
(1971) 09 CAL CK 0008
In the Calcutta High Court
Case No : A.F.O.D. No. 166 of 1960

Sm. Pratima Ghosh and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 13-09-1971

Acts Referred:

Evidence Act, 1872 — Section 13
Land Acquisition Act, 1894 — Section 11

Citation : AIR 1973 Cal 284 : (1973) 1 CALLT 428 : 77 CWN 294

Hon'ble Judges : M.M. Dutt, J;Arun K. Mukherjea, J

Bench : Division Bench

Advocate : Amarendra Nath Gupta and Provash Chandra Basu, for the Appellant; P.B. Chatterjee and Sushil Kumar Banerjee, for the Respondent

Final Decision : Partly Allowed

Judgement

M.M. Dutt, J.—This appeal was preferred by the referring claimant against the award of the Calcutta Improvement Tribunal (hereinafter referred to as the Tribunal). The referring claimant having died during the pendency of the appeal his heirs and legal representatives were substituted in his place and they are the present appellants before us.

2. Premises No. 32. Bagman Lane is the acquired property and is the subject-matter of this appeal. On tile contiguous west of premises No. 32, is the premises No. 33. Bagmari Lane. Premises Nos. 29. 30 and 31. Bagmari Lane are situate on the contiguous east of Premises No. 32.

3. Although, the acquired property is numbered as 32. Bagmari Lane, no part of it is situate on the Bagmari Lane. On the South of this premises there is a 16 feet wide common passes running East-West and the frontage of the premises is on this common passage. The common passage meets the Bagmari Lane on the East. Premises No. 33 also has its frontage on the common passage, but the other three premises, namely, premises Nos. 29. 30 and 31 have their respective frontages on the Bagmari Lane. It is thus apparent that between premises No. 32

and the Bagmari Lane, those three premises are situate and consequently, premises No. 32 is some distance away from Bagmari Lane.

4. The Collector determined the market value of premises No. 32 of Rs. 1,400/- per cottah and awarded a sum of Rs. 19,718.61 as compensation at the said rate. The Collector did not allow the solatium of 15 per cent, on the market value in view of the subsequent amendment of the Calcutta Improvement Act in 1955.

5. Being aggrieved by the award of the Collector, the referring claimant made an application for reference u/s 18 of the Land Acquisition Act claiming the market value of the acquired land at the rate of Rs. 4,500/- per cottah and also claimed the statutory allowance of 15 per cent, on the total amount of the market value.

6. It may be stated at this stage, that premises Nos. 33 and 29 Bagmari Lane, were also acquired by the Calcutta Improvement Trust. Before the Tribunal both parties examined their respective experts and both the experts relied on the judgments of the Tribunal passed in reference proceedings against the awards of the Collector in respect of premises Nos. 29 & 33. Premises No. 33 consists of a tank measuring 17 cottah 8 chattaks 15 sq. ft which is only a portion of the tank and solid land measuring 12 cottah 6 chattaks 31 sq. ft. It is not disputed that tank land is treated as half of solid land and on this basis the area of solid land comprised in premises No. 33 will be 21.18 cotta. It is also not disputed that in view of the total market value that was assessed by the Collector in respect of solid land of premises No. 33, namely. Rs. 28,414.62, the average rate of market value per cottah comes to Rs. 1343/-.

7. As premises No. 33 was situate on the contiguous West of premises No. 32 and had its frontage on the common passage, the former was taken to be the comparable unit in determining the market value of the latter. It appears that the Tribunal proceeded on the footing that the Collector took into his consideration the basic rate i.e., the front belt value of land of premises No. 29, Bagmari Lane which was found in the award in respect of that premises as Rs. 2,200/-. By deducting 36 per cent from the basic rate of Rs. 2,200/ on account of unsuitability of the land of premises No. 33 for building or factory sites, its low level and water-logged nature, and the position of the tank and on further deduction of 5 per cent, for largeness of area, the Collector deduced the basic rate of premises No. 33 as Rupees 1,400/- per cottah.

8. The basic rate in respect of the land of premises No. 29 was enhanced by the Tribunal from Rs. 2,200/- to Rs. 2,327/- in the reference proceeding from the award of the Collector. In the instant case, the Tribunal took the view that as the basic rate of premises No. 33 was determined on the basis of the basic rate of premises No. 29 and as the basic rate of the latter was enhanced from Rs. 2,200/- to Rs. 2,327/- in the reference proceeding, the proportionately enhanced basic rate of premises No. 33 which comes to Rs. 1,489/- per cottah, should be taken into account for the purpose of determining the market value of premises No. 32.

9. The Tribunal accepted the evidence of the appellant's expert D. C. Banerjee that there were five items of disadvantages of premises No. 33 as compared with premises No. 32. The disadvantages of premises No. 33 as found by the Tribunal are as follows:-- (I) the Western boundary runs across the tank; (II) low level of portions of the premises; (III) irregular shape of solid land; (IV) greater distance of the premises from Bagmari Lane; (V) low level of the common passage in front of the premises.

10. For the aforesaid disadvantages found by the Tribunal in respect of premises No. 33, the expert D. C. Banerjee claimed an addition of 25 per cent, and a further sum of Rs. 55/- per cottah on the ground of nearness of premises No. 32 from Bagmari Lane. The Tribunal held that in determining the market value of premises No. 32 there should be an addition of 11.20% on Rs. 1,489/- which was calculated to be the basic rate of premises No. 33. In that view of the matter the Tribunal increased the said basic rate of Rupees 1,489/- per cottah by Rs. 166.79 which comes to Rs. 1,655.79. The Tribunal, however, took the round figure of Rupees 1,656/-.

11. Before the Tribunal it was contended on behalf of the appellant that the rate of Rs. 1,656/- per cotta should be taken as the average rate for the purpose of valuing the land of premises No. 32. In support of the said contention it was pointed out to the Tribunal that the Collector in valuing the said land of premises No. 33, took Rupees 1,400/- as the average rate and not the basic rate and that the same was confirmed by the Tribunal in the reference proceeding from the award of the Collector inasmuch as the reference proceeding was ultimately dismissed. In repelling the contention, the Tribunal referred to an observation in the judgment of the Tribunal relating to premises No. 29 which, according to the Tribunal showed that the rate was not the average rate but basic rate i.e., the front belt rate.

12. For the reasons aforesaid the Tribunal came to the conclusion that the premises No. 32 should be valued at the rate of Rs. 1,656/- per cotta as the basic rate and not as the average rate. Calculating the value of premises No. 32 at the basic rate of Rs. 1,656/- per cotta, the Tribunal enhanced the amount of compensation awarded by the Collector by Rs. 169.95. The Tribunal, however, allowed the statutory allowance of 15% on the market value. Further, a sum of Rs. 500/- was awarded u/s 48-A of the Land Acquisition Act.

13. It may be stated here, that the judgment of the Tribunal in respect of premises No. 33 and two other premises, namely, premises Nos. 34 and 35 was set aside by this Court in F. A. Nos. 227, 228 and 229 of 1957. This Court sent the cases back to the Tribunal for fresh consideration.

14. In our view, the Tribunal proceeded in a round about way and that has created confusion and also complications. The award of the Collector in respect of premises No. 33 (Ext. 1) does not at all show that he took the basic value of solid land of premises No. 33 as Rs. 1,400/- Per cotta. The only thing which

appears from the award (Ext. 1) is that the solid land of premises No. 33 was valued at the rate of Rs. 1,343/- per cotta. This rate was admitted by the learned Advocates of both the parties as the average rate. Mr. Chatterjee, learned Advocate appearing on behalf of the respondent submitted that it would appear from the reasons given by the Collector in connection with the reference proceeding relating to premises No. 33 that he took the basic value at Rupees 1,400/- per cotta and that accordingly, the Tribunal was justified in taking the same into its consideration. We are unable to accept this contention of Mr. Chatterjee, for the simple reason that what is evidence is the award of the Collector and not the reasons given by him in connection with the reference proceeding in justification of his award.

15. Mr. Chatterjee, however, contended that an unaccepted award could not be relied on as a piece of evidence for determining the market value of similar land. In support of his contention. Mr. Chatterjee placed reliance on a decision of this Court in *Secy, of State for India v. Nagendra Kumar Bose*, (1938) 42 Cal WN 27. It was observed in that decision that an accepted award was undoubtedly as good evidence as any other award by the Collector made in a Land Acquisition Proceeding against which no reference was sought u/s 18 of the Land Acquisition Act, for determining the market value of land acquired. There can be no doubt about the soundness of the said observation, but in the instant case it has no application. In that case, the accepted award was relied on behalf of the Government and the question was whether the owner or the person interested who accepted the award should be examined or not. It was held that it was not necessary as the accepted award was a good piece of evidence. That observation therefore was made in a different context.

16. The Collector acts in the matter of the enquiry and the valuation as the agent of the Government (See *Ezra v. Secy. of State*. ILR 1903 Cal 36). Consequently, an award of the Collector is an offer of compensation made on behalf of the Government. The Government is bound by the offer but not the claimant, for, he can seek a reference to the Court from, the award u/s 18. An award which has not been accepted by the owner or the person interested, cannot be relied on by the Government as evidence of market value of land in a different land acquisition proceeding for the simple reason that the award contains an unaccepted offer of compensation made on behalf of the Government. So long the award is not accepted by the owner or the person interested or so long it is not upheld by the Court in a reference proceeding, it cannot be said that the offer contained in the award is an offer of the market value of the acquired land. But a claimant in a different proceeding can very well rely on the unaccepted award as evidence of the market value and if the land be similar to the land in respect of which the award relied upon was made, the Government will be precluded from saying that the offer contained in the award does not represent the market value of the acquired land. There is therefore, no force in the contention of Mr. Chatterjee that the award of the Collector in respect of premises No. 33 could not be relied on by the appellant for determining the

market value of the land of premises No. 32, as the award was an unaccepted award.

17. There is no indication in the judgment of the Tribunal in the reference proceeding in respect of premises No. 33 whether the valuation was made by belting method or not. In our view, the Tribunal committed an error of law in relying on the observations made in the decision of the Tribunal relating to premises No. 29 for the purpose of showing that although the reference case was dismissed by the Tribunal in respect of premises No. 33, the Tribunal had in its mind the front belt rate or the basic rate. The observations made by the Tribunal regarding the rate of valuation of premises No. 33 in a different proceeding, is not evidence. It has been seen that there was nothing in the judgment of the Tribunal in respect of premises No. 33 that the premises was valued by the bleating method. It is not permissible for the Tribunal to rely on a mere observation in the judgment in respect of premises No. 29 so as to ascertain what was in the mind of the Tribunal when it decided the reference case relating to premises No. 33. Further, the judgment of the Tribunal in respect of premises No. 33 having been set aside by this Court, it is no longer evidence and cannot be referred to.

18. For the reasons aforesaid, the only evidence which is relevant is the award of the Collector regarding premises No. 33. It has been already stated that premises No. 33 was valued by the Collector at the average rate of Rupees 1,343/- per cotta. As found by the Tribunal the average rate of Rs. 1,343/- has to be increased by 11.20 per cent, in view of the disadvantages of premises No. 33. Mr. Gupta, however, submitted that in granting an increase of only 11.20 per cent, for the disadvantages, the Tribunal acted arbitrarily. In coming to the finding that an allowance of 11.20 per cent, should be given for these disadvantages, the Tribunal relied on the evidence of the appellant's expert D. C. Banerjee. Even if we do not agree with the reasons given by the Tribunal regarding the percentage which should be allowed for the disadvantages, we cannot set aside the finding of the Tribunal which we consider to be a finding of fact, in view of the limited scope of the appeal.

19. The Tribunal was of the view that there should be deduction of 21/2 per cent, for the largeness of premises No. 32 and that 24 per cent, should be added for the nearness of premises No. 32 from Bagmari Lane. The result of the deduction and addition was nil as the percentage was the same in both the cases. In coming to the said finding the Tribunal relied on the evidence of the experts of the parties. So far as the question of deduction on the around of largeness of area of premises No. 32 is concerned, it is apparent that the Tribunal has committed an error. The area of solid land of premises No. 32 is smaller than the area of solid land of premises No. 33. It was argued that as premises No. 33 was larger in area than premises No. 29, a deduction of 5 per cent, was made from the valuation rate of premises No. 29 for the purpose of determining the market value of premises No. 33. The award of the Collector regarding premises No. 33

does not show that any such deduction was made. We have already held that the reasons given by the Collector in connection with the reference case cannot be looked into as evidence. Apart from that, the market value of premises No. 32 is being determined on the basis of the valuation of premises No. 33 and not of premises No. 29. We are therefore, of the view that the Tribunal committed an error of law in making a deduction of 21/2 per cent for the alleged largeness of area of premises No. 32.

20. Premises No. 32 is smaller in area than premises No. 33 and the size and shape of the former are more or less uniform, but the size and shape of the latter are irregular. It is apparent from the key plan that the premises No. 32 is much better in every respect than premises No. 33. Premises No. 32 being smaller in area than premises No. 33, will undoubtedly fetch greater value than premises No. 33. This aspect has not been considered by the Tribunal. We are of the view that a further 5 per cent, should be allowed i.e., 21/2 per cent, for the smallness of area and another 21/2% for the nearness of premises No. 32 from Bagmari Lane. The Tribunal has allowed 11.20 per cent, for the disadvantages and to this a further 5 per cent, should be added, so that the total percentage by which the average rate of Rs. 1,343/- per cotta should be increased for fixing the market value of premises No. 32 comes to 16.20.

21. In the result the judgment and award of the Tribunal are modified as follows:--

The market value of the land of premises No. 32 is determined at the average rate of Rs. 1,343/- plus 16.20 per cent, of that rate, per cotta. The appellants shall be entitled to compensation at that rate.

In addition to the market value calculated at the above rate, the appellants shall be entitled to a sum of 15 per cent, on such market value u/s 23(2) of the Land Acquisition Act, 1894. The appellants shall also get a sum of Rupees 500/- only as compensation for the damage suffered by them for the delay in making the award, u/s 48-A of the Land Acquisition Act.

The amount of compensation in excess of the amount awarded by the Collector shall bear interest at the rate of six per cent, per annum from the date the Collector took possession of the acquired premises No. 32 till payment of the same into the Tribunal.

The payment of the enhanced amount shall be made by the Collector within three months from the date of communication of the award to him.

22. The appeal is allowed in part with cost.

Arun K. Mukherjea, J.

23. I agree.