(2009) 02 CAL CK 0086

In the Calcutta High Court

Case No : F.A. No. 209 of 1983

Karam Chand Singh and Others — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 30(2)

Citation : (2009) 02 CAL CK 0086

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

Bench : Division Bench

Advocate : Bidyut Kumar Banerjee, Shila Sarkar, for the Appellant;Ashok Sarkar, Subrata Banerjee Roy, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.

The Judgment of the Court was delivered by:

1. This first appeal is at the instance of the Referring claimants in proceedings u/s 18 of the Land Acquisition Act and is directed against an award dated 7th August, 1981, passed by the District Judge, Jalpaiguri, in miscellaneous judicial L.A. case No. 14 of 1979 thereby enhancing the amount of compensation from Rs. 52,122/- per acre assessed by the Collector to Rs. 75,000/- per acre. The learned District Judge further awarded solatium at the rate of 15 percent upon the total amount of compensation and interest at the rate of 6 percent over the enhanced valuation from the date of possession till the deposit of decretal amount in Court.

2. Being dissatisfied, the Referring claimants have come up with the present first appeal.

3. It appears from record that the lands involved in the proceeding comprise in Plot Nos.457 and 460 under Khatian No. 150 of Mouza Debgram within the

District of Jalpaiguri and the total area of land acquired was 6.04 acre and the nature of the land was Sahari. The acquisition was notified on 4th May, 1978. The Collector valued the land at the rate of Rs. 52,122/- per acre.

4. The land owners challenged such valuation by making a reference and according to the landowners, the compensation should be enhanced to Rs. 1,30,000/- per acre. The State of West Bengal contested the proceeding by contending that the acquired land had been properly valued by the Land Acquisition Collector.

5. At the time of hearing, the appellant No. 1 deposed in favour of the claimants while one R. N. Kanji appeared to give evidence on behalf of the State of West Bengal. It appears that for the purpose of showing valuation of the property at the relevant point of time, on behalf of the State-respondent, ten different sale-deeds executed during the year 1978 of the surrounding area were produced and exhibited, and the appellants also produced twelve different sale deeds executed between 1976 and 1977.

6. Of the aforesaid twenty-two deeds, Item No. 2 of the appellant''s deed and Item No. 10 of the State-respondent''s deed was the common one dated 8th February, 1978, in respect of Plot No. 455 indicating that the price of the land covered by the said deed was Rs. 90,909/- per acre.

7. The learned Tribunal below, however, was of the view that out of the aforesaid twenty-one deeds exhibited by the parties, only five sale-deeds were relevant for the purpose of assessment of the valuation and those were mentioned as Item Nos.7, 8 and 10 of the deeds filed on behalf of the Government and Item Nos.3 and 7 of the chart, given by the appellants. The learned Tribunal below, thereafter, proceeded to find out the average price on the basis of those mentioned in the said five sale-deeds which came to Rs. 73,597/- per acre and consequently, he fixed the amount of compensation at the rate of Rs. 75,000/- per acre.

8. Being dissatisfied, the claimants have come up with the present appeal.

9. After hearing the learned counsel for the parties and after going through the materials on record, we find that the lands acquired are situated in Plot Nos.457 and 460. The following lists will show the various deeds produced by the parties.

The deeds filed on behalf of the State.

SI. No.

Plot No.

Date of Registration

Rate per acre

1.

433/1075

3.1.1978

Rs. 24.242.00 P.

2.

416/296

3.1.1978

Rs. 10.000.00 P.

3.

7/209

5.1.1978

Rs. 2.54.545.00 P.

4.

570/1011

11.1.1978

Rs. 24.242.00 P.

5.

194

16.1.1978

Rs. 12.121.00 P.

6.

507/7 & 507/20

16.1.1978

Rs. 14.814.00 P.

7.

433/1084

24.1.1978

Rs. 47.059.00 P.

8.

433/1084

24.1.1978

Rs. 50.000.00 P

9.

880

24.1.1978

Rs. 11.428.00 P.

10.

455

8.2.1978

Rs. 90.909.00 P.

The deeds filed on behalf of the appellants.

SI. No.

Plot No.

Date of Registration

Rate per acre

1.

416/926 & 925

11.8.1977

Rs. 41.000.00 P.

2.

455

8.2.1978

Rs. 90.909.00 P.

3.

8/164

20.5.1977

Rs. 1.00.000.00 P.

4.

421/931

18.2.1977

Rs. 2.69.230.00 P.

5.

421/931

29.9.1977

Rs. 3.15.000.00 P.

6.

7/209

5.1.1978

Rs. 2.54.545.00 P.

7.

1010

29.11.1977

Rs. 80.000.00 P

8.

412

1.3.1976

Rs. 90.732.00 P.

9.

412

1.3.1976

Rs. 90.942.00 P.

10.

412

28.6.1976

Rs. 1.27.200.00 P.

11.

412

28.6.1976

Rs. 1.09.200.00 P

12.

412/923

12.4.1976

Rs. 1.20.000.00 P.

10. We have also taken into consideration the map of the area which is marked as exhibit in the proceeding. We find that Plot No. 455 is the plot adjoining the acquired Plot Nos.457 and 460. Except one deed, the common one, which is the Item No. 10 of the deeds filed by the State and the Item No. 2 of the deeds filed by appellants, the other transactions indicated that the lands involved therein were not adjoining to Plot Nos.457 and 460 and those are all situated well away from the acquired plot. We, therefore, find that there was no justification of taking into consideration the Item Nos.7 and 8 of the chart of the document filed on behalf of the Government and Item Nos.3 and 7 of the chart of the document filed on behalf of the appellants. Those plots are far away from the acquired plots as would appear from the map of the locality which was marked as Exhibit.

11. We, therefore, find that the learned Trial Judge should not have taken into consideration those four deeds for the purpose of making assessment of the valuation of the acquired plots. The Plot No. 455 is the adjoining plot of the acquired plots and the deed No. 2 of the appellants and deed No. 10 of the State involves the said plot No. 455 and the selfsame deed has been relied on by both the parties. Therefore, there is no dispute as regards the bona fide of the transaction referred to above relating to Plot No. 455 which recorded the price to be 90,909/- per acre. The learned Tribunal below unnecessarily made average of the valuations by taking into consideration four other deeds of lower valuation involving lands situated away from the acquired lands resulting in reduction of the amount of compensation.

12. We, therefore, set aside the award impugned and hold that in the facts of the present case the valuation of the acquired land should be assessed at Rs. 90,909/- per acre which is indicated in the common deed filed by the parties as the lands covered therein are adjoining the acquired plots and the transaction was also made at the relevant point of time.

13. We find no substance in the contention of Mr. Banerjee, the learned Senior Advocate for the appellants that the solarium should be enhanced to 30% from 15% awarded by the Court below. As held by a five-judges-bench of the Supreme Court in the case of Union of India & Anr. vs. Raghubir Singh reported in AIR 1989 Supreme Court 1933, this Court as an Appellate Court can enhance the solarium to 30 percent provided the award by the collector or the Court below was passed between 30th April, 1982, and 24th September, 1984. In this case the Collector passed the award on 17th May, 1979 and the Court passed the award impugned before us on 7th August, 1981. The following observations of the Supreme Court are in this connection relevant and quoted below:

"We think that what Parliament intends to say is that the benefit of S. 30(2) will be available to an award by the Collector or the Court made between the aforesaid two dates or to an appellate order of the High Court or of the Supreme

Court which arises out of an award of the Collector or the Court made between the said two dates. The word ''or'' is used with reference to the stage at which the proceeding rests at the time when the benefit under S. 30(2) is sought to be extended. If the proceeding has terminated with the award of the Collector or of the Court made between the aforesaid two dates, the benefit of S. 30(2) will be applied to such award made between the aforesaid two dates. If the proceeding has passed to the stage of appeal before the High Court or the Supreme Court, it is at that stage when the benefit of S. 30(2) will be applied. But in every case, the award of the Collector or of the Court must have been made between 30 April, 1982 and 24 September, 1984."

(Emphasis supplied by us).

14. Therefore, there is no scope of giving the benefit of amendment to an award passed by the collector or the Court before 30th April, 1982 simply because we are disposing the present appeal after more than 25 years from the date of award passed by the Court.

15. We, therefore, allow this appeal by setting aside the awarded amount and enhancing the same calculating at the rate of Rs. 90,909/- per acre with solarium at the rate of 15 percent. Other portion of the award regarding interest is not disturbed.

Rudrendra Nath Banerjee, J.