

(2009) 04 CAL CK 0015

In the Calcutta High Court

Case No : F.A. No 143 of 2000, F.A. No 144 of 2000, F.A. No 145 of 2000 & F.A. No"s. 143-145 of 2000

State of West Bengal and Others

APPELLANT

Vs

Keshab Kundu and Others

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 19, 19(1)

Citation : (2009) 04 CAL CK 0015

Hon'ble Judges : Tapan Kumar Dutt, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Jagabandhu Roy and Mr. Amrita Sinha Mr. Bidyut Roy and Mr. S.P. Chakraborty, for the Appellant; Debayan Bera, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—These three appeals were heard analogously as by a common judgment dated 24th November, 1998 three reference cases u/s 18 of the Land Acquisition Act, 1894 were disposed of by the learned Additional Special L.A. Judge, First Court, Alipore, District-South 24 Parganas.

2. The three respondents filed three different reference cases u/s 18 of the Land Acquisition Act for enhancement of the compensation given by the Land Acquisition Collector in their favour. All the three respondents were joint lessees in respect of part of the property acquired. They were the owners of equal one-third share each in a running factory with buildings, structures and machineries installed on the landed property taken on the basis of lease for 21 years with option for further renewal of 10 years comprising a portion of R.S. Plot No.547/1533 under Khatian No.913 of Mouza Purba Sinthee under Police Station-Dum Dum.

3. The said property was acquired by the Land Acquisition Collector of North 24-Parganas for the construction of Dum Dum Station of Circular Railway. Notice u/s

4 of the West Bengal Act II of 1948 was issued on 9th November, 1987 and the award was made by the Land Acquisition Collector on 24th January, 1990. The possession of the property was taken on 30th December, 1986.

4. Being aggrieved by the award of the Land Acquisition Collector, the Referring claimants made three separate applications u/s 8(1)(a) of the West Bengal Act II of 1948 read with section 18 of the Land Acquisition Act for reference before the appropriate Court.

5. According to the Referring claimants, the value of the structure should have been assessed at Rs.4 lakh out of which one-third was payable to each of the Referring claimants.

6. Their further claim was that the cost of removal of the plant and machineries should have been assessed at Rs.2 lakh out of which one-third is payable to each of the Referring claimants and the loss of earning should be assessed at the rate of profit from the business for two years in place of that of six months awarded by the Land Acquisition Collector. In addition to the aforesaid amount, other statutory allowances were also claimed.

7. At the time of hearing of the proceedings, evidence was adduced on behalf of the claimants-respondents through one Dilip Kumar Bose, a chartered engineer and valuer, who submitted his report regarding valuation. The State, however, did not adduce any evidence.

8. The learned Court below enhanced the amount of compensation towards loss of earning from Rs.48,000/- assessed on the basis of six months income by the Land Acquisition Collector to Rs.1,92,000/- by treating such loss on the basis of two years' income from the business.

9. The learned Court below on consideration of the report submitted by the valuer, the P. W.1, held that the Referring claimants should be entitled to get Rs.2,95,000/- as value of structure by reducing the valuation assessed by the P.W.1 to 65% of his assessment.

10. Regarding cost of removal of the machineries, the learned Court below enhanced the amount to Rs.1,05,000/-. In addition to the aforesaid amount, the Tribunal below granted solatium at the rate of 30% and additional compensation at the rate of 12% per annum from 9th November, 1987 to 31st January, 1990 and rental compensation at the rate of 9% per annum from 30th December, 1986 to 8th November, 1987 on the entire value of the structure less amount paid by the Collector. The Referring claimants were also held to be entitled to get interest at the rate of 9% per annum on the enhanced compensation awarded in this case for one year from 9th November, 1987 and thereafter, at the rate of 15% per annum till the amount was paid.

11. Being dissatisfied, the State of West Bengal has come up with the present appeals.

12. Mr. Roy, the learned advocate appearing on behalf of the appellants, mainly attacked the award of the learned Court below on the question of enhancement of loss of earning from six months' income to two years' income from the business and, according to him, there was no justification of enhancing the amount from six months' loss of earning granted by the Land Acquisition Collector.

13. Mr. Bera, the learned advocate appearing on behalf of the claimants-respondents, however, opposed the aforesaid contention and relied upon the following decisions in support of his contention that in the fact of the present case we should not interfere with the decision passed by the learned Court below.

1. Nagar Mahapalika, Agra v. Lajpat Rai Kapoor & Anr., reported in AIR 1985 Allahabad 345;

2. State of W. B. v. Secretary, Union Club, Purulia, reported in AIR 1972 Calcutta 225;

3 Ram Kumar and Others Vs. Union of India (UOI) and Others,

4. State of West Bengal v. T.N. Gupta, reported in AIR 1959 Calcutta 65;

5. Ramesh Dutta v. State of Punjab and Ors., (2004) 7 SCC 388

14. Therefore, the question that falls for determination in these appeals is whether the award enhanced by the learned Court below should be interfered with.

15. Before we proceed to consider the said question, we should bear in mind that the onus to show that the valuation assessed by the Collector was wrong is upon the claimants, but at the same time, a duty is cast upon the Collector in terms of section 19 of the Act to disclose the grounds of his valuation and if there is no evidence of the basis of the valuation, the onus of the claimants becomes negligible. In this connection, we may profitably refer to the following observations of a Division Bench of this Court in the case of State of West Bengal Vs. Secretary, Union Club, Purulia, ;

It has, however, been held by a Bench of this Court in Fink v. Secy. of State for India, (1907) ILR 34 Cal 599 that when the Collector makes no enquiry or gives no ground for his valuation, the burden of proof on the claimant is nominal. In this connection, we may refer to Clause (d) of section 19(1) of the Act which provides that in making the reference, the Collector shall state for the information of the Court, in writing under his hand the grounds on which the amount of compensation was determined when the objection is to the amount of the compensation. In his statement, the Collector has only stated the rates of Bastu I land and Bastu II land. He has not disclosed the basis for the said rates of valuation. In our view, the Collector has not complied with the provision of Clause (d) of section 19(1). Where the Collector discloses the basis for his valuation, the Court is in a position to consider the same with reference to the

evidence adduced by the referring claimant in discharging the onus that lies on him. Omission by the Collector to state the grounds on which the amount of compensation was determined prevents the Court from such consideration and consequently, the onus of the referring claimant becomes negligible. In such a case, only slight evidence adduced by the referring claimant will discharge the onus. Most respectfully we agree with the principle laid down by this Court in Fink's case referred to above. We have already stated that the Collector has not, in his statement u/s 19, disclosed the ground of his valuation. There is no evidence from which the basis for the Collector's valuation can be ascertained. For the reasons aforesaid, the onus of the respondent is negligible and only slight evidence would discharge the said onus. In our opinion, the respondent has been able to discharge their onus that the Collector's valuation was inadequate.

16. The Supreme Court in the subsequent case of Ram Kumar and Others Vs. Union of India (UOI) and Others, has reiterated in same tune in the following way:

Under section 19 of the Act while making the reference the Collector was required to state for the information of the Court the particulars as mentioned in clauses (a) to (d) of sub-section (1) of section 19 of the Act. Thus it was the duty of the Collector to mention not only the situation and extent of land but even particulars of any trees, buildings or standing crops thereon. The agriculturist whose land is acquired may not be fully conversant with the khasra No. or area as entered in the revenue records and the Union of India or the State acquiring such land should not be allowed to take any advantage of such ignorance of the agriculturists. Once an application is moved for making a reference u/s 18 of the Act it becomes the duty of the Collector to send full information to the Court regarding the entire land acquired and it is thereafter the duty of the Court to decide the matter in accordance with law.

17. In the case before us, no particulars of the basis of the assessment and the particulars of the land and the structure have been sent by the Collector and even at the time of hearing, no evidence has been adduced by the State. On the other hand, the claimants have adduced evidence of a competent and qualified valuer who assessed the valuation of the land and structure. The Court without any reason has reduced the said assessment to 65% of the valuation so assessed. In such circumstances, we do not propose to interfere with the assessment of the value of the land and structure at the instance of the State who even did not care to produce the materials in support of its assessment. As the claimants have neither filed any appeal or cross-objection, within the scope of this appeal at the instance of the State, we are unable to consider the question of enhancement of the valuation of the land and structure.

18. Regarding removal of machinery, Mr. Roy did not make any submission and we also find that the enhancement is quite reasonable having regard to the materials on record. We, thus, find no reason to upset the assessment of the Court below on the said point.

19. The last question is whether the Court below was justified in enhancing the compensation of loss of earning from the loss of six months assessed by the Collector to that of two years.

20. The earning from the business has not been disputed by either of the parties. The only question is as regards the period of loss that should be held to be the just amount of compensation. In assessing the loss of earning from the business, as pointed out by the Supreme Court in the case of Ramesh Dutta v. State of Punjab and Ors., (2004) 7 SCC 388 the same should be computed on the basis of loss of earning during the time that would be required to restart the business having regard to the nature of the business, its extent, availability of the similar amount of land etc. In this case, the factory was constructed on the land taken on the basis of lease for 21 years with further option for renewal for 10 years more. The lease was executed in the year 1983 and the possession was taken in the year 1987 when virtually 27 years of the lease-period were yet to expire. Before restarting such a business after finding out suitable land, factory shed and office are to be constructed, the nature of which is found from the report of the PW-1. It appears that apart from the office rooms, the factory was for Coke Brickitting constructed with G 1 sheet room over wooden frame supported by Iron joist and wooden sal ballas and R.J.S. Post and brick 5" wall with 30 numbers of 10" x 10" pillars with 9" high standing on heavy foundation and brick flat soling. There are heat chambers, electrical and sanitary services and numbers of vats for mixing clay and the valuation of such property was assessed to be above Rs.4.5 lakh in the year 1987. In such a situation, in the absence of any evidence from the side of the State, the learned Court below, in our opinion, rightly assessed the loss of earning to be two years' loss from the business. Within a period of two years, it is next to impossible to restart a business of similar magnitude after getting suitable land for the purpose of construction of the factory. The nature of the business is such that readymade factory of this nature at the reasonable price is not easy to get. Over and above, for getting sanctions from different authorities for starting a new factory of this nature, a considerable time would be spent.

21. We, thus, find no reason to reduce the loss of earning assessed by the learned Court below. No other point having been raised we find no merit in these appeals and the same are dismissed. In the facts and circumstances, there will be, however, no order as to costs.

Tapan Kumar Dutt, J.

22. I agree.