
(1959) 06 CAL CK 0025
In the Calcutta High Court
Case No : Matter No. 4 of 1959

Rabindba Kumar Basu

APPELLANT

Vs

S.K. Banerjee and Others

RESPONDENT

Date of Decision : 12-06-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 11, 12(2), 18, 29
Penal Code, 1860 (IPC) — Section 175, 176

Citation : 63 CWN 851

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : S. Roy and T. Bose, for the Appellant; S.D. Banerjee and M. Sen, for the Respondent

Judgement

Sinha, J.—The petitioner along with his three brothers, the respondents Nos. 5, 6 and 7 were the sole and absolute owners of a portion of premises No. 23 and 23/1, Chhatawala Gulli Lane, Calcutta. On or about 10th August, 1946 the petitioner along with the said respondents leased out the said premises to one Nalini Ranjan Basu. On or about 7th August, 1952 the petitioner entered into an agreement for lease of the said premises with Messrs. Karnani Properties Ltd., a company registered under the Indian Companies Act, for a period of 99 years. Pursuant to the terms of the said lease which was executed on the 1st May, 1953 Messrs. Karnani Properties Ltd., went into possession. On or about 30th August, 1955 notification was published in the Calcutta Gazette u/s 4 of the Land Acquisition Act (hereinafter referred to as the "Act") for compulsory acquisition of the said property. The acquisition was for purposes of the Calcutta Improvement Trust for the implementation of scheme No. LXVI in Ward No. 40 of the Corporation of Calcutta. Sometime in July, 1955 a declaration was published u/s 6 of the said Act. Thereafter in July, 1956 the petitioner and the respondents Nos. 5, 6 and 7 submitted their respective claims relating to the compensation payable in respect of the said premises. Various other persons filed their

respective claims for compensation, as persons interested in the compensation money. The said Karnani Properties Ltd., as lessees filed a claim for the refund of about Rs. 75,000/- by way of refund of the premium paid by the company in respect of the lease. There were other claims filed in respect of mortgages and charges. The Land Acquisition Collector also received information about the existence of various encumbrances, attachments and charges, including the claim of the Corporation of Calcutta in respect of arrears of rates and taxes. On or about 5th November, 1958 the respondent No. 1, the First Land Acquisition Collector, who was dealing with the matter, made his award u/s 11 of the said Act. A copy of the said award is annexed to the petition and marked as Ex. "A". The award shows that the total sum allowed was Rs. 6,24,769-44 nP. Next under the heading, "apportionment of the amount of compensation", has been set out the names of the petitioner and the respondents Nos. 5, 6 and 7, together with a long list of names of persons interested, together with the nature of their interest. The next heading is "amount payable to each", but under this there is only a single entry of Rs. 4,27,769-44 nP. together with Rs. 750/- on account of water and drainage connection. On or about 10th November, 1958 the petitioner received a notice u/s 12(2) of the said Act, dated the 7th November, 1958 in which it was stated that the petitioner had been treated as a person interested and an award had been made on the 5th November, 1958 u/s 11 of the said Act, and the sum payable to him was Rs. 4,27,769-44 nP. Pursuant to this notice, the petitioner asked for the payment of the amount mentioned in the notice, or at least 80 per cent of it. On the 2nd January, 1959 the Land Acquisition Collector intimated to the lawyer of the petitioner that a joint award had been made for Rs. 4,27,769-44 nP. in favour of all the owners. lessee, mortgagee, decree-holders and other claimants and also for a sum of Rs. 750/- in favour of the owners and lessee. It was further intimated that the entire amount of the award less the Corporation taxes amounting to be Rs. 8,000/- and a sum of Rs. 1,000/- as security pending possession of structures, had been remitted by the Collector to the President, Calcutta Improvement Tribunal as a deposit u/s 31(2) of the said Act. It was pointed out that through oversight it was not mentioned in the notice u/s 12(2) that the award was a joint one. The petitioner was asked to move the President, C.I. Tribunal and to take such steps as he thought proper and that the Land Acquisition Collector's office had nothing further to do in the matter. Thereafter on the 13th of January, 1959 this rule was issued. The point that arises in this application is a very short one. Mr. Roy appearing on behalf of the petitioner argues that the Land Acquisition Collector, in making an award u/s 11 of the said Act, failed to comply with his statutory duties as prescribed in section 11. In particular, the Land Acquisition Collector failed to make an apportionment of the compensation money among all the persons known or believed by him to be interested in the land. He argues that it is the statutory duty of the Land Acquisition Collector to make such apportionment, and without making such an apportionment it was not competent for the Land Acquisition Collector to make a deposit of the compensation money with the C.I. Tribunal u/s 31(2) of the Act. In order to decide this point it will be necessary to consider

some of the provisions of the said Act. We might begin with section 9 of the Act, under which the Collector causes public notice to be given to persons interested, to the effect that Government intended to take possession of the land and that claims to compensation for all interests in such lands may be made to the Land Acquisition Collector. Such notice shall require all persons interested in the land to appear personally or through their agent before the Collector and to state the nature of their respective interests in the land, and the amount and particulars of their claims to compensation for such interests. The Collector may, in any case, require such statements to be made in writing and signed by the parties or their agents. u/s 10, the Collector may require any such person to make, or deliver to him, a statement containing, so far as may be practicable, the name of every other persons possessing any interest in the land or any part thereof as co-proprietor, sub-projector, mortgagee, tenant or otherwise, together with the nature of such interests and other particulars Every person required to make or deliver such a statement shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code. I now come to section 11, under which the award was made. That section runs as follows:

On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the publication of the notification u/s 4, sub-section (1) and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or whose claims, he has information, whether or not they have respectively appeared before him.

2. The next section to be considered is section 18. That section lays down that any person interested, who has not accepted the award, may by written application to the Collector, require that, the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. The next relevant section is section 29. That section lays down that where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment. We next come to section 30, which lays down that when the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to

the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. Finally, we come to section 31. Under sub-section (1) of section 31 the Collector on making an award u/s 11 shall tender payment of the compensation awarded by him to the persons entitled thereto, according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section, which runs as follows:

If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted.

3. The Scheme of the Act, therefore, is as follows: After hearing the respective claims of the persons interested in the compensation money, the Land Acquisition Collector must make an award u/s 11. In that award he must do all the things that are mentioned in section 11, which has been quoted above. Amongst other things, he is bound to apportion the compensation money among all the persons known or believed to be interested in the land, of whom or whose claims he has information, whether or not they have appeared before him. If the persons interested agree to the apportionment, then u/s 29 he can specify the same in the said award, between such persons, and this would be binding. Where however, compensation has been settled u/s 11, but a dispute arises as to the apportionment, then two courses are open. One is provided in section 30 which enables the Collector himself to refer such a dispute to the decision of the Court. The second course open is that any person interested, who has not accepted the award, whether it relates to the measurement or the amount of compensation or the persons to whom it is payable or the apportionment of the compensation among the persons interested, may require the Collector u/s 18 to refer is for determination of the Court. Deposit u/s 31(2) of the Act can only be done under the specified circumstances, which are mentioned therein. Before making such a deposit, an award must be made in terms of section 11. The Collector must then tender payment of the compensation awarded by him to each of the persons interested according to the award. If they do not consent to receive compensation or if there is no person competent to alienate land or if there is any dispute as to the title to receive compensation or if there is any dispute as to the apportionment of it, then and then only the Collector can deposit the amount of compensation in Court, and that Court is the one to which a reference u/s 18 would be submitted.

4. Let us now come to the facts of this case, and see what has happened. The owners of the land put forward their claims for compensation. Various other parties interested in the compensation money also put forward their claims. Some were lessees, others were mortgagees and charge-holders. During the enquiry other interests came to the knowledge and information of the Collector,

namely various mortgages and charges upon the respective shares of the owners as also attachments, statutory charges, etc. In making his award u/s 11, the Collector has arrived at the total figure of compensation. He has also made a list of the persons interested and the nature of their respective interests. He has however failed to make any apportionment at all between such parties according to their respective interests. He says that they are jointly entitled to a sum of Rs. 4,27,769-44 nP. as also to Rs. 750/-. The Land Acquisition Collector has filed an affidavit before me, in which he states that none of the parties prayed for apportionment of the compensation and he denies that it was incumbent upon him to make any apportionment of the compensation money unless the parties prayed for the same. He also points out that after he made an order for deposit of money u/s 31(2) of the said Act in Court, the petitioner and the respondents Nos. 5, 6 and 7 filed an application u/s 18 of the said Act for reference by the Collector of the matter to the Calcutta Improvement Tribunal. A copy of the application made u/s 18 has been annexed to the affidavit of the Land Acquisition Collector affirmed on the 23rd February, 1959. It appears from the copy of the petition that it was contended amongst other things, that the Land Acquisition Collector was wrong in making a joint award, and what he should have done was to ascertain the entire value of the property and to have apportioned the same according to the respective shares of the claimants. The petitioner however, objected to the amount of compensation which, it was stated, was too low. In my opinion, the Land Acquisition Collector is entirely in error in his interpretation of the law. u/s 11 of the said Act it is the bounden duty of the Collector to apportion the compensation. There is no question of any of the parties interested asking for it. This has been laid down by the Privy Council in the case of *Parag Narain v. The Collector of Agra* (1) 36 C.W.N. 579. Lord Russell stated as follows:

As their Lordships read the Act, the duty of the Collector u/s 11 of the Act is to make an award in regard to three matters, viz., (1) the area of the land included in the award; (2) total compensation to be allowed for that land, and (3) apportionment of that compensation among all the persons interested in that land each award should contain within its four corners the fixing of the value of the land with which it deals, and the apportionment of that value between various persons interested in that land.

5. In this case there can be no doubt that the Land Acquisition Collector failed to discharge his statutory duty to apportion the compensation amongst the claimants. It is argued before me that the Collector found that there were disputes and the apportionment was a complicated affair, so he sent the money to the Court. In doing so, the Land Acquisition Collector entirely misconceived his duties u/s 11. Whether a matter is complicated or not, it is the bounden duty of the Collector to make an apportionment, upon such materials as he is able to gather. The Act gives him power to collect information and compel the parties to give information. If the apportionment is agreed upon between the parties, then of course he is saved from computation of it. But if there is no agreement, then

he has got to make apportionment to the best of his ability, upon the materials before him, or such as he can gather, by exercise of the powers given by the Act. Without an apportionment, he cannot compel the parties to apply for the matter to be referred to Court u/s 18. What he can do however, is, if the apportionment is complicated and beyond his capacity to determine, to refer the matter to Court himself u/s 30 of the Act. That he has not done in this case. Without any apportionment of the compensation money, he has acted u/s 31 (2) of the Act and made a deposit in Court. Indeed, none of the ingredients in sub-section (2) of section 31 are satisfied. Since there has been no apportionment, there can be no dispute regarding it. That being the position, the next thing to be considered is as to how the matter is affected by the owners of the property making an application u/s 18 of the Act. Mr. Roy has explained that his client was compelled to make such an application because the Land Acquisition Collector refused to make any apportionment and yet deposited the money straightaway in Court u/s 31(2). If at that stage his client did not make an application u/s 18, within the time prescribed, then any such application in future would have been barred. In such a case, there would be no possibility of challenging even the amount of compensation that was fixed. He points out however that in the petition preferred u/s 18, his client specifically took the point that a joint award was bad and that there should have been an apportionment. I do not think that this application is barred, because of the making of the application u/s 18 of the Act. Under the circumstances of this case, the petitioner had no other choice. That however does not excuse the action on the part of the Collector in failing to apportion the compensation. As has been laid down in *Pannalal Maheshwari Vs. State of Bihar and Others*, where the Land Acquisition Officer had failed in the performance of the duties cast by the statute upon him, a writ in the nature of mandamus would lie under Article 226 of the Constitution commanding him to perform the statutory duty.

6. The short position therefore, is as follows: The Land Acquisition Collector, in making his award u/s 11, failed to perform his statutory duty, inasmuch as he did not apportion the amount of the compensation between the parties. Next, he made an error in depositing the money u/s 31(2) of the Act with the C.I. Tribunal. It follows therefore, that the so-called joint award made by the Collector dated 5th November. 1958 must be set aside. The Rule is accordingly made absolute and a writ in the nature of certiorari is issued quashing the said award, and a writ in the nature of mandamus is issued directing the Land Acquisition Collector to make an award in accordance with law, including the apportionment of the amount of compensation between the parties interested. This does not mean that the measurements of the land or the amount of compensation that has been determined by the Land Acquisition Collector should be disturbed. It only means that the amount of compensation that he found payable, should be apportioned by him among the parties interested. The award must be in terms of section 11 of the Act and must contain findings on all headings specified in it. It must be a complete award There will be a writ in the

nature of mandamus directing the President, Calcutta Improvement Tribunal to re-transfer the amount of money deposited by the Land Acquisition Collector u/s 31(2) of the Act, to the Land Acquisition Collector, to be dealt with by him in accordance with law. There will be no order as to costs.