(1990) 05 CAL CK 0040

In the Calcutta High Court

Case No : F.A. 115 of 1987

Md. Alam APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 31-05-1990

Acts Referred:

Calcutta Improvement Act, 1911 — Section 49
Land Acquisition (Amendment) Act, 1984 — Section 15, 20, 23(1A), 30, 30(1)
Land Acquisition Act, 1894 — Section 18, 23(2), 28

Citation : AIR 1991 Cal 82 : 94 CWN 1149

Hon'ble Judges : Mukul Gopal Mukherji, J;J.N. Hore, J

Bench : Division Bench

Advocate : Shib Kumar Majumder and Madan Mohan Saha and Miss. Banani Chatterjee, for the Appellant; Sakti Nath Mukherjee and Pradipta Roy, for the Respondent

Judgement

J. N. Hore, J.

1.The present appeal by the referring claimant is directed against the judgment and award passed on March 23, 1979 and modified on September 11, 1979 by the Calcutta Improvement Tribunal in Case No. 25 of 1974(V).

2. The case relates to the acquisition of premises No. 267, Prince Anwarshah Road, plot Nos. 2 and 49, Lake Colony Scheme No, III comprising portion of C.S. Dag Nos. 919 and 920 of Mouza Chandpur under the General Improvement Scheme known as Scheme No. 114B of the Calcutta Improvement Trust in Ward Nos.''95, 96 and 97 of the Calcutta Corporation. The acquisition involves 5 Ch. 18 Sft. of land according to the award of the L.A. Collector and structures thereupon. The date of publication of notification under S. 49 of the Calcutta Improvement Act, 1911 corresponding to S. 4 of the Land Acquisition Act, 1894 is 16-3-67.

3. The Collector awarded Rs. 65,587.50 as value of land (5 Cot. 15 Ch. 18 Sft. @Rs. 11,000/- per removal cost. The total award was Rs. 1,06, 872.50 reduced

to Rs. 1,06,864.30p. after deduction of Rs. 8.20 payable to the Commissioner, Corporation of Calcutta for taxes. The Collector''s award was passed on March 16, 1973.

4. Upon reference being made under S. 18 of the Land Acquisition Act, the Calcutta Improvement Tribunal after hearing the referring claimant and the State of West Bengal and upon a consideration of the materials on record has held that the area of the land acquired was 6 Cot. 9 Ch. 11 Sft. and not 5 Cot. 15 Ch. 18 Sft. as held by the L.A. Collector, The Tribunal has assessed the value of the said land at Rs. 76,118.00 worked out at the rate of Rs. 11,572/- per cottah (average). The value of the structures was assessed at Rs.48,812/-. So, the increase in the value of land and structure was Rs. 10,530.50p. (Rs. 76,118/- less 65,587. 50p.) and Rs. 6,627/0 (Rs.48,812/- less Rs. 41,185/-) respectively. The total enhancement was Rs. 18,157.50p. The Tribunal further allowed solatium at the rate of 15% over the value of land and structures as awarded by the Tribunal. It was also ordered that the increased amount of value of land and structure as well as the amount of solatium would carry interest at the rate of 6% per annum with effect from the date of Collector''s taking possession of the land till the amount was remitted to the Tribunal. The award of the Tribunal was passed on March 23, 1979.

5. Being aggrieved by the award of the Tribunal, the referring claimant has referred the instant appeal for enhancement of the compensation.

6. Mr. Majumder, learned Advocate for the appellant, has firstly contended that the learned Tribunal having accepted the sale deed of 58/130, Prince Anwar Shah Road (Ext.7) as a comparable unit erred in law in not making an addition to the rate of sale on account of encumbrance of thika tenancy in that premises as urged by the appellant''s expert witness. It has been contended that the learned Tribunal ought to have made addition of 10% over the rate of 58/130, Prince Anwar Shah Road on account of encumbrance of thika tenancy therein. The second contention of Mr. Majumder is that the appellant is entitled to solatium at the enhanced rate of 30% and interest at the enhanced rate of 9% under S. 23(2) and S. 28 of the Land Acquisition Act, 1894 as amended by Cl. (b) of S. 15 and S. 18 of the Land Acquisition (Amendment) Act, 1984 (No. 68 of 1984) respectively read with S. 30(2) of the amending Act. The third and last contention of Mr. Majumder is that the appellant is entitled to enhanced rate of interest under S. 34 of the principal Act as amended by S. 20 of Act 68 of 1984. Mr. Majumder does not, however, claim that the appellant is entitled to additional amount provided under new sub-sec. (1 A) of S. 23 of the principal Act as inserted by Cl. (a) of S. 15 of Act 68 of 1984 read with S. 30(1).

7. Mr. Mukherjee, learned Advocate for the State has, on the other hand, contended that the enhanced solatium at the rate of 30% and the enhanced rate of interest under the amended S 23(2) and S. 28 respectively are not applicable in this case in view of the limited retrospectively as per provisions of S. 30(2) of the Amending Act. He has further contended that interest under S. 34, if

available at all must be at the said rate of 6 per centum. He has contended that the appellant is not entitled to enhancement of valuation of land by addition of 10% on account of the alleged encumbrance of thika tenancy.

8. With regard to the first contention of Mr. Majumder, the materials on record do not support the alleged encumbrance of thika tenancy. The sale deed of 58/130, Prince Anwar Shah Road (Ext.7) which was adopted by the appellant himself as the comparable unit represents price of the land free from encumbrances. The recitals clearly show that there was no encumbrance and the price of the land as agreed upon between the buyer and the seller represented the price of the land free from encumbrances. There is, therefore, no question of addition of 10% to the value of the land on account of encumbrance of tenancy. The appellant''s valuer said that he learnt from the claimant (witness No. 1) of such tenancy but the latter has not anywhere in his evidence mentioned about any encumbrance. Witness No. 2 Santosh Kumar Dutta, the alleged thika tenant in respect of 58/130, Prince Anwar Shah Road does not claim thika tenancy in his testimony which merely shows that he had a shop room at 58/130, Prince Anwar Shah Road which might have been erected forcibly without any thika tenancy. His evidence does not show when the structure was raised before or after the date of sale by Ext.7. Mr. Majumder has urged that the award in respect of plot No. 58/130, Prince Anwar Shah Road would show that the land had an encumbrance of thika tenancy in the name of Santosh Kumar Datta who was awarded compensation for the structure etc. The certified copy of the said award has been filed. Mr. Majumder has urged that this may be accepted as additional evidence. No satisfactory explanation is forthcoming as to why the certified copy of the award was not taken earlier and filed before the Tribunal. Moreover, the certified copy of the said award shows that compensation was awarded to Santosh Kumar Datta for structure only and not for interest in the land such as right of thika tenancy. We have already seen that Santosh has not also claimed any tenancy right in the land. We are, therefore, unable to accept the contention of Mr. Majumder.

9. Let us next consider the second contention of Mr. Majumder. On April 30, 1982 the corresponding Bill of the Amending Act 68 of 1984, namely, Land Acquisition (Amendment) Bill, 1982 was introduced in Parliament. On September 24, 1984 it became law as the Land Acquisition (Amendment) Act (No. 68 of 1984) when it received assent of the President. Before the amendment, S. 23(2) provided solatium at 15 per cent on the market value. After amendment by Act 68 of 1984 solatium was raised to 30 per cent on the market value, S. 23(2) now reads:

"23(2). In addition to the market value of the land, as above provided, the Court shall in every case award a sum of 30 per centum on such market value, in consideration of the compulsory nature of the acquisition".

Before amendment, S. 28 of the Land Acquisition Act, 1894 provided interest on the excess compensation at the rate of 6 per cent. After amendment by Act 68 of 1984 the interest was raised to 9 per cent. S, 28 now reads:

"28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court."

10. The question is whether the higher solatium under the amended S. 23(2) and/or the higher interest under the amended S. 28 are attracted to the present case. S. 23(2) and S. 28 have been given limited retrospectively by supplying transitional provisions under S. 30(2) of the Amending Act. S. 30(2) reads:

"30. Transitional provisions (1)

(2) The provisions of sub-sec. (2) of S. 23 and S. 28 of the principal Act, as amended by Cl.(b) of S. 15 and S. 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People) and before the commencement of this Act".

11. It has been contended by Mr. Majumder that under sub-sec. (2) of S. 30 of the Amending Act the provisions of the amended S. 23(2) and S. 28 are made applicable to all proceedings relating to compensation pending on April 30, 1982 or filed subsequent to the date whether before the Collector or the Court or the High Court or the Supreme Court. Even if an award is made by the Collector or Court before April 30, 1982 and an appeal against such award is pending before the High Court or the Supreme Court on April 30, 1982 like the present case, the provisions of the amended S. 23(2) and S. 28 would be applicable in relation to an order passed in such appeal by the High Court or the Supreme Court. In other words, sub-sec. (2) of S. 30 of the Amending Act makes the amended S, 23(2) and S. 28 of the principal Act regarding enhanced solatium and enhanced rate of interest applicable not only to awards of the Collector and the Land Acquisition Judge made between April 30, 1982 and the date of commencement of the Act but also to all appeals heard by the High Court or the Supreme Court after the commencement of the Amending Act.

12. The scope of retrospective operation of amended S. 23(2) was first explained by the Supreme Court in K. Kamalajammanniavaru (Dead) by Lrs. Vs. Special Land Acquisition Officer, A two Judge Bench held that S. 30 of the Land Acquisition (Amendment) Act, 1984 did not make the amended S. 23(2) which increased the solatium to thirty per centum applicable to all proceedings in regard to compensation which had not become final whether they be pending before the Collector, Court, High Court or Supreme Court, Parliament desired to give effect to the amended S. 23(2) from the date of introduction of the Bill i.e.

April 30, 1982. So the amended provision was expressly made applicable by S. 30(2) to awards made by the Collector or Court between April 30, 1982 and September, 24, 1984 and further to appeals against such awards, that is, awards made between April 30, 1982 and September 24, 1984. "Parliament did not intend and could not have intended that whatever be the date of the award, however ancient it may be, solatium would stand enhanced to ''thirty per centum'' if an appeal happened by chance or accident to be pending on April 30, 1982. Surely it was not the intention of Parliament to reward those who kept alive the litigation even after several years. If it was the intention of Parliament to make the amended S. 23(2) applicable to all proceedings relating to compensation wherever they be pending, the words "after the 30th day of April, 1982 the date of introduction of the Land Acquisition Amendment Bill, 1982 in the House of People) and before the commencement of this Act" in S. 30(2) would become meaningless. It is clear that Parliament wanted the amended S. 23(2) to have very limited retrospectivity. It made the provision applicable to awards made after April 30, 1982 and before September 24, 1984 also and further to appeals arising from such awards".

13. The above decision was rendered on February 14, 1985. Shortly thereafter there was another decision of the Supreme Court by a three Judge Bench in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, There a contrary view was expressed. It was held that the amended provisions of S. 23(2) and S. 28 would apply in determination of compensation where proceedings are either pending at the date of commencement of the Amending Act or are filed subsequent to that date, whether before the Collector or before the Court or before the High Court or the Supreme Court. Under S. 30, sub-sec. (2) of the Amending Act the provisions of the amended S. 23, sub-sec.(2) and S. 28 are applicable to all proceedings relating to compensation pending on 30th April, 1982 or filed subsequent to the date, whether before the Collector or before the Court or before the High Court or the Supreme Court, even if they have finally terminated before the enactment of Amending Act. It would not be a correct interpretation of S. 30, sub-sec. (2) to say that the provisions of the amended S. 23, sub-sec.(2) and S. 28 would be applicable in relation to an order passed by the High Court or Supreme Court only if the order is passed in appeal against an award made by the Collector or Court between 30th April, 1982 and the commencement of the Amending Act. Even if an award is made by the Collector or Court on or before 30th April, 1982 and an appeal against such award is pending before the High Court or the Supreme Court on 30th April, 1982 or is filed subsequent to the date, the provisions of the amended S. 23, sub-sec. (2) and S. 28 would be applicable in relation to an order passed in appeal by the High Court or the Supreme Court. In taking that view, Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, overruled K. Kamalajammanniavaru (Dead) by Lrs. Vs. Special Land Acquisition Officer, and approved of the opinion expressed in another three Judge Bench in State of

Punjab Vs. Mohinder Singh and Another,

14. But the recent Constitution Bench of 5 Judges in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., has overruled Bhag Singh and Mohindra Singh and reiterated the views expressed in Kamalajammanniavaru. Pathak, C.J. as he then was speaking for the Court in Raghubir Singh''s case (supra) rounded off his discussion thus (AIR p. 1948-1949, para 34):

"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 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 passed to the stage of appeal before the High Court or 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 April 30, 1982 and September 24, 1984".

15. In stating thus the decision has set at rest the controversy as to entitlement of higher solatium to cases pending on the date of commencement of the Amending Act, Amended S. 23(2) was held to apply to awards made in between April 30, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People) and September 24,1984 (The date of commencement of the Land Acquisition (Amendment) Act, 1984). The award may be of the Collector or Court. One or the other must receive 30 per cent solatium on the market value of the land. The higher solatium can also be given by the High Court or the Supreme Court in appeals against such awards made between the said two dates.

16. In the instant case, the awards made by the Collector and the Improvement Tribunal upon reference under S. 18 of the Land Acquisition Act, 1894 were long before April 30, 1982 and consequently the higher solatum is not available to the appellant in this appeal arising out of the award of Improvement Tribunal made long before April 30, 1982.

17. Mr. Majumder has urged that both K. Kamalajammanniavaru (Dead) by Lrs. Vs. Special Land Acquisition Officer, and Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., dealt with the question of enhanced solatium and the decisions in those two cases do not stand in the way of the appellant''s getting interest at the enhanced rate under amended S. 28 of the principal Act. This contention is devoid of substance and does not merit acceptance. S. 30(2) in express terms deals with application of the provisions of both sub-sec. (2) of S. 23 and S. 28 of the principal Act as amended by Cl. (b) of S. 15 and S. 18 of

the Amending Act respectively to the awards made by the Collector or the Court after April 30, 1982 and before September 24, 1984. So the interpretation of S. 30(2) in the two cases above with regard to the provisions of the amended S. 23(2) would apply equally to the provisions of the amended S. 28. In other words, the enhanced rate of interest as per amended S. 28 of the principal Act is applicable only to awards made by the Collector or the Court between April 30, 1982 and September 24,1984 and to appeals to High Court or Supreme Court arising out of such awards made between the two aforesaid dates. So the appellant is not entitled either to increased solatium at the rate of 30 per cent under the amended S. 23(2) or to the increased interest at nine per centum under the amended S. 28 of the Land Acquisition Act, 1894.

18. Mr. Majumder has relied upon a very recent decision of the Supreme Court in Union of India v. Filip Tiago De Gama of vedem Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama, The decision in that case does not help the appellant in any way. It abides by the decision of the Constitution Bench in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., but holds that the said decision or other decisions do not solve the problem in that case. The award in that case does not fall within the interregnum i.e. between April 30, 1982 and September 24, 1984. The Collector made the award on March 5, 1969 and the reference Court made award on May 28, 1985. Both the awards thus apparently fall outside the period prescribed under S. 30(2). It was held that the benefit of higher solatium under S. 23(2) should be available to that case where the award was made by the Court after commencement of the Amending Act. In this case the award of the Court was made long before April 30, 1982. This decision is, therefore, of no help to the appellant.

19. Let us next consider the claim of the appellant to enhanced interest under amended S. 34 of the Land Acquisition Act which reads as follows:

"34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited" before the amendment of the section, the rate of interest was six per centum.

Section 30(3) of the Amendment Act reads as follows:

"30. ***

(3) The provisions of S. 34 of the principal Act, as amended by S. 20 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th day of April (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of People), and the amount of compensation for such acquisition had not been paid or deposited under S. 31 of the principal Act until such date, with effect on and from that date; and

(b) every case in which such possession has been taken on or after the date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said S. 31, with effect on and from the date of taking such possession".

20. The words ''until such date'' and "with effect on and from that date" in Cl. (a) of S. 30(3) obviously mean in the context April 30, 1982. It is clear, therefore, that enhanced interest at the rate of nine per centum on the unpaid amount of compensation from April 30, 1982 till the date of payment would be available in a case where possession of the land acquired under the Land Acquisition Act, 1894 had been taken before April 30, 1982 but the amount of compensation for such acquisition had not been paid or deposited under S. 31 till April 30, 1982.

21. Under Cl. (b), enhanced rate of interest under amended S. 34 would also be available where such possession had been taken on or after April 30, 1982 but before September 24, 1984 without payment or deposit of the amount of compensation under S. 31 with effect from the date of taking possession till the date of payment.

22. In the instant case, possession was taken and compensation was paid long before April 30, 1982. So the provisions of S. 34 of the principal Act as amended by S. 20 of the Act 68 of 1984 would not apply to the present case.

23. There is no dispute that possession of an area measuring 3 cottahs 4 chittacks out of the disputed plot No. 267 Prince Anwar Shah Road along with some structures was taken on June 21,1973. Possession of the remaining portion of the said plot No. 267, Prince Anwar Shah Road and the remaining structure was taken on March 26, 1974. The Collector awarded a total sum of Rupees 1,06,872. 50 as compensation. An amount of Rs. 8.20 was deducted for taxes to the Corporation of Calcutta. Accordingly, under the Collector''s Award a sum of Rupees 1,06864.30 was payable to the claimant appellant. The particulars of payments made to the appellant, which are not disputed, are given below:--

Date of payment by the Land Acquistion Collector. ... Amount

April 5, 1973 ... Rs. 16,396.87

July 5, 1973 ... Rs. 55,467.43

July 12, 1973 ... Rs. 2,000.00

January 31, 1974 ... Rs. 12,000.00

April 4, 1974 ... Rs. 20,000.00

June 24, 1974 ... Rs. 1,000.00

Rs. 1,06,864.30

24. The proportionate value of land measuring 3 cottahs 4 chataks would be Rs. 35,750 and the proportionate value of the structure which was taken possession

of on June 21, 1973 would be Rs. 24,739. On the basis of the said calculation it appears that a sum of Rs. 44,092.13 was paid 14 days after the date of taking part possession (from June 21, 1973 to July 5, 1973). The appellant is, therefore, entitled to interest at the rate of 6 (six) per centum on the amount of Rupees 44,092.13 for 14 days from June 21, 1973 to July 5, 1973 under the old S. 34 of the Land Acquisition Act, 1894.

25. It also appears that when possession of the remaining portion of the disputed plot No. 267, Prince Anwar Shah Road and the remaining structure was finally taken on March 26, 1974 a sum of Rs. 21,000/-was due to be paid to the appellant. This amount would bear interest at the rate of 6 per cent for 9 days from March, 26 to April 4,1974. A sum of Rs. 1,000.00 remained due on April 4,1974 and it was paid on June 24, 1974. There was delay of 81 days. This sum of Rs. 1,000.00 would, therefore, bear interest at the rate of 6 percent for 81 days from April 4,1974 to June 24, 1974.

26. For the forgoing reasons, the appeal be allowed in part to the extent indicated above. We make no order as to costs in the appeal.

Mukul Gopal Mukherji, J.

27. I agree.

28. Order accordingly.

