(2013) 03 GAU CK 0005

In the Gauhati High Court

Case No : L.A. Application Nos. 4 of 2001, 5 of 2001 and 6 of 2001

Smt. Sachi Rani Das and Others — APPELLANT

Vs

The L.A. Collector and Another — RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Citation : (2013) 3 GLD 423

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Talapatra, J.—All these appeals filed by the land-losers against the common judgment and award dated 31.03.2001 by the Land Acquisition Judge No. 3, West Tripura, Agartala in Misc. (L.A.) No. 38/1991, Misc. (L.A.) No. 39/1991 and Misc. (L.A.) No. 40/1991. The land acquisition proceedings as referred emerged from the notification No. F.9(48)-Acq/Rev/IV/87 dated 22.08.1990 by the Revenue Department, Govt. of Tripura u/s 4 of the Land Acquisition Act for construction of accommodation for the DIG (CRPF), Agartala at Mouja Singarbil, Tripura West. On consideration of the contiguity of the plots as acquired, these appeals would require homogenous consideration, save some variations in the area pertaining to the plots against the individual reference. It is essential to relate the miscellaneous Land Acquisition cases as referred, to the respective Land Acquisition appeals under consideration by this Court and for this purpose the table appears hereunder:

2. By the said notification dated 22.08.1990 an area of land measuring 3.52 acre was sought to be acquired for construction of accommodation for the DIG (CRPF), Agartala at mouza Singarbil under Sadar Sub-Division in Tripura West District. Accordingly, the notification was published in the Tripura Gazette and also in Dainik Sam-bad, a daily newspaper published from Agartala. The land as proposed for acquisition by that notification pertained to plot Nos. 2975, 2878 and 6269 are part and parcel of the land belonged to the land-losers (the

claimants or their decedents). The Land Acquisition Collector, the respondent No. 1 in due process assessed the quantum at Rs. 80,000/- per kani i.e. Rs. 2,00,000/- per acre, whereas the land-losers claimed compensation at Rs. 8,00,000/- per kani for the acquired land. However, they received the compensation under protest in terms of Section 31 of the Land Acquisition Act, 1894 and pressed for reference u/s 18 of the Land Acquisition Act, 1894. The respondent No. 1, the Land Acquisition Collector, West Tripura, Agartala made reference u/s 18 of the L.A. Act, 1894 to the Land Acquisition Judge, West Tripura, Agartala. The land as belonged to the land-losers under reference remained recorded under the Khatian No. 412, but the individual pieces of the land were described in various plots under the said khatian. It is essential to refer that on the basis of the said reference, the judgment and award dated 21.09.1992 was passed, but in the appeal as preferred by the requiring organisation on the ground that they were not notified in terms of the provisions of Section 20 of the Land Acquisition Act, 1894, this Court, by setting aside the said judgment and order, remanded the case for fresh decision by the order dated 25.02.1999 as passed in F.A. No. 79/1992 and other cases, the operative part of the said order runs as under:

In that view of the matter, we remit the case back to the L.A. Judge by setting aside the judgment and order dated 21.09.1992 in Misc. (L.A.) 40 of 1991 and Misc.(L.A.) 38 of 1991 for early disposal. Accordingly, the case is sent back. Parties including the C.R.P.F., the acquiring department are directed to appear before the learned L.A. Judge on or before 22.03.99. After their appearance, the learned L.A. Judge shall fix the next date in respect of the parties and thereafter, shall dispose of the matter. Parties shall be at liberty to adduce evidence. Since the case is an old, it is expected that the LA. Judge shall make an endeavour to dispose of the case as expeditiously as possible preferably within four months from the date of receipt of the records from this Court.

3. The impugned judgment is the outcome of the fresh adjudication in terms of the said order dated 25.02.1999. The requiring organisation filed their statement and adduced evidence in support thereof. By the impugned common judgment and order, the Land Acquisition Judge determined the market value of the acquired land as under:

So considering the position of the land and its potential value I hold that the price of the land at the relevant time was not less than Rs. 1,50,000/- per kani. That means Rs. 1,75,000/- per kani. The claimant-appellants are therefore entitled to get compensation for the land at Rs. 1,50,000/- per kani i.e. Rs. 3,75,000/- per acre. In addition, the claimants are also entitled to get solatium @ 30% (thirty per cent) on the market value or the land determined by this Court and also entitled to get interest @ 9% (nine per cent) per annum over the enhanced amount from the date of taking over possession.

4. Mr. S. Deb, learned senior counsel, assisted by Mr. B. Debnath, learned counsel for the land-loser appellants contended that the determination of the

market value of the acquired land has been carried out without proper appreciation of the evidence as placed on record and the rate as has been determined by the Land Acquisition Judge would evince to be far lesser than the market rate as existed at the relevant time of the acquisition. Mr. Deb, learned senior counsel seriously criticised the observation of the Land Acquisition Judge that "So virtually we cannot at all rely on Exhibit-1 series, i.e., the certified copy of sale deeds produced by the claimant side and Exhibit-B series i.e., the certified copy of the sale deeds produced by the respondents. So we have to depend on the oral evidence of the parties". The learned senior counsel further contended that such observation is in contrast to the settled position of law vis-?-vis Section 51A of the Land Acquisition Act, 1894. He further stated that the Land Acquisition Judge denied the land-loser appellants due interest inasmuch as the interest as directed to be paid is @ 9% on the enhanced market rate as determined by the impugned judgment and decree. Mr. Deb, learned senior counsel had also taken recourse to the oral testimonies as well as to the Exbt.-1 documents to substantiate the claim of the land-losers and contended that the land-losers are entitled to much higher rate considering the potential and rate of increase in the value of the land in that area. He emphatically contended that the sale instances as relied and brought in the evidence by the appellants would demonstrate the approximate value of the land, but those sale instances were discarded from consideration on wrongly appreciating the law. While making submission extensively in regard to the individual reference, Mr. Deb, learned senior counsel for the appellants unfolded the relevant fact and the evidence as led by the appellants to establish their claim of enhanced market rate. Against the individual appeal, the relevant fact and the evidence as led by the land-losers are being noted separately hereunder:

L.A. Appl. No. 04 of 2001

5. The acquired land is situated at mourn Singarbill under Sadar Sub-Division of C.S. Plot Nos. 2878/2975, Viti class of land measuring 0.64 acre. The Land Acquisition Collector identified the interested persons, namely Radhika Mohan Das, Subodh Chandra Das, Sushil Chandra Das and the legal heirs of Sudhangshu Das who died after the acquisition proceeding commenced and he was substituted as per order dated 03.03.2001 by the Land Acquisition Collector by (i) Smt. Parul Das, (ii) Amitabha Das and (iii) Smt. Sukla Das (Kar). The Land Acquisition Collector passed the award on the following components:

6. By the judgment and order dated 21.09.1992 as passed in Misc. (L.A.) Case No. 38/1991, Misc. (L.A.) Case No. 39/1991 and Misc. (L.A.) Case No. 40/1991, the Land Acquisition Judge, West Tripura, Agartala awarded an enhanced sum against the claim of the land-losers and on consideration of the Exbt.-1 series and all other relevant factors at Rs. 2,40,000/- per kani for the Viti class of land along with solatium of 30% of the enhanced market value with interest @ 9% from the date of possession till the date of expiry of one year and from that date, thereafter till the date of payment @ 15% per annum on the increased awarded

sum with a cost of Rs. 300/-.

7. The land-losers examined Radhika Mohan Das as the PW 1 and through him brought the Exbt.-1 series comprising of (1) Sale Deed No. 1-9020 of 1991, dated 23.11.1990, executed by Dhananjoy Gope in favour of Smt. Sabita Rani Paul, (2) Sale Deed No. 1490 of 1990, dated 24.02.1990, executed by Sankar Ghosh in favour of Nihar Gope and (3) Sale Deed No. 3447 of 1990, dated 23.04.1990, executed by Binoy Bhusan Kar in favour of Prafulla Kumar Debnath in the evidence. After the case was remitted for fresh consideration, the land-losers adduced two more witnesses, namely Har Mohan Majumder, a Deed Writer as the PW 2 who narrated and vouched the execution of the Sale Deed No. 1-1490 as written by one Promode Chandra Datta and another Smt. Sabita Rani Paul, the purchaser of the land of Sale Deed No. 1-9020 dated 23.11.1990 as the PW 3.

8. For the Land Acquisition Collector (the respondent No. 1), one Prahllad Majumder (DW 1), Amin of the office of the D.M. & Collector, West Tripura, Agartala was examined and he proved the Exbt.-A (attested copy of the assessment note) and Exbt.-B series (certified copies of two Sale Deeds vide Sale Deed No. 1-7703 dated 07.12.1987, executed by Madan Lal Bin in favour of Smt. Sila Saha and Sale Deed No. 1-5925 dated 09.09.1987, executed by Smt. Mira Rani Paul in favour of Jitendra Chandra Ghosh). After the case was remanded by this Court, the Union of India (the requiring department) adduced two witnesses, namely Dilip Sarkar (DW 2) and Sridam Bin (DW 3), but the Union of India-respondent did not submit any documentary evidence whatsoever.

9. The PW 1 in his deposition stated that the land-losers claimed the compensation to the extent of Rs. 8,00,000/- per kani, but the L.A. Collector awarded only Rs. 80,000/- per kani which was not only inadequate but also unjust. He further stated that at the relevant time the similar kind of land used to be sold at much higher price than that of the amount awarded by the Land Acquisition Collector. He also brought in the evidence the said three Sale Deeds (Exbt.-1 series) on due compliance of the procedure. He stated that the land in question is located adjacent to Natunnagar High School, Sukhamoy High School, Government Post Office. Other establishments are situated within the close proximity of the land so acquired. Thus the land has got tremendous potential.

10. The PW 2 simply stated that the Sale Deed No. 1490 dated 24.02.1990 was written by one Promode Chandra Datta. As such his testimony does not contain any further evidentiary element.

11. The PW 3 being the purchaser of the land as referred in the said Sale Deed No. 1-9020 dated 23.11.1990 stated categorically that she purchased a piece of land measuring 0.05 acre from one Dhananjoy Cope at a consideration of Rs. 35,000/-. She also stated that her land and the acquired land was within a distance of 500 cubits. However, in cross-examination she could not identify the plot and the khatian in terms of the record of rights or any other records.

12. The DW 1 as adduced by the Land Acquisition Collector, stated in the Court that he collected the documents for assessing the value of the land and thereafter submitted the report to the Land Acquisition Collector and in consideration of his report, the Land Acquisition Collector determined the price of the land. He stated that the amount determined by the Land Acquisition Collector was in terms of the prevailing market rate and as such no fresh consideration of determining the market value was required. He brought in the evidence the Exbt.-B series which contained the Deeds as indicated earlier.

13. The DWs. 2 and 3 as adduced by the Union of India are the two local residents. The DW 2 stated that the price of the acquired land at the relevant point of time might be Rs. 1,00,000/- to Rs. 1,25,000/- per kani and the DW 3 stated that the price of the acquired land at the relevant time was about Rs. 1,00,000/- to Rs. 1,05,000/- per kani, but they did not provide any basis of such assessment. As already stated, the Land Acquisition Judge while re-determining the market value of the acquired land did not consider the Exbt.-1 series inasmuch as those Deeds were not produced before the Land Acquisition Collector at the time of determination of the price. However, the Land Acquisition Judge observed that "Any way, at this stage also the Court is not barred from acting upon those deeds". The Land Acquisition Collector relied the Exbt.-B series documents and found in conjunction with the oral testimonies of the DWs. 2 and 3 that the price of the land at the relevant point of time was within Rs. 1,00,000/- to Rs. 1,25,000/- per kani. Accordingly, the impugned judgment and order has been passed directing the respondents to pay a sum of Rs. 1,50,000/- per kani i.e., Rs. 3,75,000/- per acre. He also observed that the land-losers are entitled to compensation to the extent of Rs. 1,50,000/- per kani i.e. Rs. 3,75,000/- per acre. In addition, the claimants would be entitled to get solatium 30% of the market value of the land as determined by this Court and would also be entitled to get interest @ 9% per annum over the enhanced amount from the date of taking over the possession.

L.A. Appl. No. 05 of 2001

14. The acquired land is situated at mourn Singarbill under Sadar Sub-Division of C.S. Plot Nos. 2878/6269, Viti class of land measuring 0.20 acre. The Land Acquisition Collector identified the interested persons, namely Narayan Dutta, Smt. Bachu Dutta and Smt. Manju Badra (legal heirs of Smt. Jyotsna Rani Dutta) who were substituted as per order dated 03.03.2001 on death of the original jotedar Smt. Jyotsna Rani Dutta after the land acquisition proceeding commenced. The Land Acquisition Collector passed the award on the following components:

Thus, the total compensation came to Rs. 53,908/- (rupees fifty-three thousand nine hundred and eight).

As the present proceeding was considered analogously with the Misc. (L.A.) Case No. 40/1991 (connected to L.A. Appl. No. 04/2001), the land-losers also adopted the evidence as led in Misc. (L.A.) Case No. 40/1991. L.A. Appl. No. 06 of 2001.

L.A. Appl. No. 06 of 2001

15. The acquired land is situated at mouza Singarbill under Sadar Sub-Division of C.S. Plot Nos. 2878, Viti class of land measuring 0.84 acre. The Land Acquisition Collector identified the interested persons, namely Narayan Dutta and Smt. Krishna Datta (Bhowmik) (legal heirs of Smt. Push-pa Rani Dutta) who were substituted as per order dated 03.03.2001 after the death of the original jotedar Smt. Pushpa Rani Dutta when the land acquisition proceeding was set in. The Land Acquisition Collector passed the award on the following components:

Thus, the total compensation came to Rs. 2,26,414/- (rupees two lakhs twenty-six thousand four hundred and fourteen).

The land-losers also adopted the evidence as it was considered analogously with the Misc. (L.A.) Case No. 40/1991 (connected to L.A. Appl. No. 04/2001).

16. The Exbt.-1 series being the basis of the claim of the land-losers for re-determination of the rate/has been extensively referred by Mr. S. Deb, learned senior counsel for the appellants. On appreciation of the Exbt.-1 series it appears that the land acquisition proceeding by way of publication of the notification u/s 4 of the Land Acquisition Act, 1894 commenced on 22.08.1990 whereas the sale instance by which the PW 3 had purchased the land was executed on 23.11.1990. For .05 decimal of the land, the consideration was paid at Rs. 35,000/- meaning thereby the land value as per the said sale instance at the relevant point of time was Rs. 2,08,000/- per kani. Another sale instance as brought on record was executed on 14.02.1990 by Sankar Ghosh (the vendor) to Nihar Gope (the vendee) on consideration of Rs. 50,000/- for two gandas one kara one kranta and eleven dhurs. Thus the land value from the said sale instances is deducible at Rs. 4,40,000/- per kani (approximately), but the location of the said land covered by the said sale instance dated 14.02.1990 has not been brought on record in terms of the land so acquired. While preparing the report regarding the value of the land, the sale instance dated 07.12.1987 (part of the Exbt.-B series) was considered by the DW 1, where Mohan Lal Bin and Smt. Shana Charri Bin (the vendors) transferred the land to Smt. Shila Saha (the vendee) on consideration of Rs. 10,000/- for .10 decimals at the said Mouja Singarbill. Thus the market value of the land at the relevant point of time is deducible at Rs. 40,000/- per kani.

17. Before proceeding further, what the DW 1 namely Prahallad Mazumdar had stated in the cross-examination is required to be excerpted for better appreciation:

I know the boundary of the acquired land, north bounded by Airport road, south-lunga, east-lunga and tilla, west-Bastu.

Therefore, it is apparent that the land is situated along the Agartala Airport Road.

18. Similarly, from the deposition of Ram Bin, the DW 3, it appears that the price of the land at the time of acquisition according to him was Rs. 1,00,000/- to Rs. 1,50,000/- per kani and the Land Acquisition Judge has relied the said assessment and enhanced the land value from Rs. 1,50,000/-.

19. Mr. S. Deb, learned senior counsel for the appellants also contended that while determining the market value of the acquired land, the Land Acquisition Judge was bound to take into consideration the annual rate of increase in the land value in the said locality. In this context, Mr. Deb referred a decision of the Apex Court in Administrator General of West Bengal Vs. Collector, Varanasi, , where the Apex Court observed as under:

8. The determination of market-value of a piece land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market-value, as one author put it, is the prediction of an economic event, viz., the price outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available.

20. The said decision is relied to con-tend that if the best evidence of the market value is not available, the other methods of valuation could be resorted to. In the case in hand, the Exbt.-B series documents cannot be stated to be a very contemporaneous sale instance in comparison to the sale instance dated 14.02.1990 or 23.11.1990. Non-consideration of Exbt.-1 series by the Land Acquisition Judge on the ground that those are the certified copies and having not placed before the Land Acquisition Collector cannot be relied by the Court is according to Mr. S. Deb, learned senior counsel contrary to the provisions of Section 51A of the Land Acquisition Act where it has been provided that the certified copies of the sale instances if found relevant can be admitted in the evidence. This special provision has been so made for protecting of the land-losers and to avert the delay in determination of the market rate of the acquired land by the Land Acquisition Judge. To support his contention, he relied a decision of the Apex Court in Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, , where it has been observed that--

17. In the light of the above discussion we are unable to concur with the observations made by the two-Judge Bench in the decisions in Inder Singh and Others Vs. Union of India (UOI) and Another, and P. Ram Reddy v. Land Acquisition Officer, (1993) 3 SCC 240 that even in spite of Section 51A of the Act certified copies of the sale deed could not be considered without examining persons connected with the transactions mentioned therein.

18. The High Court cannot, therefore, be faulted for relying on the transactions recorded in Exts. A-2 and A-4 though no one was examined for proving such transactions. No evidence had been adduced by the State for creating any doubt regarding the bona fides or genuineness of the transactions mentioned therein. It is true that the area of lands involved in those sale-deeds were relatively very small. Nonetheless, learned Judges persuaded themselves to consider the sale price indicated therein along with the prices shown in other transactions mentioned in Exts. A-1 and A-3 also, for reaching the conclusion that the market value of the acquired land should have been Rs. 75,000/- per acre. The increase made by the High Court is not so substantial as to warrant interference from this Court.

21. Mr. S. Deb, learned senior counsel for the appellants also relied on Gurpreet Singh Vs. Union of India (UOI), to contend that the respondents are liable to pay the interest on the amount of compensation or on the excess compensation of the enhanced compensation from the dale of taking possession of the land to the date of payment of such excess into the Court in terms of Section 34 of the Land Acquisition Act.

22. From the other side, Mr. P.K. Biswas, learned Asstt. Solicitor General of India for the Union of India-respondent submitted that the claim of the land-losers is not only unreasonable but without any nexus to the market value. He further contended that it is trite proposition that prices fetched for small plots cannot form safe guide for valuation of large tracts of land as the two are not comparable properties. To buttress his contention, he made reference to The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, ; Mirza Nausherwan Khan and Another Vs. The Collector (Land Acquisition), Hyderabad, ; Padma Uppal and Others Vs. State of Punjab and Others, ; Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, . The principle as has crystalised is, that the sale-instances of small and developed plots are not safe guides in assessing the rate of the large tracts of land. The principle requires that price fetched for small developed plots cannot directly be adopted in valuing large tracts of land. He submitted that the sale instances as available in Exbt.-1 series cannot be the safe guide as the subsequent sale instances show lesser price than that of the previous one. Moreover, both the sale instances as relied by the land-losers are related to a very small plots whereas the acquisition had been made for a large tract of land. Thus the determination as made by the Land Acquisition Judge cannot be faulted with.

23. Mr. N. Majumder, learned state counsel appearing for the respondent No. 1, referring to the assessment note of the Land Acquisition Collector (Ext.-A), submitted that the enhancement as made by the Land Acquisition Judge is substantive and reasonable. The land-losers cannot be expected to have the imaginary claim they laid.

24. On overall assessment of the submissions as made by the counsel for the parties and on scrutiny of the record as placed, it appears that the contention of

Mr. S. Deb, learned counsel for the appellants as regards the non-consideration of the certified copies (Exbt.-1 series) is substantially correct and thus this Court is inclined to consider the Exbt.-1 series for purpose of re-assessing the evidence so as to determine the relevant market rate of the acquired land of the appellants. Similarly, the Land Acquisition Judge did not awarded the interest in terms of Section 34 read with Section 28 of the Land Acquisition Act.

25. In Sunder Vs. Union of India, , the Apex Court held in no uncertain terms, approving the State of Haryana Vs. Kailashwati and Others, that once it is held as it inevitably must be that the solatium provided for u/s 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 of the Act does not even remotely refer to market value alone rather it talks of compensation or the sum equivalent thereto. The interest awardable u/s 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.

26. In other words, the interest be paid to the land-losers in terms of Section 28 read with Section 34 of the Land Acquisition Act, 1894 meaning thereby even on the enhanced amount the land-losers would be entitled to get interest @ 9% per annum from the date of taking possession till the expiry of one year or to the date when the deposit is made and whichever is earlier and if not paid within one year the said compensation inclusive of the, enhanced rate with solatium shall carry interest @ 15% per annum from the expiry of the said period of one year till the amount is paid or deposited. While re-assessing the market rate as carried out by the land Acquisition Judge, this Court is alert to the proposition of law as referred to by Mr. P.K. Biswas, learned Assistant Solicitor General of India appearing for the Union of India-respondents that the price fetched for small pieces of land shall not be the safe guide for determination for the price of the larger tract of land.

27. On consideration of the location of the acquired land as has been transpired from the oral testimonies of the DW1 as well as from the sale instances, the rate of the price increase and other co-related factors, this Court is of the opinion that by making necessary adjustment vis-?-vis the sale instances of the small pieces of land against the acquired land, the proper market price is liable to be determined at Rs. 2,40,000/- per kani i.e. Rs. 6,00,000/- per acre for the acquired ''Viti'' class of land. As it appears that all the pieces and parcels of the acquired land belonged to the ''Viti'' class, therefore, the market price for determining the compensation as a whole would be Rs. 2,40,000/- (rupees two lakh and forty thousand) per kani. The land-losers would be entitled to 30% solatium on the land value as determined in terms of Section 23(2) of the Act. They will be also entitled to interest on the compensation, inclusive of the land

value and solatium at 30% thereon, deducible @ 9% from the date of taking possession till expiry of one year and thereafter @ 15% till the payment is made. Needless to mention that if any sum, paid to the land-losers by now, shall be deducted from the deposit. In the result, all the appeals being LA. Appl. No. 04/2001, LA. Appl. No. 05/2001, LA Appl. No. 06/2001 are allowed. The decree be prepared accordingly.

Send down the LCRs on preparation of the decree.

