receipted copy of a notice served on the office of the Legal Remembrancer, West Bengal has been produced by Mr. Bakshi, appearing on behalf of the petitioner, showing service of the intended notice on the Legal Remembrancer's office on 30th of January, 1992. We are keeping the said receipted notice on record. Still then nobody appears when the matter is taken up for hearing today and, accordingly, we have heard out the petitioner alone in connection with the Civil

Revisional application.

2. The lands in question were acquired by Notification dated 30th April, 1966 and proceeding for vesting of the land under West Bengal Estates Acquisition Act had been initiated in the year 1969. The proceeding culminated with an order of vesting and dated 25th of June, 1979 and in course of hearing of the Reference before the Land Acquisition Judge, on behalf of the State it was urged for the first time that the petitioner was not entitled to any compensation whatsoever because the lands which had been acquired were vested lands. The learned Land Acquisition Judge, by the impugned order upheld the contention advanced on behalf of the government that the absence of any right of the petitioner to compensation on the ground of the lands being vested could be urged in course of a Reference u/s 18 of the Land Acquisition Act. The instant Revisional application is directed against the said impugned order. It has been strenuously argued on behalf of the petitioner that in a proceeding u/s 18 of the Land Acquisition Act it is not open to the Land Acquisition Judge to go into such a contention.

3. Part III of the Land Acquisition Act (hereinafter referred to as the "said Act") dealing with the Reference to Court and procedure thereon embodies Sections 18 to 28. A careful reading of the said sections clearly indicates the scope of Reference made u/s 18, as in the instant case, and the matters which may fall for determination in connection with or in deciding such Reference. Sub-section (1) of Section 18 delineates such matters as (a) objection to the measurement of the land, (b) amount of compensation, (c) the persons to whom it is payable and (d) apportionment of the compensation among the persons interested. For the materials to be considered, reference may be made to Sections 19 20 and 23 of the said Act. The question of disentitlement which has now been raised, in the context of the aforesaid statutory provisions, in our view, does not fall within the scope of the present reference. The initiation of a proceeding under the Land Acquisition Act presumes the existence of the interest with regard to the land or lands as defined in the said Act in the claimants and the very idea of the State acquiring the land, which belonged to State itself, is contradiction in terms, if not, fallacious. We derive support and justification for our above view from the decisions in the cases of *British India Steam Navigation Co. v. Secretary of State* 15 CWN 87 and *Imdad Ali Khan v. Collector of Farakhabad* reported in ILR All 817 (Division Bench) and followed in case of *Babujan v. Secretary of State* reported in 4 Cri LJ 257. We feel inclined to quote the observations made by the Division Bench in the second case, which run as follows :-

"The special jurisdiction of the Judge for this purpose is intelligible enough; but I do not think it was ever intended to be extended to a case in which the collector claims the land on behalf of the Government or the Municipality, and denies the tide of other claimants to the land. Such a position would be inconsistent with the applicability of the Act, for it denies the right of any person to compensation. It seems a contradiction in terms to speak of the Collector as seeking acquisition

of land, when he asserts that the land is his own, and that no other person has any interest in it.

The Judge has treated this case as one between three persons making conflicting claims to the land, and he has determined that it belongs to the Collector. In other words, he has, under colour of the Land Acquisition Act, tried a triangular civil suit for declaration of proprietary title to the land : and in my opinion he had no authority whatever to do so....."

4. We would also like to cite another decision in the case of Secretary of State Vs. Shyamapada Banerjee, which laid down, inter alia, that the question of title to the land acquired was not relevant in reference on the question of the amount of compensation only because in an enquiry as to the amount of compensation, the question was how much the claimant was to get and how much the Government was to pay. It did not involve determination of question of the right to claim or liability to pay any additional compensation. In the said decision, the view of the Privy Council in the case of AIR 1930 64 (Privy Council) had been followed. In the said case, in unequivocal terms, the Privy Council laid down that the jurisdiction, which the Court exercised in reference Under Sections 18 20 and 21, was a special one strictly limited by the terms of the said sections and, accordingly, it was confined to a consideration of the specific objection taken as to the amount of compensation and nothing beyond that. Lastly, we would also refer to the decision of the Supreme Court in the case of The State of Madras Vs. K.N. Shanmugha Mudaliar and Others, the facts of which, have great similarity with the facts in the present case. The Supreme Court while dealing with a substantially similar contention raised on behalf of the State, observed as follows :-

"The reference which was made by the Land Acquisition Officer to the Subordinate Judge u/s 18, of the Land Acquisition Act was with respect to the quantum of compensation payable to the respondents because the respondents had felt dissatisfied with the amount awarded to them as compensation by the said Officer. The underlying assumptions of these proceedings was that the respondents had an interest in the land. If it was the case of the appellant that the respondents had been divested of their interest in the land and the same had vested in the appellant State, the appellant should have taken appropriate steps to make such a claim in accordance with law....."

and in conclusion, the Supreme Court held, by way of affirmation of the decision of the Madras High Court, that the question of title could not be urged in a proceeding arising out of a reference u/s 18 of the Land Acquisition Act.

5. Following the foregoing well established legal position, we feel that the impugned order is an instance of exercise of jurisdiction by the Court of reference which it did not possess and accordingly, we set aside the impugned order, allow the Revisional application and direct the learned Additional District Judge, 1st Court, Hooghly to dispose of the Reference on the lines of the legal

principles laid down or noted above upon consideration of the question of enhancement of compensation alone without entering into the other question of absence of title in the claimant. The reference is an old one and as expressed by the Supreme Court in the case of Mangat Ram Tanwar and another Vs. Union of India, we direct the learned Land Acquisition Judge to dispose of the same expeditiously and not beyond a period of three months from the date of communication of this order to him.

6. There will be no order as to costs.

Let a xerox copy of this order passed today be handed over to the learned advocate on record for the petitioner on the usual terms and on his undertaking to apply for and obtain an urgent certified copy.

A. M. Sinha, J.

7. I agree.