
(1971) 08 CAL CK 0011
In the Calcutta High Court
Case No : A.F.O.D. No. 471 of 1961

Sk. Aslam and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-08-1971

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8(3)

Citation : AIR 1972 Cal 292 : 76 CWN 46 : (1973) 1 ILR (Cal) 35

Hon'ble Judges : Gupta, J;Amiya Kumar Mookerji, J

Bench : Division Bench

Advocate : Amarendra Nath Gupta, Durgesh Prosad Das, Purnendra Banerjee and Rathindra Nath De, for the Appellant; Homendra Chandra Sen and Nani Gopal Das, for the Respondent

Final Decision : Allowed

Judgement

Amiya Kumar Mookerji, J.—This appeal is by the referring claimant and it arises out of a reference u/s 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as the Act).

2. On May 13, 1944, C. S. Plot Nos. 801, 805, 994, 998 (p), 1025, 1026, 1029, 1030, 1083, 1148 and 1149 of mouja Digla in the district of 24-Parganas, were requisitioned under Rule 75A (1) of the Defence of India Rules. Thereafter on November 4, 1959, these plots measuring about 3.69 acres were acquired u/s 7 of the Act. On November 9, 1959, the Land Acquisition Collector awarded compensation at the rate of Rs. 1,000/-per bigha with respect to lands in the above C. S. Plot except plot No. 1149 which is a doba and the same was assessed at Rs. 500/- per bigha As no agreement was reached between the parties with regard to the assessment made by the Land Acquisition Collector, an Arbitrator was appointed by a notification dated 17th of May, 1960, and, a reference was made to him on 29-6-60. The claimant claimed Rs. 4,000/- per bigha as fair compensation for the lands and Rupees. 2,000/- per bigha for the "doba". The claimant contended before the Arbitrator that Clause (b) of Section

8(3) of the Act was ultra vires and the Arbitrator should award compensation under Clause (a) of Section 8(3) of the Act. The learned Arbitrator rejected the claimant's contention and awarded compensation of the lands at Rs. 1400/- per bigha and the doba at Rs. 700/- per bigha, being double the rate that was prevalent at the time of requisition. The claimant, being aggrieved against the said award of the learned Arbitrator, preferred this appeal in this Court.

2A. Mr. Gupta, the learned Advocate appearing on Behalf of the claimant, contended that as Clause (b) of Section 8(3) of the Act had been declared ultra vires by the Supreme Court in *Union of India (UOI) Vs. Kamlabhai Harjiwandas Parekh and Others*, the value of the land should be assessed as on the date of acquisition.

3. Mr. Sen the learned Advocate appearing on behalf of the State, contended that after the Constitution (4th Amendment) Act, 1955, under Article 31(2) of the Constitution inadequacy of compensation is not justiciable and when Parliament has expressly enacted that no law shall be called in question in any court on the ground that the compensation provided is not adequate, it was intended clearly to exclude from the jurisdiction of the court an enquiry as to whether the amount fixed or determined by the application of the principles stated in the statute is "a just equivalent" of what the owner of the land is deprived of. In other words, the argument is, that neither the principles prescribing the "just equivalent" nor the amount awarded as "just equivalent" can be questioned by the Courts on the ground of inadequacy of compensation.

4. *Union of India (UOI) Vs. Kamlabhai Harjiwandas Parekh and Others*, was decided by the Supreme Court following the principle stated in *The State of West Bengal Vs. Bela Banerjee and Others*, in respect of the Acts enacted before the Constitution (4th Amendment) Act, 1955. The Amendments made in Article 31 of the Constitution are not given retrospective operation. The result is, that in a case where acquisition was made pursuant to a statute enacted before April 27, 1955, the law declared in *Bela Banerjee's* case and followed by *Kamalabai's* case would continue to apply (*Vide, State of Gujarat Vs. Shantilal Mangaldas and Others, The Requisitioning and Acquisition of Immovable Property Act, 1952 (Central Act XXX of 1952)* was enacted on March 14, 1952. The Supreme Court in *Kamalabai's* case decided the vires of the said Act on the anvil of the Constitution as it stood before the fourth amendment.

Therefore, the amended provisions of Article 31(2) of the Constitution are not attracted to the present case, in view of the fact, that the Central Act, XXX of 1952, was enacted prior to the date when the Constitution (4th Amendment) Act, 1955, came into force.

5. The learned Arbitrator passed the award in the instant case on the basis of Clause (b) of Section 8(3) of the Act and so he did not come to any finding as to what was the value of the land on the date of the acquisition. Mr. Sen submitted that we should remit the case to the learned Arbitrator for determining the

Valuation on fresh evidence. We find there is sufficient material on record which makes it possible for us to come to a reasonable assessment of the value of the lands of the land on the date of the acquisition.

6. Ext. 1 (c) is a kobala executed on the 12th February, 1959, which would be relevant for ascertaining the rate of the market value near about the date of the acquisition. In that kobala lands were sold at the rate of Rs. 10,950/- per bigha. The acquired lands are situated within the Dum Dum Municipality. It is only five miles from Calcutta. Many industries, -- big and small have grown up in and around the locality. The claimant however has claimed only Rs. 2,800/- per bigha. Considering the nature of the land and the evidence on record, we are of opinion that the valuation of the land cannot be less than Rs. 2800/- per bigha as claimed and on that basis the value of the doba (C. S. Plot No. 1149) also cannot be less than Rs. 1400/- per bigha.

6A. In the result, this appeal is allowed. We order that a sum of Rs 15,542.19 calculated on the basis of Rupees 2800/- per bigha of the lands including the "doba" be paid to the claimant-appellant in addition to the sum which had already been paid to him. The claimant is also entitled to interest at the rate of 6% (six per cent) per annum on the compensation money till the date of payment.

There will be no order as to costs.

Gupta, J.

7. I agree.