

(1993) 01 CAL CK 0044
In the Calcutta High Court
Case No : Misc. Appeal No. 1 of 1992

M.A. Rahman and Another	Vs	APPELLANT
The Collector, Land Acquisition and Others		RESPONDENT

Date of Decision : 20-01-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, Order 41 Rule 24, Order 41 Rule 27
Land Acquisition Act, 1894 — Section 23

Citation : (1993) 2 CALLT 358

Hon'ble Judges : Susanta Chatterji, J; Nisith Kumar Batabyal, J

Bench : Division Bench

Advocate : Hemraj Bahadur, for the Appellant; R. Shiv Saroop, Government Pleader, for the Respondent

Judgement

Susanta Chatterji, J.—The present miscellaneous appeal is against the judgment dated 28th January, 1992 passed by the learned District Judge acting as the Land Acquisition Judge in disposing Misc. Judl. Case No. 6 of 1983 as to reference u/s 18 of the Land Acquisition Act made by the Collector following an objection to the Award by him in Land Acquisition case No. LA/BD/82.

2. This case has a chequered background indeed. At the outset an application for time was filed for the alleged inconvenience of Mr. A.S. Ray, appearing for the appellant/claimant. Mr. Hem Raj Bahadur obtained adjournment earlier to get himself ready for necessary hearing. He has not pressed the application for time seriously. Instead he is found ready to argue the case effectively and competently.

3. Upon perusal of the material on record it transpires that the learned Land Acquisition Judge disposed of the reference in terms of the order of remand made by the Division Bench of this Court as per the order dated 26.5.1990. Previously the reference was disposed of and being aggrieved Miscellaneous Appeal No. 1 of 1988 was preferred. The appeal was allowed and the judgment

appealed against was set aside and the matter was sent back on remand by M. N. Ray and S. K. Guin, JJ. The Division Bench held that proper legal evidence either on the date of Notification u/s 4 or prior to the said date was not available on the date of determination before the authorities concerned including the learned District Judge and as such there should be an order of remand, so that the learned District Judge can give the parties further opportunities to adduce appropriate legal evidence. It was an open remand and the learned District Judge was directed to consider the matter in the proper perspective. The Award referred to land, trees and structure of the claimants/appellants. After the remand the claimants had adduced further evidence and the learned L.A. Judge decided the case as per the following issues :-

- (1) Was the quantum of compensation correctly assessed ?
- (2) Was the market value of the land considered ?
- (3) Was the quantum of damage taken into consideration in assessing the compensation?
- (4) Was the fruit bearing trees properly valued?

Another additional issue was framed as to the following extent :-

- (5) Did the claimants remove any trees and structures and appropriate the yields of the trees during the period from the publication of the Notification and taking over of possession by the Military state Officer ? If so, what is the quantum of the value of the benefit enjoyed by the claimant in the said manner ?

4. Originally six witnesses including one of the claimants were examined in support of the claimants and on behalf of the respondents the Agriculture Officer and an official of the Defence Estate Office were examined. After the remand, the claimants have examined seven more witnesses. The claimants have also proved the documents (Exts. G and I). No witness has, however, been examined after the remand either by the Collector or on behalf of the Union of India. The issues Nos. 1 to 4 were taken up together for consideration and the learned L.A. Judge held inter alia that the claimants could not produce any documents as to the income from the plantation nor they could produce any worthy evidence to dispel the correctness of the Award while the Collector relied upon the report of the Agriculture Department made in the year 1978. The learned L.A. Judge further found that that the capitalisation method of the income from the plantation of the claimants has not been correctly adopted and in his view the compensation should have been given by capitalising the net income at 15 years" purchase taking the annual income from each tree as fixed by the Agriculture Department as the annual income from each tree in the plantation of the claimants as the claimants have failed to show that their annual income from each tree was more than that fixed by the Agriculture Department. By discussing the evidence adduced on behalf of the claimants the learned L.A. Judge held that the schedule of rates of compensation for agricultural crops was prepared by the Agriculture

Department in the year 1978 and the rates as fixed were approved by the Administration and there was nothing wrong for the collector to accept the rate prepared by the Agriculture Department in 1978 while the Notification u/s 4 of the Land Acquisition Act was made on 16th June, 1982.

5. The learned Land Acquisition Judge further held that the valuation of the structure was correctly made by the Collector and the claimants have not been able to prove anything to increase the valuation as made out. The learned Land Acquisition Judge also did not find any sufficient material produced by the claimants to increase the valuation of the land in question. However, upon consideration of all the material on record the Land Acquisition Judge held that the claimants are entitled to a further sum of Rs. 48,831/- together with interest at the rate of 9% more and since the Collector had already deposited the Award amount there was a direction to make payment of the excess amount in terms of the judgment dated 28th January, 1992.

6. Being aggrieved the present appeal has been preferred and the same has been taken up for final disposal. Mr. Hem Raj Bahadur, learned Advocate, appearing for the petitioner has argued inter alia that the Notification is dated 6th of June, 1982 and the possession was taken in the year 1984. The Collector has admittedly relied upon the rate fixed by the Agriculture department in the year 1978. The attention of this Court has been drawn to the evidence that the Agriculture Department made the report in 1978 for statistical purpose and for payment of compensation in case of damages." It is argued that the market value has to be made in terms of Section 23 of the Land Acquisition Act and the acceptance of the rates as made by the Agriculture Department in the year 1978 cannot be correlated and the valuation as made by the Collector after the Notification in the year 1982 is neither objective nor dependable. It is argued on behalf of the claimants/ appellants that regarding the structure it would appear from the reference that as the structures were very old, it was not got assessed through technical authorities, but assessed by the Tehsildar, Port Blair and a total compensation of Rs. 13,000/- was assessed for the said structure. In the reference it was further made clear that the buildings were assessed by the Tehsildar, Port Blair, a non-technical authority and accepted on the grounds that the structures were old and were made of wood with the roof of tins, rubber sheets and thatched leaves and of cement and mud floor. It is submitted before this Court that this type of assessment made by the Tehsildar is unknown in law. Besides no report of Tehsildar is on record, nor the Tehsildar was examined.

7. Regarding the valuation of the land the reference was made observing that a total compensation of Rs. 49,511/- was assessed for 6.43 hectares of hilly land at the rate of Rs. 1000/- per bigha which was the prevailing market rate in the area at the time of publication of the Notification u/s 4 of the Land Acquisition Act. The grievance of the claimants/appellants is that the Award suffers from inherent defects. Neither the land nor the structures, nor the plantation has been assessed according to the prevailing market price and/or by following the

procedure in accordance with law.

8. Mr. Shiv Saroop, the learned Advocate for the respondents has submitted that although the judgment under appeal is not free from criticism and the Award suffers from various infirmities, the claimants cannot ask for further advantage as in spite of sufficient opportunities either before the remand and/or after the remand nothing has improved and the present appeal is rather misconceived. Mr. Shiv Saroop, however, in his usual fairness conceded that the Collector has not properly made the Award by accepting-the rates of Agriculture Department in the year 1978 and by accepting the report of the Tehsildar regarding the structures and by assessing the valuation of the land by ignoring certain documents filed by the claimants and particularly in not considering the prevailing market price at the relevant time of consideration. He submits that there is no material on record that this Court considers to increase the quantum of compensation. He suggests that at best if this Court is of the view that the matter has not been considered in the proper perspective the matter may be sent back on remand. Having heard the learned lawyers appearing for the respective parties at length, this Court was, at the first outset, not inclined to send back the matter on remand for the second time. The consequence may be unnecessary delay and further complication. But considering the matter in depth and looking at Section 23 of the Land Acquisition Act, which runs as follows : -

"23-(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

First, the market value of the land at the date of the publication of the notification u/s 4;

Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

Thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of severing such land from his other land ;

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings ;

Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ;

And

Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the

time of the Collector's taking possession of the land.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen per centum or more since amended on such market value, in consideration of the compulsory nature of the acquisition" and upon perusal of the material on record we find that the Collector has erred in not assessing the market value of the land, structure and plantation. Unfortunately, neither the claimants have adduced all evidence to enable this court to increase the valuation by way of effective adjudication. Even this Court considered that had the claimants been given an opportunity to take steps under Order 41 Rule 27 of the CPC for adducing additional evidence the matter would be complicated as there will be scope of examination and cross-examination of witnesses and production of the document and the process would be unnecessarily complicated. This Court has considered the decision reported in *Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another*, It is found inter alia that Section 23 of the Land Acquisition Act provides that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall take into account-inter alia the market value of the land at the date of the publication, of the notification u/s 4 of the Act. The market value means price that a willing purchaser would pay to a willing seller for the property, having due regard to its existing condition with all its existing advantages and its potential possibilities when laid out in the most advantageous manner excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired. In considering market value the disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. There is an element of guess-work inherent in most cases involving determination of the market value of the acquired land. But this in the very nature of things cannot be helped. The essential things is to keep in view the relevant factors prescribed by the Act.

9. We have considered the decision reported in *Chaturbhuj Pande and Others Vs. Collector, Raigarh*, . In paragraph No. 7 it has been found that the valuation made by the Land Acquisition Officer was substantially enhanced by the High Court relying on inadmissible evidence. Evidence of the claimant was rejected by the High Court and no appeal by the Government against enhancement of compensation. If admissible evidence were not relied, the compensation allowed by the Land Acquisition Officer would have remained. The claimant cannot, therefore, complain against the High Court that it has taken into consideration inadmissible evidence. But in fact in the instant case there is no inadmissible evidence, but this Court is of the view that further evidence is required inasmuch as after setting aside the Award which suffers from defects, admittedly there cannot be increase of the valuation without any data and/or sufficient material. The attention of this Court has, however, been drawn to a decision reported in *Administrator General of West Bengal Vs. Collector, Varanasi*, It indicated that the determination of the market value of a land with potentialities for urban use is an intricate exercise which calls for collation and collection of diverse economic

criteria. The market value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing but not too anxious a buyer, dealing at arms length. The determination of market value, in the prediction of an economic event, viz. price-outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available.

10. Two other reported decisions have been cited from the Bar viz. Delhi Simla Catholic Archdiocese Vs. Union of India, It is for considering of a subsequent document as to the special suitability of the land for industrial activity as if a factor of no mean importance. In Adusumilli Gopalakrishna Vs. Special Deputy Collector (Land Acquisition), the Apex Court found that an assessment of the compensation payable for land acquired must take into account several factors including the nature of the land, its present use and its capacity for a higher potential, its precise location in relation to adjoining land, the use to which neighbouring land has been put and the impact of such use on the land acquired, and so on. It seemed to the Hon'ble Supreme Court that having regard to all those factors the rate of compensation should increase. In the instant case the date of acquisition is of the year 1982. The date of taking possession is of the year 1982, and a document has been relied upon by the claimants that price of the hilly land is tentatively Rs. 25,000/- per bigha whereas in the impugned Award the assessment of the value of the land has been made @ Rs. 1000/- per bigha. The said document cannot be ignored as post-Notification transaction as the upward trend of the price of the land has to be considered a factor while assessing the market value of the land at the relevant period.

11. With great anxiety this Court considered the case with intention to decide the matter on merit instead of remanding the case further. But we are afraid that we shall be blamed equally for making the valuation arbitrarily by inferences and surmises without proper evidence and the technical reports. For the fitness of things and for the ends of justice our judicial conscience demands that the matter should be sent back on remand further on limited points and upon stipulated terms and specific guidelines which we hereby do as indicated below :-

For the foregoing reasons the judgment under appeal is set aside and the matter is sent back on remand. The Land Acquisition Judge will give another opportunity to the claimants to bring specific evidence if any, as to the rates of trees and/or plantation in or about 1982 and produce documents regarding the valuation of the land and any other material as the relevant factors as to upward trend of the price of the land in question. The opposite party, Collector will produce the Tehsildar's report and/or produce the Tehsildar as a witness who made the valuation¹ of the structures. The Collector will also produce the relevant data and/or materials as to the market price of the plantation and/or trees and/or

Government Bulletins, if any, of the year 1982 around and the Land Acquisition Judge would decide the matter looking into the provisions of Section 23 of the Land Acquisition Act and to the guidelines and observations as made in this judgment and dispose of the the matter within four months from the date of the receipt of the records in the court below. There will be no order as to costs.