
(1984) 04 CAL CK 0028

In the Calcutta High Court

Case No : A.F.O.D. No's. 35 and 503-505 of 1967

Raj Kumar Banerjee

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 06-04-1984

Acts Referred:

Constitution of India, 1950 — Article 14

Land Acquisition Act, 1894 — Section 23(1)

West Bengal Land Development and Planning Act, 1948 — Section 4, 8, 8(1)

Citation : AIR 1985 Cal 81

Hon'ble Judges : Samir Kumar Mookherjee, J; Bankim Chandra Ray, J

Bench : Division Bench

Advocate : Sakti Nath Mukherjee and Bhaskar Ghosh, for the Appellant; N.G. Das, for the Respondent

Final Decision : Allowed

Judgement

B.C. Ray, J.—These four appeals being F. A. 35/67 and F. As. 503 to 505/67 are directed against the judgment and award made by the Land Acquisition Judge, Calcutta 24 Parganas in L. D. P. Cases Nos. 90, 94 and 95 of 1962 allowing in part on contest with costs. The award made by the Collector was revised in accordance with the findings arrived at in the aforesaid judgment. There was a direction for payment of statutory compensation at the rate of 15% in each case and interest was allowed at the rate of 6% from the date of possession till payment of the awarded sum in each of these cases. The subject-matter of these appeals was in respect of the determination of the market price of the lands comprising of C. S. plots Nos. 90 and 90/434 and plot No. 219 in Mouza Naktolla, P. S. Tollygunge, district 24 Parganas which was notified for acquisition u/s 4 of the Land Development and Planning Act on 19th October, 1950 and simultaneously on the said date a declaration was also made and thereafter possession of the said plots of land was taken. However, in view of the decision that simultaneous publication of the notification u/s 4 and the declaration u/s 6 was illegal, the subsequent notification u/s 4 was published on 30th October,

1956 and thereafter declaration was made u/s 6 though of course possession, that was taken on the basis of the earlier notification made u/s 4 in 1950, was retained and the possession which was on the basis of the earlier notification made u/s 4 in 1950, was retained and the possession which was taken on 19th February, 1950 was not however restored to the parties even though the earlier notification was superseded by subsequent notification u/s 4 being published on 30th October 1956. The learned Land Acquisition Judge in his judgment held that though the lands were notified for acquisition u/s 4 of the Land Development and Planning Act on October 1956, still in view of the provision of Section 8(1)(b), 2nd proviso, the market price of the lands would be determined on the basis of the price prevailing as on 31st December, 1946 as the said acquisition has been made for the purpose of settlement of immigrants under the provision of Section 2(1)(b) of the West Bengal Land Development and Planning Act.

2. Mr. Mukherjee, learned Advocate appearing on behalf of the appellant has questioned this finding of the learned Land Acquisition Judge on the ground that this finding is wholly erroneous in view of the decision of this Court reported in Ramendra Nath Nandi and Others Vs. State of West Bengal and Others, where it was held that the second para of Clause (b) of proviso to Section 8(1) of L. D. P. Act, 1948 having made a differential treatment to the owners of land is unconstitutional and as such in making the award the Special Land Acquisition Judge ought to have determined the market price of the land on the date of the issuance of the notification published u/s 4 of the L. D. P. Act which has been done in this case on 30th October, 1956. Mr. Mukherjee, therefore, prayed that this is a fit case which should be sent down to the learned Judge below for fresh determination of the market price of the aforesaid lands acquired under the provision of the said Act on the basis of the price prevailing on the date of the publication of the said notification, that is 30th October, 1956.

3. Mr. Das has also appeared on behalf of the State appellant in F. As. 503 to 505 of 1967.

4. Two points required to be considered in these appeals (F. As. 503-505/67) are firstly, whether the market price of the lands notified for acquisition under the Land Development and Planning Act has to be determined on the date of publication of the notification u/s 4 of the said Act or not. Secondly, though the original notification was published in January, 1950 and the same was superseded by subsequent notification published on 30th October, 1956. whether statutory allowances should be allowed as has been decided by the Land Acquisition Judge under the provisions of Section 8(2) of the L. D. P. Act, 1948 (Act 21 of 1948). As regards the first question, Section 8(1) Clause (b) provides that compensation is to be determined on the basis of the market price as provided in Section 23(1) of the Land Acquisition Act 1 of 1894. Proviso to Clause (b) of the aforesaid sub-section as amended has further provided that so far as regards acquisition of land for the purpose of Section 8(1)(b), that is for settlement of immigrants, the price of the lands notified for acquisition will be

determined on the basis of price prevalent on 31st December, 1946. This provision was challenged as discriminatory being violative of Article 14 of the Constitution in the case of Ramendra Nath Nandi and Others Vs. State of West Bengal and Others, as well as in the case of Ramendra Nath Nandi and Others Vs. State of West Bengal and Others, and it has been held that second para of Section 8(1) of the West Bengal Act 21 of 1948 as amended having made a differential treatment to the owners of land similarly situated without any rational relation to the object sought to be achieved, is ultra vires Article 14 of the Constitution and it is void. The inclusion so made in the 9th Schedule of the Constitution does not protect the said proviso from being struck down as unconstitutional as second para of Clause (b) amended after inclusion of the Act in the 9th Schedule. Relying on these decisions. A. K. Sen, J. has observed in the case of State of West Bengal v. Land Development Bureau (1979) 2 Cal LJ 169 : AIR 1981 NOC 35 that the condition attached to the proviso to Section 8 of the Act being ultra vires and unconstitutional, the assessment made in terms thereof has to be set aside and the assessment has to be made in terms of the amended provision excluding the unconstitutional part, namely, the condition specified in second para of the proviso. The compensation has to be determined on the basis of market value as prevailing on the date of publication of the notification u/s 4(1) of the said Act. We agree with the finding of the Division Bench and therefore we hold that the finding of the Land Acquisition Judge that the market price of the lands acquired would be valued on the market price as on 31st December 1946 is erroneous and as such the same is set aside. We send the case viz. F. A. 35 of 1967 back to the learned Land Acquisition Judge to re-determine the market price of the lands acquired on the basis of the market price prevailing on the date of publication of notification u/s 4 of the L. D. P. Act on 30th October 1956 and the Land Acquisition Judge will make an award accordingly. As regards the statutory allowance, the Land Acquisition Judge will also consider and allow the same in the light of the provision of Section 8 of the Land Development and Planning Act, 1948 Act 21 of 1948).

5. F. A. No. 35 of 1967 is allowed and F. As. Nos. 503 to 505 of 1967 are dismissed. There will, however, be no order for costs in all these appeals.

6. We also direct that the learned Land Acquisition Judge while hearing the appeal (F. A. 35/67) will allow the parties to adduce further evidence both oral and documentary if they are so advised. We further direct that the learned Land Acquisition Judge will expeditiously dispose of the case as this is a very old matter, preferably within a period of six months from the date of receipt of the records by the learned Judge.

7. Record be sent down as early as possible.

Samir Kumar Mookherjee, J.

8. I agree.