

(1954) 09 CAL CK 0004

In the Calcutta High Court

Case No : A.F.O.D. No's. 171, 172, 173 and 228 of 1951

Naresh Chandra Bose

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-09-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 23
Evidence Act, 1872 — Section 101, 102, 103, 66, 67
Land Acquisition Act, 1894 — Section 20, 21, 23

Citation : AIR 1955 Cal 398 : (1955) 1 CALLT 268 : 59 CWN 757 : 59 CWN 727

Hon'ble Judges : Renupada Mukherjee, J; R.P. Mookerjee, J

Bench : Division Bench

Advocate : Hari Gopal Roy, for the Appellant; J. Majumdar, Nani Gopal Das, Biswanath Mukherjee and Barun Kumar Roy Choudhury, for the Respondent

Final Decision : Allowed

Judgement

1. For the establishment of a Livestock Research Station at Haringhatta a large number of plots had been compulsorily acquired. Notification and Declaration were published in October and November, 1945. Separate Land Acquisition Cases were started for settling the market value of the lands acquired as also the claims by diverse parties for apportionment.

2. These four appeals arise out of as many References made by the landlord for increased valuation and also questioning the Collector's direction for apportionment. The same landlord is the appellant in each of the cases but the Respondents are other claimants as holders of subordinate interests and they are different ones.

3. These appeals were heard one after another. The transactions on which the learned Judge relies upon are the same in all these cases. The nature of the other evidence adduced is of the same type and character. In view of the order WP intend to pass, this order will govern all of them.

4. The special facts relating to the claim for apportionment will be dealt with separately under each appeal.

5. We first proceed to deal with the common features in all the four appeals.

6. In all these cases lands under acquisition are described as garden lands. The Land Acquisition Collector fixed Rs. 180/- per acre as the market value for these lands. He stated that such "market value had been determined from Registered sale-memos." Compensation was apportioned as "between the proprietor and the intermediaries on the basis of the rent received by the former and the tenant was awarded the balance.

7. Against such awards the landlord filed References u/s 18, Land Acquisition Act.

8. Although the normal and proper procedure is that the Reference relating to the valuation is to be taken up separately from the Reference about apportionment, in the present batch the learned Judge and the parties lumped both together. By the same order the Court dealt with both the matters. The Government is neither interested nor is a proper party in an apportionment reference or appeal therefrom -- but only the contesting claimants are. It is only in the valuation Reference that the Government is a necessary party.

9. In view of the circumstances referred to above in the References as also in the Appeals before us the Government Pleader and the Advocates for the different sets of claimants were heard separately.

10. The learned Land Acquisition Judge affirmed the award and the apportionment as made by the Collector.

11. The proprietor is the appellant in all the appeals now before us.

12. We shall take up the question of valuation first

13. On behalf of the appellant the common arguments in all the appeals are that the teamed Judge has relied upon copies of the same two sale deeds which had not been properly admitted. Secondly, even if the said two deeds be taken into consideration, they are not of any assistance in determining the market-value of the lands in dispute which are garden lands whereas the lands which were the subject-matter of the two transactions were "nal" lands. In our view both the contentions must prevail.

14. We shall take up the second question first on the footing that the documents which had been produced were admissible in evidence or had been properly marked. On a scrutiny of the two documents, it appears that the subject-matter of the two kobalas would not be of much assistance in assessing the proper market-value of the garden lands. The sale deeds are in respect of "nal" lands and/or some homestead plots. There is no evidence to correlate the value of the garden and "nal" lands.

15. It is contended on behalf of the -State that the onus was on the claimant to

prove that the rate fixed, by the Collector was not a proper one. The evidence as adduced by the claimant was not only meagre but unreliable as being unsupported by documentary evidence. This argument is not available to the State in the special circumstances of the present case. No doubt when a reference is made by a claimant the onus is upon him to prove by evidence that may be adduced by him that the market-value as fixed by the Land Acquisition Collector was not the proper one. If, however, the compensation is fixed by the Land Acquisition Collector either without any evidence but merely on conjecture, or on materials which appear to be irrelevant ones the onus which lies on the claimant as having made the reference is a very slight one. Such onus would be discharged on the claimant proving that the Collector had proceeded either without any legal evidence or the materials on which he had relied were not relevant ones. The present case comes within that exception and, therefore, on the conclusion reached by us that the documents on which the Collector had based his valuation are not relevant ones or of any assistance to determine the value of garden lands the onus which lay on the claimant shifts to the other side.

16. It, however, appears from the judgment of the learned Land Acquisition Judge that in coming to the conclusion that the value as stated by the Collector was a fair one he had placed reliance principally upon those two documents and not so much on other pieces of evidence. That fact that the evidence as adduced by the claimant was meagre or was unsupported by documentary evidence will not be a material point in this case. The judgment by the learned Judge cannot be supported on the simple ground that it is based upon evidence which is irrelevant.

17. We shall then consider the other objection which has been raised about admissibility of the two documents on which reliance has been placed.

18. Mr. Roy appearing on behalf of the appellant in these appeals contended before us that the learned Land Acquisition Judge improperly admitted in evidence copies of two sale-deeds without formal proof and as these two documents have greatly influenced his decision, the decision ought to be set aside. The copies of the sale deeds in question bear different exhibit marks in the trial court in the different cases. One of them is a sale deed executed by one Mahattari Bibi in favour of one Ekraj Mandal on 9-3-1945 (Ext. C in F. A. 171) and the other is a sale deed executed by Saharjan Bibi for self and some minors in favour of Monaset Mondal and others on 4-9-1945 (Ext. B in F. A. 171).

It is difficult to ascertain from the records of the court below how and under what circumstances these documents were admitted in evidence because none of the witnesses on behalf of the State formally proved them. So far as our attention has been drawn to the record in the trial court, we find that the Registers of the Sub-Registrar in which these documents were copied out at the time of their registration, were produced by the State and the copies of that kabalas marked as exhibits by the trial judge without formal proof on the footing that they were public documents.

19. Mr. Roy contended on behalf of the appellant that the documents so marked from the Registers maintained by the Sub-Registrar were mere copies and they could not have been marked exhibits without calling for the original kobalas according to the provisions of Section 66, Evidence Act.

20. Mr. Majumdar appearing on behalf of the State contended on the other hand that the kobalas as copied out and recorded in the registers of the Sub-Registrar are public records of private documents within the meaning of Section 74, Evidence Act, and as such, they should be regarded as original public documents. He contended further that if the kobalas as recorded in the registers be regarded as public documents no question of calling for the original documents arises because the entire registers were produced in the trial court in their original.

21. In support of this contention reliance was placed on -- Pattu Kumari Bibi Vs. Nirmal Kumar Singh Nawlakha, . That case, however, is clearly distinguishable. The abstract of a power-of-attorney is maintained in the Registration Office under rules made by the Inspector General of Registration u/s 69, Registration Act, 1908, and every entry in that Register is "a public document within the meaning of Section 74(1)(iii) of the Evidence Act being "a document forming the act or record of the act" of an executive public officer in the discharge of a statutory duty imposed upon him. A true copy of such an entry is admissible as proof of the original entry u/s 66, Evidence Act. In the present case, what is sought to be proved by the State by production of the registers of the Sub-Registrar's Office is not any original entry or one prepared by the Sub-Registrar himself, but copies of documents, the originals of which were admittedly in the custody of persons in whose favour they were executed. That being the position, the documents could not be admitted in evidence by simply producing the registers of the Registration Office without calling for the original documents.

22. Moreover, a kobala is a document which requires to be signed or executed by the executant under the law. u/s 87, Evidence Act, the signature of the executant must be proved before such a document is admitted in evidence. Mere registration of a document is not by itself sufficient proof of its execution (vide -- "Salimatul Fatima v. Koylashpoti", 17 Cal 903 (B) and -- "Mt. Munnan v. Mt. Najnum", 11 Ind Cas 50 (All) (C). That being the position, even if the contention of Mr. Mazumdar be accepted that the registers of the Sub-Registrar containing copies of the document in question should be regarded as original documents, we must hold that the kobalas were improperly and illegally admitted in evidence in as much as there was no attempt made for formal proof of their execution. In these circumstances, the two sale deeds in question must be excluded from evidence.

23. It need only be pointed out that the admissibility of the two documents was raised in the trial court and in spite of that no proper steps were taken by the State.

24. The result, therefore, is that the decision reached by the learned Land

Acquisition Judge about fair market-value of the garden lands must be set aside and all the cases remitted to the court of the Land Acquisition Judge for rehearing according to law. Both the parties will be allowed to adduce fresh evidence about valuation and the documents which had been produced and which we have rejected may be proved as under the provisions of the law.

25. We now take up the question of apportionment in each of the four appeals separately. (After considering briefly the question of apportionment in all the four appeals, the judgment concluded:) All the four appeals are, therefore, allowed. The matters will go back to the learned District Judge for a decision according to law and in terms of the directions given above. As regards the question of costs, the appellant will be entitled to hearing fee of two gold mohurs for each of the four appeals from the respondent State. The appellant will not be entitled to the costs of the preparation of the paper book as a substantial portion of the paper book consisted of papers which were not necessary to be printed or even referred to during the hearing.