
(1970) 08 CAL CK 0028
In the Calcutta High Court

Sm. Ranibala Bhar and Others

APPELLANT

Vs

Banga Laxmi Cotton Mills and Another

RESPONDENT

Date of Decision : 06-08-1970

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 20, 21, 23, 25(1)
West Bengal Non-Agricultural Tenancy Act, 1949 — Section 7

Citation : 75 CWN 628

Hon'ble Judges : Salil Kumar Datta, J;S.K. Chakraborty, J

Bench : Division Bench

Advocate : Manindra Nath Ghosh and Samarendra Nath Banerjee, for the Appellant; Narayan Chandra Dey and Monohar Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Salil Kr. Datta, J.—This appeal arises out of land acquisition proceedings. The lands situate in Mouja Mahesh, P.S. Srirampore in the District of Hooghly measuring 4.938 acres were notified on December 19, 1949 for acquisition u/s 4 of the Land Acquisition Act, 1894 for extension of the mills of the Bengal Luxmi Cotton MHLs Ltd. (hereinafter referred as the company) at its expense. This notification was followed up by the declaration on December 17, 1953, and the Collector made his award on January 11, 1955 while the possession of the lands was taken on July 12, 1957. The lands under the said acquisition were included in a brick-field which comprised quite a large area of 7.753 acres of lands and were owned by Dey Chowdhurys. The brick-field was settled with one Nilkanta Srimani, for and on behalf of the appellants as claimed by them, for a period of 3 years commencing from Kartick, 1350 B.S. to Aswin, 1353 B.S. at an annual rent of Es. 2,6001-. It further appears that there were 3 kilns in the settled lands and the appellants in the name of their firm T. N. Bhar & Co. carried on the business of manufacture and sale of the bricks in the settled lands. After the expiry of the period of the lease, according to the appellants, they went on holding over the settled lands at an enhanced rent of Rs. 3,200- per year obviously under the same terms and conditions as before and were in possession thereof when the

acquisition proceedings started. It further appears that the Dey Choudhury as lessors instituted a suit being Title Suit No. 10 of 1955 in the Second Court of Subordinate Judge, Hooghly on February 8, 1955 for khas possession of the brickfield on eviction of Nilkanta Srimani therefrom and for mense profits and the suit was contested by the defendant Nilkanta denying the liability for eviction, and stating that the appellants were the partners of T. N. Bhor & Co. for whose benefit and interest the settlement was taken and they are the persons who are the appellants before us in this appeal. The said suit was however dismissed on August 1, 1958 for non-prosecution on the basis of a joint petition filed in the said proceedings.

2. Before the Collector the lessors as also the appellants filed their respective claims and the Collector determined the proportionate annual rent for the lands acquired, out of the settled lands, at Rs. 1,550/- and compensation was awarded to the lessors by capitalising the net income at 20 times of the annual rent less expenses. For the appellants, the Collector assessed the loss of their business at 4 times the net annual loss and the total loss was determined at Rs. 16,300/- for which the award was made. For removal costs a further amount of Rs. 1,000/- was awarded for bricks and Rs. 200/- for kiln.

3. Being dissatisfied with the award the lessors as also the appellants filed applications for reference and two reference cases started accordingly. The L. A. Case No. 854 of 1957 concerned the lessors while L. A. Case No. 330 of 1959 was in respect of the claim by the appellants. The learned District Judge by the same judgment modified the award of the Collector in respect of the claim of the lessors holding that the proportionate annual rent for the acquired land would be Rs. 1,784/8- and 20 times of this amount as the capitalised value of rent would be the compensation for the land acquired; to this was added an additional compensation of 15 per cent and the total compensation was determined at Rs. 4,1043 1/8/-favour of the lessors.

4. Before the District Judge the appellants claimed Rs. 3,72,450/- being the 15 times the annual net profit for the loss of their business and Rs. 15,750/- as the lessees' interest in the acquired lands, Rs. 2,000/- for loss of breakage at the time of transit and Rs. 15,500/- for removal cost. The additional statutory compensation of 15 p.c. was also claimed. In respect of the said claims, the learned Judge was of the opinion that in view of the nature of lease under which the appellants were holding the acquired lands at the time of acquisition they had no permanent interest in the settled lands. Accordingly they were not entitled to anything more than a year's net profit for loss of their business in any event and the Collector's award of 4 years' net profit was without any basis; as it was not possible for the reference court to reduce the quantum of compensation awarded by the Collector, the District Judge by his judgment and decree dated June 23, 1960 dismissed the claim in the appellants' reference case on contest.

5. The present appeal is by the; appellants against- the said decree and has

been valued at Rs. 94,500/- (Rs. 1,12,000/- now claimed less Rs. 17,500/- awarded).

6. Mr. Manindra Nath Ghosh, the learned Advocate appearing for the appellants, has contended that the learned Judge was in error in not considering that the appellants had an interest in the lands and for deprivation of that interest they were entitled to adequate compensation. Elaborating his argument, he contended that the lease commenced from Kartick 1, 1350 B.S. and possession of the lands was taken on July 12, 1957. The appellants were thus in possession of the lands as lessees since 1943 and as such by the time the possession was taken from them by the acquiring authority the appellants had been in possession for well over 12 years, thereby acquiring a non-ejectable tenancy in respect of the settled lands as provided in Section 7, Clause (4) of the West Bengal Non-Agricultural Tenancy Act, 1949. For acquisition of such interest, Mr. Ghose contended, the appellants were entitled to adequate compensation. Further by the dismissal of the suit for khas possession of the brick-field, the lessors forfeited their right to possession, thereby conferring on the appellants a permanent and non-ejectable right in the settled lands.

7. We have examined the original "deed of lease which was produced at our request by the appellants in court and a copy or counterpart whereof appears to have been marked as Ext. 1 though not found in the record. The deed of lease is a settlement of a brickfield with all its equipments, and appliances and not of the lands whereon the brick-field is situate. The provisions of West Bengal Non-Agricultural Tenancy Act has, therefore, no application. Further under provisions of Section 23 of the Land Acquisition Act, the market value of any property acquired is to be determined on the basis of the market value of the land at the date of the publication of the notification u/s 4. We have seen that the notification was published in or about December 19, 1949. At that point of time, the appellants, assuming they had any interest in the lands on the basis of a settlement or otherwise, did not acquire any non-ejectable or permanent rights in the lands and the alleged subsequent acquisition of that right after 12 years" possession could not relate back to the date of notification as contended by Mr. Ghosh for the purpose of determination of compensation of the appellants" interest. Further the appellants must be deemed to have been holding over the brick-field under the same terms and conditions as in the original lease and under its clause 9 the lessors only were entitled to the entirety of the compensation money for the acquisition of the lands and the brick-field thereon or any portions thereof. The dismissal of the suit for possession has also no bearing as on the taking over of the possession of the acquired lands long prior to such dismissal, the lessors" title to the acquired lands passed on and became vested in the acquiring authority. Considering all aspects, it appears to us that the appellants cannot be deemed to have any interest in the lands and accordingly, in agreement with the learned Judge, we hold that the appellants are not entitled to any compensation for the acquisition of the lands.

8. Mr. Ghosh next contended that the learned Judge was in error in holding that the appellants were not entitled to four times the annual profit they used to earn from the brick-field out of their business on the acquired lands as assessed by the Collector. While the appellants were dissatisfied with the quantum assessed for which the reference was prayed for, the learned Judge on a reference to him under the Land Acquisition Act had no jurisdiction to hold that the basis of the Collector's determination of loss of business was wrong or not maintainable in the law or on fact. In support he relied on Sections 21 and 25(1) of the Land Acquisition Act, 1894. The provisions of the said sections are as follows :

21. "Restriction on scope of proceedings.

The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interest of the persons affected by the objection.

25(1). Rules as to amount of the compensation. When the applicant has made a claim to the compensation, pursuant to any notice given u/s 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11.

* * * On a reference to, these sections, Mr. Ghosh contended that the learned Judge was wrong in entering into the basis of the assessment of the Collector for the compensation for loss of business. In support reliance was placed in the decision in (1) Lila Mahton Vs. Sheo Govind Singh, . The above contention has been disputed by Mr. Narayan Chandra De, the learned Advocate appearing for the company, who has contended that the jurisdiction of the Land Acquisition Judge is not circumscribed by Section 21 or 25(1) of the Act as contended by Mr. Ghosh. The Judge is competent to consider when objection has been taken to the valuation of the Collector, about the propriety or the basis of such assessment, though the Judge is not competent u/s 25(1) to reduce the quantum of valuation assessed by the Collector.

9. There is no doubt that the Land Acquisition Judge is not a court of appeal over the Collector and is not entitled to go outside the reference. When an objection is taken to the Collector's award leading to a reference, the Land Acquisition Judge is confined to a consideration of such objection, being the only matter referred and such court is not competent in law to travel beyond it. As was observed in (2) Pramatha Nath Mallick v. Secretary of State for India in Council, 34 CWN 289 (PC) : "Their Lordship have no doubt that the jurisdiction of the Courts under this Act (Land Acquisition Act, I of 1894) is a special one and is strictly limited by the terms of these sections (Sections 20, 21). It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred and the Court has no power to determine or consider anything beyond it."

In this case an objection was taken before the Court as to measurement of the lands under acquisition, though no such objection was taken before the Collector

and reference was for determination of proper compensation and valuation of the lands. The Privy Council rejected the objection as to measurement as it was distinct objection under the Act beyond the scope of reference.

10. In (1) *Leela Mahton v. Sheo Govinda Singh* (supra) it was observed that the Court acting under the Act has no jurisdiction to look into proceedings anterior to the reference before the Collector however erroneously he may have acted in law or in fact or both in making the reference. In this case, references were made for apportionment between claimants and the appellant claimed compensation as a "shikmidar" and was described as such in the award though in response to notice u/s 9 no such claim was made in his petition. The Court in the view it took that the appellant had given up his claim to the value of the land and the dispute was not about the "shikmi" right as mentioned by the Collector did not allow the appellant to adduce evidence in support of his claim as "shikmidar". The High Court in setting aside the order also observed that the Court had no right to modify the scope of the reference referred to it by the Collector.

11. In the case before us the objection was as to the assessment of the compensation made by the Collector in the various heads and the reference made by the Collector was thus concerned with the determination of the compensation for the acquisition. The appellants claimed that they were entitled to loss of business calculated at the rate of fifteen times of the annual loss of profit and it was therefore open to the Land Acquisition Judge to consider the amount in the head of loss of profit of their business to which the appellants would be entitled for the acquisition. In considering such claim for enhancement of valuation the learned Judge, in our opinion, was within the limit and scope of the reference to examine the principles which would govern the assessment of compensation in such a case. We therefore find nothing wrong in the learned Judge's entering into the basic principles for determination as to the appropriate amount of compensation for loss of profit to which the appellants in the circumstances would be entitled, and, the only limitation on the Court's powers being in regard to the quantum of such compensation provided in Section 25(1) which lays down that the Collector's determination of the amount of compensation cannot be reduced by the learned Judge in reference.

12 & 13. The court then proceeds to consider the evidence about the projects arising from the brick-field within the acquired lands and hold "It is therefore not possible to come to any conclusive or precise finding about the annual profit for the kiln No. 1 and in fact, the Collector's assessment of its annual profit of Rs. 4,075/- appears to be without basis."

14. Mr. Ghosh has strenuously contended that the appellants were entitled at least to four years' annual loss of profits from the brick-field acquired, as by the acquisition their business in that brick-field and the income therefrom had come to an end. Mr. De has contended that the appellants were not entitled to the loss of profits claimed and on their application they were granted more time than they asked for, for removal of themselves and their articles from the brick-field.

It appears that even on December 7, 1953, the appellants lodged their claim with the Collector for compensation for the acquisition. The notification for acquisition was published as early as on December 17, 1949. On January 20, 1955 a notice for delivery of possession was served on the appellants and on January 27, 1955, they made an application to the Collector praying for time till end of September, 1955 to remove themselves and deliver possession of the acquired lands while possession was actually taken on July 27, 1957.

15. We have seen that the claimants had no interest in the lands acquired and they were at its highest the lessees of the brick-fields with appliances and equipments, on a tenancy determinable by six months' notice. The nature of the tenancy being precarious, we are in agreement with the learned Judge that the appellants would not be entitled in all to more than one year's profits for the loss of their business at the acquired brick-field. On the materials on record, the appellants have not been able to establish the profits they earned from the kiln No. 1 which was on the acquired lands. In view of the provisions of the Act, it was not possible also for the learned Judge to reduce the amount awarded by the Collector and we are unable to hold that it was erroneous in the circumstances.

16. It may also be noted that the loss of profits is awarded for the purpose of rehabilitating the displaced persons as far as possible. In (3) Collector Vs. Smt. Janki Devi, , cited by Mr. Dey, for a tailor's business, compensation at six months' income was considered adequate. Six months' income was again considered proper compensation for shop business displaced by the Bhakra Project in (4) The Collector Vs. Daulat Ram and Another, . In. the (5) State of West Bengal v. T.N, Gupta AIR 1965 Calcutta 65, this Court held as adequate two years' loss of earning less deduction for the extension period of 3\4 months obtained by the claimant for delivery of possession. In this case the claimants had his factory at the acquired premises as tenant where he had built his structures and installed valuable machinery. Viewed on all aspects, considering the nature of the appellants interest in the brick-field and the time they had for delivery of possession, the award of one year's profit as compensation for loss of business appears to us to be fair and reasonable. The amount assessed by the Collector represents more or less one year's profit even on the basis of annual profit claimed by the appellants.

17. As all contentions raised on behalf of the appellants fail, the appeal fails and is dismissed. There will be no order for costs in this Court.

S.K. Chakravarty, J.

I agree.