

(1972) 12 CAL CK 0012
In the Calcutta High Court
Case No : A.F.O.D. No. 855 of 1961

Kanchanganga Co. Ltd.

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 14-12-1972

Acts Referred:

Constitution of India, 1950 — Article 299
Evidence Act, 1872 — Section 64
Land Acquisition Act, 1894 — Section 23(2)

Citation : AIR 1973 Cal 325 : (1973) 2 ILR (Cal) 60

Hon'ble Judges : A.N. Banerjee, J; A.K. Sinha, J

Bench : Division Bench

Advocate : T.K. Roy Dastidar, U.C. Mullick and A.N. Banerjee, for the Appellant;
Bankim Ch. Banerjee and N.G. Das, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sinha, J.—This appeal is preferred by the claimant appellant against a judgment and decree rejecting the reference made against Collector's award u/s 18 of the Land Acquisition Act.

2. Before we enter into the points raised we would indicate brief outlines of the circumstances under which the order under controversy was made. The appellant who had certain vacant lands offered to the State Government for sale for settlement and rehabilitation of refugees. After several correspondence between the parties and the State the lands so offered were agreed to be acquired. There was further correspondence over the payment of compensation and as a result of several correspondence the appellant agreed to accept the maximum price of Rs. 9,000/- per acre for the acquisition of the land by the State.

3. After the appellant had agreed to the valuation offered by the Rehabilitation Commissioner, possession of the lands was amicably delivered from time to time on diverse dates between 4th February, 1955 and 13th May, 1955. Thereafter notification u/s 4 of the Land Acquisition Act was made and published and then

followed the declaration u/s 6 of the Land Acquisition Act The Collector thereafter proceeded to make its award on the basis of the agreed rate between the appellant and the State and gave an award of total compensation of Rs. 400663.53 to the appellants.

4. The petitioner then made an application for reference u/s 18 of the Act on 29th October, 1960 claiming only statutory compensation of 15% over the total compensation paid by the Collector and also the interest at the rate of 6%. The matter eventually came up before the Special Land Acquisition Judge who took the view that the acquisition was of a private nature, firstly, and, secondly, there was an agreement between the parties by which the appellant agreed to accept the compensation money inclusive of statutory compensation of 15% as provided in the Act. On the question of interest also the learned Judge found against the appellant and thus rejected the reference. That is how in short the appellant felt aggrieved and preferred the present appeal.

5. The principal question that arises for our consideration in this appeal is whether the appellant is entitled on the facts of this case to claim any statutory compensation of 15% under the Act. There is no dispute admittedly in this case on the question of valuation but the dispute centres round, firstly, the question whether that valuation actually included this statutory compensation of 15%. Now, in this case it is not disputed that there were certain correspondence between the parties whereby the Relief Rehabilitation Officer offered to pay compensation at the agreed rate which would include the statutory compensation of 15% and this was accepted by the appellant and finally the value of disputed lands was agreed to be paid on the basis of the Deed value inclusive of all the interest of the lands held by the appellant as also 15% statutory compensation. It also appears that the Government directed that 80% of the value might be paid to the appellant agreeing to the said valuation and executing indemnity bonds in respect of the money that may be paid to it. It is also undisputed that this was followed by several documents in the form of agreements and indemnity bonds by the appellant for receiving this compensation money in which there is specific mention of the agreed valuation which included 15% of the statutory compensation. These several documents in the form of agreement and also the indemnity bond appears to have been admitted in evidence Without any objection before the learned judge. The question is, what really is the effect of these agreements and indemnity bonds wherein the appellant specifically agreed to accept the amount of compensation awarded by the Collector inclusive of all the statutory compensation of 15%.

6. Mr. Dastidar learned Advocate for the appellant has contended, in the first place, that the provisions of Section 23 are mandatory. Therefore, even though, it is argued, there is mention of such statutory compensation either in the agreements or in the indemnity bonds that cannot override the mandatory provisions of Section 23 of the Act. Secondly, it is submitted that although the value of the disputed lands were arrived at an agreed rate that did not mean in

any way waiver of statutory compensation. Thirdly, it is submitted that Section 18 of the reference speaks of determination of compensation and therefore it was clearly obligatory upon the learned Judge to determine whether or not the appellant was entitled to statutory compensation of 15% even though there might have been some commitment of the appellant in the indemnity bonds stating that the agreed value also included statutory compensation. Fourthly, Mr. Dastidar attacked the validity of the agreement itself as inadmissible for want of proof and also that it is void for it purported to defeat the provisions of law. Fifthly, he has challenged the validity of this agreement on the ground of non-compliance with the provisions of Article 299 of the Constitution. Sixthly, Mr. Dastidar has said that no issue was framed as to whether statutory compensation was included in the agreed valuation or not and therefore, it was not proper for the court to come to a decision without framing such issue which really raises a mixed question of fact and law. Lastly, Mr. Dastidar submits that the question of payment of interest is also mandatory and in any event that could never (have) been denied to the appellant by the learned Judge.

7. The first three points are more or less interconnected as they substantially involve one question whether in spite of the provisions of the Land Acquisition Act for statutory compensation, there can be an agreed valuation inclusive of such compensation. Since the pronouncement of the Judicial Committee in 27 Cal WN 418 = (AIR 1922 PC 365) (Fort Press Co. Ltd. v. The Municipal Corpn. of the City of Bombay) relied on by the trial Court it is fairly established that such valuation Including the statutory compensation may be an agreed valuation. In this case before the Judicial Committee the company agreed to accept the fixed amount including statutory compensation of 15% from the Bombay Municipal Corporation for acquisition of their property but subsequently resided from that position. On a suit being filed inter alia for declaration that such agreement was binding and valid, the Judicial Committee held that "there was nothing in the Act which could negative any such right and the agreement so made is an agreement which bound the parties". Mr. Dastidar has however relied on 50 Cal WN 401 = AIR 1946 75 (Privy Council) and submitted that the Collector or Judge was not bound to act upon such agreement. We do not think, however, that the question decided in this case has any application to the facts of the present case for, clearly, the Collector here gave its award on agreed valuation. We, therefore, do not think that there is much of substance in the arguments made in support of these contentions raised by Mr. Dastidar.

8. On the next question as to the admissibility of several documents embodying tie impugned agreements without formal proof, the correct position appears to be that these documents were admitted in evidence without objection. Clearly, therefore, it is not open to the appellant to raise any fresh objection in this regard.

9. The next point raised namely, that such agreements are void as they purported to defeat the provisions of law are really covered by the earlier points

raised by Mr. Dastidar which we have already dealt with and held in substance that such agreements in spite of the provisions of the Act for statutory compensation are fully binding and effective.

10. This brings us to the question as to whether these agreements not being in conformity with the provisions of Article 299 of the Constitution are effective and valid. In this case, it appears that there was offer and acceptance by the parties in course of correspondence. In other words, the contract was completed by such offer and acceptance through correspondence. In spite of the provisions of Article 299 of the Constitution, it cannot be said that in no circumstances such contracts if entered into by and on behalf of the State are not enforceable as valid contract. This is what has been held in *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, . This apart in the instant case, the matter did not rest in correspondence only but the appellant itself executed certain documents in the nature of unilateral agreements and indemnity bonds in quasi-judicial proceeding stating clearly that the valuation agreed in respect of the acquired land included statutory compensation of 15% and the Collector accepted these representations, gave his award and finally allowed the appellant to withdraw compensation. It is difficult to see how in face of these circumstances it could still be open to the appellant to turn back on its own representation in such proceeding and question the validity of such agreements or to say that they were not binding or effective.

11. Mr. Banerjee learned Senior Government Advocate has contended that on the admitted position of the parties the appellant was precluded from raising any such objection in view of provisions of Section 70 of the Indian Contract Act. Relying on two decisions of the Supreme Court in *State of West Bengal Vs. B.K. Mondal and Sons*, and *State of West Bengal Vs. B.K. Mondal and Sons*, it is argued that the petitioner having obtained benefit under such agreement could not challenge the validity of such agreements.

12. Mr. Dastidar, however, has contended that in the facts of this case Section 70 of the Indian Contract Act could have no manner of application for it is said there could not be any question of restoring the parties to its former position or to deliver anything. We, however, do not think, in the facts and circumstances of this case, it is necessary to decide this disputed question. In our opinion, the appellant is clearly estopped by its own conduct and representation from challenging the validity of the agreement in course of valuation proceeding before the Collector. It is undisputed that the appellant has taken benefit under this agreement and having done so it was not open to it to again claim separately the statutory compensation which undoubtedly was agreed by it to be included in the agreed valuation. The Collector himself proceeded upon that agreed valuation and gave the impugned award and the appellant withdrew the entire amount of compensation under that award. It is not really so much a case of contract as of representation in a proceeding which if not judicial is at least quasi-judicial in nature. The view we have taken finds support in a decision of

the Supreme Court reported in *Sunderabai Deshpande and Another Vs. Devaji Shankar Deshpande*, where it has been held in no uncertain terms that the rule of estoppel which is the rule of evidence u/s 115 of the Indian Evidence Act is applicable to a case where "the matter might have passed the stage of representation. There are cases where the Courts are entitled to entertain a plea of estoppel in order to prevent fraud or circuitry of action". Although this was a case not between a private party and the State, in our opinion the principle indicated would equally apply even in cases where such representation is made and the State is persuaded to act upon such representation. Here, in the instant case, the appellant cannot be allowed to take up a new position now as to do so would be to encourage "a fraud or circuitry of action" which according to the passage quoted from *Bigelow* in the judgment "is the last thing a Court would ever countenance". Such being the position the appellant's claim for separate statutory compensation is not entertain able at all.

13. Next, the fifth point raised is that no issue was framed. The short answer to this is that the entire question as to the maintainability of the petitioner's claim for statutory compensation was the subject-matter of decision before the learned Judge in the trial Court. Therefore, we do not think, any separate issue ought to have been framed again for identical purpose. Even if it was so, it was the duty of the appellant to raise such issue. We, therefore, do not think that there is any substance in this point. In our opinion. Article 299 has no application to the facts of the present case. The appellant cannot escape from the position it created by its own conduct and representation in a quasi-judicial proceeding. The learned Judge was right in dismissing the appellants claim for separate compensation upon the agreed valuation under the award given by fee Collector.

14. On the other question regarding payment of interest Mr. Banerjee frankly concedes that the decision of the learned Judge was wrong and the appellant is entitled to get a total sum of Rs. 2173.00 as the other interest or the future interest have already been given up. We, therefore, dismiss the appeal in respect of the statutory compensation but allow the appeal only in respect of interest to the extent of Rs. 2173.00.

15. Accordingly, this appeal is allowed in part with proportionate cost. The award of the Collector is modified to this extent that the petitioner shall get a sum of Rs. 2173.00 as total interest. We direct the Collector to pay the interest within two months from date. Hearing fee assessed at 5 Gms.

A.N. Banerjee, J.

16. I agree.