

(1982) 04 CAL CK 0004
In the Calcutta High Court
Case No : C.R. No. 3107 of 1977

Snehalata Bhowmik and Ors

APPELLANT

Vs

Land Acquisition Collector, West Dinajpur

RESPONDENT

Date of Decision : 21-04-1982

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 12, 18, 18(2), 19, 20
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 7, 7(1), 7(2)(a), 8(2), 8A

Citation : 86 CWN 813

Hon'ble Judges : B.C. Chakraborti, J; Anil K. Sen, J

Bench : Division Bench

Advocate : Bhagabati Prosad Banerjee, for the Appellant;

Final Decision : Allowed

Judgement

Anil K. Sen, J

1. An order dated June 28, 1977, passed by the learned District Judge, West Dinajpur in L. A. Case Nos. 69 of 1975, 72 of 1975, 2 of 1976, 8 of 1976 and 9 of 1976 modifying the judgment and decree earlier passed in those reference cases is the subject matter of challenge in the present revisional application. It is not in dispute that several plots of land belonging to the petitioner having been acquired under the provisions of the West Bengal Land Requisition and Acquisition Act, 1948, the Collector made awards of compensation in respect of the land so acquired. The petitioners feeling aggrieved by and dissatisfied with the award so made obtained the above five references u/s 18 of the Land Acquisition Act. One of the grounds of objection raised to the award as made by the Land Acquisition Collector was that the Collector had wrongfully refused to award statutory compensation at 15% by way of solatium under the provision of section 23(2) of the Land Acquisition Act, 1894. By a judgment dated August 25, 1976, the learned District Judge disposed of those reference cases when he net

only modified the award as made by the Collector but allowed the claim of statutory compensation at 15% by way of solatium u/s 23(2) of the Land Acquisition Act, 1894, It was so done on the concession of the Government Pleader appearing on behalf of the State in view of the decision of this court in the case of Bijoli Prova Nandy Chowdhury Vs. State of West Bengal,

2. On May 27, 1977, the learned District Judge, however, recorded an order that a mistake appears to be apparent on the face of the record in his judgment disposing of the aforesaid reference cases which was due to the erroneous submissions made by the Government Pleader. He thought that the provision of section 23(2) of the Land Acquisition Act not having been invoked by the West Bengal Land Requisition and Acquisition Act 1848, for the purpose of determining the compensation the statutory compensation at 15% could not have been lawfully allowed. Particular reliance was placed on the provision of section 8(2) of the West Bengal Land Requisition and Acquisition Act, 1948. In that view he thought it necessary to modify his judgment delivered on August 25 1976, in exercise of his inherent powers and wanted to hear the parties afresh on the point. Arguments were heard on the point and by the impugned order dated June 28. 1977, he directed the earlier judgment dated August 25, 1976, to be modified by deleting the direction for grant of statutory compensation u/s 23(2) of the Land Acquisition Act and interest thereon. The learned judge took the view that as a court hearing the reference he is to dispose of the reference in terms of section 8(2) of the West Bengal Land (Requisition and Acquisition) Act, 1948 and since under the said provision he is to dispose of the reference having regard to section 18(2). sections 19 to 22, 25 to 28 of the Land Acquisition Act and the principles set out in subsection (1) and in clause (a) of subsection (2) of section 7 of the West Bengal Land (Requisition and Acquisition) Act, 1948. so far as they may be applicable, he has no scope for taking into consideration or applying the provision of section 23(2) of the Land Acquisition Act. According to the learned judge although this court in the decision referred to hereinbefore struck down the provision of section 7(2)(a) and section 8(2) so far as that provision invoked section 7(2) (a), that would not render section 23(2) of the Land Acquisition Act applicable because u/s 7(1) the compensation is to be assessed in terms of subsection (1) of section 23 of the Land Acquisition Act, 1894, which subsection alone had been invoked and made applicable to determination of compensation for land acquired under the Act. The learned judge was conscious of the position that in the decision of this court referred to hereinbefore this court not only struck down the provision of section 7(2) (a) together with section 8(2) in so far thereby the aforesaid section 7 (2) (a) was invoked but this court went further to direct granting of compensation by way of solatium u/s 23(2) of the Land Acquisition Act. The learned judge, however, expressed the opinion that the High Court could do it In an appeal u/s 8A there being no restriction on the powers of the High Court but it was not competent for him to do so In view of the restrictions imposed by section 8 subsection (2).

3. On a careful consideration of the statutory provisions of West Bengal Land

(Requisition and Acquisition) Act, 1948, we agree with the learned District Judge that there exists an anomaly which unless removed would create certain difficulty In the matter of invoking the provision of section 23(2) Of the Land Acquisition Act, in the matter of determination of compensation for land acquired under the West Bengal Land (Requisition and Acquisition) Act. But in our view there is an apparent falacy in the view taken by the learned District Judge to the effect that though the High Court can direct grant of statutory compensation u/s 23(2) of the Land Acquisition Act in an Appeal u/s 8A of the West Bengal Land (Requisition and Acquisition) Act, he as the court of reference cannot do so. The learned District Judge failed to appreciate that as a court of appeal this court can exercise only the same powers which he as the court of reference could exercise so that if he had no power or authority to grant statutory compensation u/s 23(2) of the Land Acquisition Act, necessarily the High Court in en appeal from the judgment and decree passed by him cannot do so.

4. We now proceed to consider the anomaly pointed out by the learned District Judge which renders it difficult to invoke section 23(2) of the Land Acquisition Act. We set out hereunder the material provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948.

7. (1) Wherever any land is acquired u/s 4 there shall be paid (to every person interested) compensation the amount of which shall be determined by the Collector in the manner and in accordance with the principles set out in sub section (1) of section 23 of the Land Acquisition Act, 1894, so far as they may be applicable :

Provided that the market value referred to in clause first of sub-section (1) of section 23 of the said Act shall, in respect of any land acquired under this Act, be deemed to be the market value of such land on the date of publication of the notice referred to in (sub section (1a) of section 4) :

Provided further that in respect of any land In Calcutta which, immediately before the 1st day of January, 1964. constituted a bustee as defined in clause (10) of section 5 of the Calcutta Municipal Act, 1951, the amount of compensation to be paid on account of acquisition to the persons interested shall be determined in the manner and in accordance with the principles set out in sub-section (1) of section 7 of the Calcutta Slum Clearance and Rehabilitation of Slum dwellers Act, 1958. so far as they may be applicable.

(2) (a) when the compensation has been determined under sub-section (1) the Collector shall make an award In accordance with the principles set out In section II of the Land Acquisition Act, 1894, end no amount referred to In sub section (2) of section 23 of that Act. shall be Included In the award.

Provided that interest at the rate of six per centum per annum on the amount of compensation under the award from the date of the publication of the notice under sub-section (1e) of section 4 until payment shall be included in the amount payable under the award.

(aa) (i) Such award shall be filed in the Collector's office and shall, except and as hereinafter provided be final and conclusive evidence as between the Collector and the persons interested in the land whether they have respectively appeared before the Collector or not of the true area and value of the land and the apportionment of the compensation among the persons interested :

(II) the Collector shall give in the prescribed manner immediate notice of his award to such of the persons interested in the land as are not present personally or by their representatives when the award is made.

(b) Upon an award being made under clause (a), the Collector shall proceed to make payment in accordance with the provisions of sections 31 to 33 of the Land Acquisition Act, 1894, so far as they may be applicable.

5. 8. (1) The Collector shall In every case-

(a) Where (any person interested being aggrieved by an award made under sub section (2) of section 7 or clause (ii) of sub section (4) of that section) makes an application requiring the matter to be referred to the Court; or

(b) where there is any disagreement with regard to the compensation payable under sub-section (3) of section 7 between the Collector (and any person interested in compensation), refer the matter to the decision of the Court.

(2) The provisions of sub section (2) of section 18 and of sections 19 to 22 and of sections 25 to 28 of the Land Acquisition Act, 1894, and the principles set out in sub-section (1) and in clause (e) of sub section (2) of section 7 of this Act, shall, so far as they may be applicable, apply in respect of any reference made to the Court under sub-section (1).

Explanation. - The notice given under sub-clause (ii) of clause (aa) of sub-section (2) of section 7 shall be deemed to be the notice under subsection (2) of section 12 of the Land Acquisition Act, 1894, for the purposes of the proviso to section 18 thereof.

8A. The provisions of the Code of Civil Procedure, 1908 relating to appeals shall apply to an award made by the court on a reference u/s 8 as if such award were original decree passed by the court in exercise of its civil jurisdiction

6. It is evident from the provisions of subsection (1) of section 7 hereinbefore that the Collector in determining the compensation is to do so u/s 23(1) of the Land Acquisition Act, 1894. On the scheme of section 23 of the Land Acquisition Act, the compensation is to be determined having regard to the factors set out in subsection (1) and then adding the statutory compensation under sub section (2). Now section 7(1) of the West Bengal Land (Requisition and Acquisition) Act, not having invoked sub-section (2) necessarily the compensation is to be determined having regard to the factors set out in subsection (1) but without adding the statutory compensation. When such is the effect of sub-section (1) one fails to appreciate the reason for express exclusion of section 23(2) of the

Land Acquisition Act, by sub-section (2)(a) of section 7 giving an idea that but for such express exclusion It would have formed a part of the compensation to be determined under section 7(1). This court in the case of Bijali Prova Nandi Chowdhury referred to hereinbefore struck down section 7(2) (a) of the West Bengal Land (Requisition and Acquisition) Act, In view of series of decisions of the Supreme Court wherein it had been held that such exclusion is violative of Article 14 of the Constitution. In striking down section 7(2) (a) this court further struck down that part of section 8(2) which directed the court hearing a reference to abide by the said provision in section 7(2) (a). It has been rightly pointed out by the learned District Judge that by striking down section 7(2) (a) of the West Bengal Land (Requisition and Acquisition) Act, section 23(2) of the Land Acquisition Act, cannot be rendered applicable because in a way section 23(2) not having been invoked at all its positive exclusion was redundant. We find much justification for the view so taken by the learned District Judge and all this is due to limited invocation of section 23(1) of the Land Acquisition Act, by section 7(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948.

7. In our considered opinion this difficulty has to be resolved. It cannot now be disputed in view of a long line of decisions by the Supreme Court and by this court as well that if the same land could be acquired either under the provisions of the Land Acquisition Act, or under the West Bengal Land (Requisition and Acquisition) Act, 1948 the State cannot take recourse to the West Bengal (Requisition and Acquisition) Act, 1948, only to deprive the owner of the statutory compensation which would otherwise be payable if the land had been acquired under the provisions of the Land Acquisition Act. Therefore, what is violative of Article 14 is the denial of the relief u/s 23(2) and not merely exclusion thereof u/s 7(2) (a) of the West Bengal Land (Requisition and Acquisition) Act, 1948. To remove this vice in the statute we must hold that section 7(1) must be read striking out therefrom the following words "subsection (1) of" between the words "in" and "section". If these words are excluded then the compensation becomes determinable in accordance with the principles set out in section 23 which would necessarily invoke sub-section (2) thereof. Such an interpretation in our view becomes imperative in order to uphold the statute. Otherwise the only alternative would have been to strike down the entire Act by striking down section 7 itself. It is now settled by the Supreme Court that the court can uphold the validity of an enactment in the manner proposed by us by striking down a part of the provision to render it constitutionally valid. Reference may be made to the decision of the Supreme Court in the case of S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty., and State of Kerala and Others Vs. T.M. Peter and Others, . In this view, we must hold that the learned judge had correctly disposed of the reference on August 25, 1976 by awarding the statutory compensation and he was wrong in his view that he had not the authority to grant such statutory compensation on the basis whereof he passed the impugned order dated June 28, 1977, modifying the earlier judgment.

8. This revisional application, therefore, succeeds. The Rule is made absolute.

The impugned order is set aside. There will be no order for costs. Since the order impugned had been passed with regard to five cases the deficit court fee has since been paid.

B.C. Chakrabarti, J.

I agree.