
(1979) 05 CAL CK 0005
In the Calcutta High Court
Case No : A.F.O.D. No. 178 of 1975

Sm. Lily Ghosh and Others	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 28-05-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 23(2)

Citation : AIR 1979 Cal 329

Hon'ble Judges : Sharma, J;M.M. Dutt, J

Bench : Division Bench

Advocate : Bhabani Prasun Chatterjee and Mani Mohan Mukherjee, for the Appellant; Manindra Chandra Chakrabarti, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—This appeal is at the instance of the referring claimants and it arises out of a reference case u/s 18 of the Land Acquisition Act, 1894.

2. The appellants were the owners of the acquired land measuring 3 bighas 15 cottahs 2 chhataks 40 sq. ft. and appertaining to the municipal premises No. 109B, Ultadanga Main Road, Calcutta. The appellants were in need of money for paying off their debts due on account of the mortgage of the acquired land to the Sindu Family Annuity Ltd. The Refugee Rehabilitation Department of the Government of West Bengal was in need of land for the purpose of establishing a refugee market. The appellants approached the said Department offering to it to sell the acquired land. The Department agreed to purchase the acquired land and the market price was thereafter settled amicably at Rs. 1,600/- per cottah. It appears that it was also agreed between the parties that the Government would acquire the land so as to perfect its title, for admittedly it was under a mortgage. On April 25, 1956, the appellants delivered possession of the acquired land to the Refugee Rehabilitation Department, and on May 24, 1956 the notification u/s 4 of the Land Acquisition Act was published in the official Gazette. The appellants approached the Government for payment to them of 80 per cent of the price

settled so as to enable them to pay off the mortgage debt. They also made a claim before the Collector pursuant to a notice u/s 9 of the Land Acquisition Act for payment of the additional sum of 15 per cent as provided in Section 23(2) of the Act. On August 27, 1956, the Government sanctioned payment to the appellants of the 80 per cent of the price subject to their right to claim the additional 15 per cent. On Oct. 5, 1956 an agreement was executed by the parties for the payment by the Government to the appellants of a sum of Rs. 96,231/-, being the 80 per cent of the price of the acquired land. It is not disputed that the appellants were paid the said sum as agreed.

3. The Collector made a formal award of compensation for Rs. 1,20,288.89 calculated at the agreed rate of Rs. 1,600/-per cottah including the additional sum of 15 per cent. What the Collector did was that he split up the said sum of Rs. 1,20,288.89 into two parts, namely, Rs. 1,04,599.03 and Rs. 15,689.86, the former being the market-value and the latter being the additional 15 per cent.

4. The appellants, being aggrieved by the award of the Collector, filed an application u/s 18 of the Land Acquisition Act for a reference to the District Judge. The Collector made a reference as prayed for. The only claim that was made by the appellants in the reference case before the Special Land Acquisition Judge was a claim for the additional 15 per cent on the market-value of the acquired land settled between the parties at the rate of Rs. 1,600/- per cottah. The learned Special Land Acquisition Judge, however, came to the finding that in the facts and circumstances of the case, the appellants had waived their right to claim the additional sum and, as such, they were not entitled to the said additional sum of 15 per cent. In that view of the matter, he dismissed the reference case. Hence this appeal.

5. The only question that is involved in this appeal is whether the appellants are entitled to the statutory allowance of 15 per cent in terms of the provision of Section 23(2) of the Land Acquisition Act. Section 23(2) inter alia provides that in addition to the market-value of the land, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of acquisition. The section is undoubtedly mandatory in nature. The reason for the grant of the additional sum is obvious, namely, the disinclination of the owner to part with his land. The payment of additional sum is by way of solatium to the owner. But the question is where the owner wilfully offers his land for acquisition by the Government at an agreed market-value, whether he will be entitled to claim the additional sum over and above the agreed price of the land. It is urged by Mr. Bhabani Prasun Chatterjee, learned Advocate appearing on behalf of the appellants, that in view of the mandatory nature of the provision of Section 23(2), the Government is under an obligation to pay the additional sum. There can be no doubt that when land is acquired under the Land Acquisition Act, the Court shall allow to the owner whose land has been acquired the additional sum over and above the market-value of the land. As has been stated already, the provision of Section 23(2) is mandatory.

But the question is when the element of compulsion is absent, or in other words, when the land is acquired on the basis of an agreement between the owner of the land and the Government, whether the provision of Section 23(2) would apply. In our opinion, as the payment of additional sum is made because of the compulsory nature of acquisition as mentioned in Section 23(2), the Government will not be bound to pay the additional sum when the acquisition is made not compulsorily against the will of the owner but under an agreement. In the Privy Council case in *Secretary of State for India v. Shanmugaraya Mudaliar* (1893) 20 Ind App 80, which has been strongly relied on by the appellants, though the owner of the land was willing to sell the land at a moderate price, he was granted the additional sum of 15 per cent. In the Privy Council case, the land was not acquired on the basis of an agreement, as it could not be, for there was dispute about the ownership of the land. Moreover, no such point arose for the consideration of the Privy Council. In the circumstances, the said decision of the Privy Council is not applicable in the instant case.

6. It is, however, contended on behalf of the appellants that the appellants had agreed to the fixation of the market-value of the acquired land at Rs. 1,600/-per cottah subject to their claim to the statutory allowance of 15 per cent. After the market-value or the price of the acquired land was agreed to by and between the appellants and the Government before the publication of the notification u/s 4, the appellants claimed the additional sum after the publication of the notification. The agreement dated Oct. 5, 1956 (Ext. A) that was executed by the appellants and the Government in connection with the payment of 80 per cent of the amount of compensation to the appellants shows that the appellants had waived their right to claim the additional sum of 15 per cent. The relevant portion of Ext. A is as follows:

"That upon the completion of the investigation of the title of the said several plots of lands, hereditaments and premises mentioned and described in the Schedule hereunder written so proposed to be acquired and about the claims regarding the compensation payable for the acquisition of the same under the Land Acquisition Act aforesaid and upon the owners being found to be solely and absolutely entitled to the compensation including statutory allowance payable for the acquisition of the said several plots of lands, hereditaments and premises mentioned and described in the Schedule hereunder written, the owners shall accept the market-value of Rupees 1,20,289/- (Rupees one lac twenty thousand two hundred eighty nine) only in respect of the acquisition of the said several plots of lands, hereditaments and premises described in the Schedule hereunder written and shall appropriate the amount of Rs. 96,2310/- so agreed to be advanced by the Governor to the owners in manner aforesaid towards the same and the owners shall have no further or other claims whatsoever against the Governor or the Government in respect of the acquisition of the said several plots of lands, hereditaments and premises mentioned and described in the Schedule hereunder written save and except the balance that will remain payable for, such compensation as aforesaid in accordance with the terms of this agreement."

7. It is clear from the relevant portion of the agreement set out above that the appellants had waived all other claims against the Government which obviously included the claim to the additional sum of 15 per cent. We are unable to accept the contention made on behalf of the appellants that they had only agreed not to claim any amount other than the amount that was agreed to between the parties as to the market-value of the acquired land. In our view, it has been clearly stipulated in Clause (2) of the agreement quoted above that the appellants had waived all other claims against the Government.

8. The question, however, is whether there can be a waiver of a right under a mandatory provision of law. It has been stated in Maxwell's Interpretation of Statutes, 12th Ed. page 328, that everyone has a right to waive and agree to waive the advantage of a law made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy. The provision of Section 23(2) does not involve any public right or public policy. It has been enacted for the benefit of a particular person, namely, the owner of the land. Waiver of the benefit conferred by Section 23(2) on the owner of the land, will not infringe any public right. It is true that as Section 23(2) is mandatory, it is obligatory for the Government to pay the additional sum of 15 per cent, but such obligation will arise when the acquisition is compulsory in nature and not where the acquisition is made at the instance of the owner of the land and under an agreement between him and the Government as it had happened in the present case. It has been observed in Craies on Statute Law (7th Ed., page 269), "But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the Court."

In view of the above principles of law, the owner of the land is entitled to waive the benefit of the payment of the additional sum of 15 per cent as provided in Section 23(2) of the Land Acquisition Act. In our opinion, the appellants have waived their right to the additional sum and after such waiver they are precluded from laying a claim to the same. The learned Special Land Acquisition Judge was, therefore, perfectly justified in overruling the contention of the appellants that they were entitled to the statutory allowance u/s 23(2). No other point has been urged in this appeal.

9. In the result, the appeal is dismissed, but in view of the facts and circumstances of the case, there will be no order for costs.

Sharma, J.

10. I agree.