
(1950) 08 CAL CK 0013
In the Calcutta High Court
Case No : A.F.O.D. No. 299 of 1947

Province of Bengal

APPELLANT

Vs

Radha Gobinda and Others

RESPONDENT

Date of Decision : 03-08-1950

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : AIR 1951 Cal 43 : 55 CWN 110

Hon'ble Judges : Guha, J;G.N. Das, J

Bench : Division Bench

Advocate : J. Majumdar, Asst. Govt. Pleader, for the Appellant;Purusottam Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Das, J.—This is an appeal by the Province of Bengal & concerns the compensation to be paid in respect of certain lands acquired by the Province of Bengal. The property acquired consisted of a plot of danga (high) land recorded in C. S. Dag No. 1855 & certain arable lands recorded in C. S. Dags Nos. 1870, 1409, 1463, 1472/4500. The property acquired belonged to four brothers, Prangobinda Thakur, Radhagobinda Thakur, Gatigobinda Thakur & Satya Narayan Thakur. The Collector awarded compensation at the rate of Rs. 90 per bigha for the danga lands & Rs. 25 per bigha for the arable lands. Being dissatisfied by the award all the four claimants made a petn. for reference u/s 18, Land Acquisition Act. They claimed compensation at the rate of Rs. 500 per bigha for the danga lands & Rs. 150 per bigha for the arable lands. This reference petn. also concerned a plot of land in which Prangobinda was alone interested. For reasons unexplained, one petn. of reference was made covering both the cases & no objection appears to have been raised to this procedure being adopted by the claimants. On 30-6-1939, the learned Land Acquisition Judge dismissed the reference. Against this order the claimants came up to this Ct. on the ground that a particular document, being a lease dated 31-3-1937, had not been

accepted by the Ct. below as relevant evidence. The appeal in this Ct. was heard by Nasim Ali & Pal JJ. & by their judgment dated 25-3-1943 they directed that this documents should be considered along with other evidence in the case. After the matter went back, on 24-1-1944, Prangobinda, one of the referring claimants, made an appln. before the Land Acquisition Judge which runs as follows "that the appct. Prangobinda begs to withdraw from the case. Your Honour will therefore be pleased to permit him to do so." It would seem that this petn. referred to both the cases then pending before the Land Acquisition Judge. The petn. came up for consideration before the learned Dist. J., Burdwan, & by an Order No. 57, dated 26-4-1945, the learned Judge was of opinion that the reference in so far as it concerned Prangobinda alone was properly withdrawn & could not be proceeded with at the instance of other brothers. As regards the portion of the claim in which all the four brothers were interested the learned Judge was of opinion that the brothers have to claim the entire amount which may be awarded hereafter for the land after service of regular notice on Prangobinda; otherwise the reference at their instance is bound to fail. The learned Lawyer for the brothers accepted this position & notice of the reference case then pending before the learned Dist. J. was served on Prangobinda, who, however, did not appear. Against that part of the order which disallowed the contention of the brothers allowing them to carry on the claim in so far as it concerned the property in which Prangobinda alone was interested, the three brothers moved this Ct. in revision giving rise to Civ. Revn. case No. 1002 of 1945. The Province of Bengal did not contest the order of the learned Dist. J. in so far as it directed that the claim petn. in which all the brothers were interested should be proceeded with for the entire amount after notice to Prangobinda alone. The Civil Revision Case was disposed of by Mukherjea & Sharpe JJ. on 19-2-1946, the rule being discharged. After the matter went back to the learned Dist. J., the learned Dist. J. has accepted the reference & ordered compensation at the rate of Rs. 500 per bigha for the danga lands, & Rs. 150 per bigha for the arable lands. It is the propriety of this order which is challenged in this appeal on behalf of the Province of Bengal.

2. Learned Asstt. Govt. Pleader, appearing for the applt. has raised two contentions. In the first place he contends that the assessment of value as made by the Land Acquisition Judge was excessive. We have been referred to the several documents on which reliance was placed by the Land Acquisition Judge. It appears therefrom that as regards the danga lands, 12 kattahs were sold for Rs. 300 in 1936. Taking into account the potential increase in the value it is not possible to say that the assessment of danga lands at Rs. 500 per bigha is excessive. The lands are situated close to the Steel Works & naturally there was great potentiality for conversion of these lands into building sites & consequent appreciation in the value.

3. As regards agricultural lands the learned Judge relies on certain leases Exs. 1 (5), 1 (9), 1 (1). A perusal of these documents leaves no room for doubt that the value of the agricultural lands at Rs. 150 per bigha was quite fair.

4. A subsidiary point was also raised viz. that the learned Judge has mainly relied on the lease Ex. 1 and has thus gone against the order of remand made by Nasim Ali & Pal JJ. As I have already stated, the learned Judge did not base his decision merely on lease Ex. I, but referred to various documents which are expressly referred to in the judgment. The subsidiary contention is obviously unsound & must be overruled. The position, therefore, is that the appraisal of value of the land by the Land Acquisition Judge must be maintained. The first contention raised on behalf of the applt. accordingly fails.

5. The second contention on behalf of the applt. is that as Prangobinda, one of the referring claimants, withdrew from the case, the reference must be deemed to have been made only by three of the brothers & as such was incompetent. Reliance was placed on Section 18 Land Acquisition Act. I fail to see any force in this contention. The reference was properly made by all the four brothers. In the reference petn. all the four brothers claimed that the value of the high land should be assessed at Rs. 500 per bigha & that of the arable lands at Rs. 150 per bigha. The mere fact that one of the referring claimants chooses to withdraw from the case at a later stage when a fresh petn. by the other referring claimants would be barred, in my opinion, has no bearing on the question viz. whether the reference petn. could be treated as having been properly filed & entertained.

6. It was next contended that in so far as Prangobinda is concerned, he having withdrawn from the case the reference must be deemed to be limited to the other brothers & the law will imply an apportionment of compensation as between the three brothers as Prangobinda withdrew from this case. In my opinion, this contention is also unsound in the facts of the present case. As I have already stated, the Land Acquisition Judge by order No. 57 dated 26-4-1945 expressly held that the reference must proceed for the entire sum claimed at the instance of the three brothers after notice to the remaining brother, Prangobinda. This order was not challenged on behalf of the Province of Bengal. In my opinion it is too late in the day now to assert that this order was not correctly made. In my opinion it is no longer open to the applt. to contest the position that the reference would proceed for the entire sum at the instance of the three brothers. Quite apart from this, in my opinion, there is no substance in the contention. The four brothers formed members of a joint Mitakshra family. It is not possible to predicate of any of the brothers that he has a defined share. The reference concerned the claim of all the four brothers. u/s 18, Land Acquisition Act, reference may be made on any of the four grounds of objection, namely, measurement of land, amount of compensation, to be paid, the person to whom the same is payable & the apportionment of the compensation inter se. u/s 20 of the Act, the Ct. will fix a date for determination of the objection, that is the objection made u/s 18 of the Act. u/s 21, the scope of the enquiry is limited to a consideration of the interest of the persons affected by the award. Section 25 of the Act only limits the power of the Ct. to fix the award at a sum not exceeding the amount claimed u/s 18. In my opinion the scheme of the Act is that if a reference is made u/s 18 raising a specific ground of objection, that

ground of objection has to be determined by the Ct. Here the reference petn. raised a question as to the entire amount, of compensation payable for the land acquired. It was this question which the Ct. was called upon to decide. The learned Asst. Govt. Pleader referred us to the case of AIR 1932 102 (Privy Council) . The facts of that case are entirely different. There an award was made appropriating the compensation money between the landlord & the tenants. The tenants acquiesced in the award. The landlord alone made a reference u/s 18 on the question of valuation. The Land Acquisition Judge enhanced the valuation of the lands. The landlord then claimed the additional value of the land not only in so far as it concerned the landlord's interest but also in so far as it concerned the tenant's interest. The Judicial Committee said that the landlord is not entitled to claim the enhanced value in so far as it concerned the tenant's interest, the tenants having acquiesced in the compensation as awarded by the Land Acquisition Collector. The case of Collector of Dacca Vs. Gholam Kuddus Choudhury and Others, , is also distinguishable on similar grounds.

7. In my opinion, in a case like the present one, where the claim of the four brothers who formed members of a joint Mitakshara family was not severable & where the reference was made by all of them acting jointly, the learned Land Acquisition Judge was perfectly justified in making an award for the entire sum representing the interest of all the four brothers. The second contention raised by the applt. also fails.

8. The result, therefore, is that this appeal fails & is dismissed with costs, hearing fee being assessed at 5 gold Mohurs.

Guha S.

9. I agree.