

(2004) 07 CAL CK 0069
In the Calcutta High Court
Case No : F.M.A. No. 340 of 1998

State of West Bengal and Others

APPELLANT

Vs

Pradip Kumar Agasti and Others

RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 33, 34
Land Acquisition Act, 1894 — Section 23(1), 23(3), 28, 34
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8(1), 8(2), 8(3)

Citation : (2006) 4 CHN 25

Hon'ble Judges : Joytosh Banerjee, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Chandrasekhar Das and Sridhar Panja, for the Appellant; Jiban Ratan Chatterjee, Swapan Banerjee and Srilekha Bhattacharya, for the Respondent

Judgement

Dilip Kumar Seth, J.

Facts:

1. The respondent's land was requisitioned under the Defence of India Act, 1942. At that point of time, "sal" trees (timber) were standing on the land. Admittedly the land was utilized for the Military on which buildings were constructed and roads were developed. The land was utilized for the purpose of Panagarh Air Field. Subsequently, the Requisition and Acquisition of Immovable Property Act, 1952 was enacted for the purpose of governing the cases requisitioned under the Defence of India Act as well as for fresh requisition. Admittedly, the respondents were getting the recurring compensation payable u/s 8(2) of the 1952 Act. Ultimately, the land was sought to be acquired in 1975 under the 1952 Act. Pursuant to such acquisition, compensation became payable u/s 8(3) of the 1952 Act.

1.1. Since the parties could not agree to the compensation payable an Arbitrator was appointed in terms of Section 8(1) of the 1952 Act. Before the Arbitrator

certain documents were produced. It does not appear that the appellants had taken any steps in order to contest the said case. It further appears from the Paper Book at page 10 that the learned Arbitrator had requested the Collector by an order dated 26th July, 1995 to forward the record of the case. No records were ever produced before the learned Arbitrator till the Arbitrator had given its decision ultimately on 21st of March, 1996. It appears that the Arbitrator decided the case of one of the respondents Pradip Kumar Agasthi and 4 others in LA Case No. 6 D.I.A of 1972/73 by its Order No. 15 dated 21st March, 1996 while that of Raoson Ali Khan in the same proceedings being LA Case No. 6 D.I.A. of 1972/73 by its Order No. 14 dated 21st March, 1996. This appeal has since been preferred against both these order Nos. 15 and 14 dated 21st March 1996 respectively.

1.2. From page 11 of the Paper Book, it appears that certain documents were forwarded by the Collector on 26th of June, 1996. It included a statement that the lands were comprised in Khatian No. 1 belonging to the State of West Bengal consisting of jungle. Certain R.S. records-of-right were also annexed with the said letter. From the papers, it does not appear that these R.S. records-of-right were the certified copies of the records-of-right. Be that as it may, these documents were never brought on record before the Arbitrator. At the same time, even in this appeal, no application under Order 41 Rule 27 of the CPC (CPC) was filed for adducing those documents in evidence in this appeal. No leave was obtained, neither any attempt was made to produce the original records despite order passed by us to produce the original records. On the other hand, it was submitted that the original records were misplaced and untraceable.

1.3. Mr. Jiban Ratan Chatterjee appearing on behalf of the claimants/respondents had pointed out that he had already furnished copies of the records, which were in the record before the Arbitrator. Mr. Chatterjee undertook to file an appropriate application annexing those documents by Monday (26th July, 2004). Those documents will be placed on record so as to enable the Department to act on the basis of those documents as reconstructed records.

Appellant's submission:

2. Mr. Chandrasekhar Das, appearing for the appellants, submitted that the land comprising of jungle are "Forest Land" which is supposed to be so declared under the Forest Act and Notification to that effect has since been issued including those lands within the Forest Area. Therefore, no compensation is payable to the claimant/respondent. Secondly, he contends that with the coming into force of the West Bengal Estates Acquisition Act, all lands stood vested and no right was given to the raiyat to retain forest land. All forest land stood vested in the State. Therefore, the claimant cannot claim any compensation in respect of those lands.

2.1. Mr. Das also contended alternatively that even if the "Jungle Lands" were not declared "Forest" by notification issued under the Forest Act and even if by

reason of construction of air field, the land did not remain forest land, then also the claimant/respondent cannot claim anything beyond the retainable area under the West Bengal Estates Acquisition Act. The land was not an agricultural one and therefore, it might come within the definition of non-agricultural land or homestead, as the case may be. Therefore, in addition to the homestead or other non-agricultural lands retained by the claimant/respondent, the claimant could retain only the balance area of 20 acres of land, which is permissible to be retained under these heads. Therefore, after adjusting the land outside the acquisition or requisition, the balance area could be available to the claimant for payment of compensation.

Claimants/Respondents' submission:

3. Mr. Chatterjee, on the other hand, points out on behalf of the respondents that the land was no more a forest land since an air field was constructed on the land and in the air field, roads were developed, run-ways and permanent structures were constructed, therefore, it was no more a "Forest Land". That apart, no document has been produced to show that these lands were included within the notification as "Forest Land". Before the Arbitrator nothing was produced to show that the land had vested either under the Forest Act or under the Estates Acquisition Act as Forest Land. The records-of-right, which are made part of the Paper Book, does not appear to be the certified copies of the records-of-right, and it is not known whether the lands were so recorded in the records-of-right at the time when the acquisition was made. According to him, notice of acquisition was issued in the name of the claimant. These documents were forwarded only in June, 1996, three months after the decision of the Arbitrator. According to Mr. Chatterjee, these documents might have been prepared for the purpose of the case after the decision of the Arbitrator. Be that as it may, those documents cannot be looked into since they were not part of the records. Nor those can be looked into by this Court since these have not been made part of the records of the appeal. Therefore, the contention of Mr. Das has no legs to stand.

3.1. So far as the question of compensation is concerned, Mr. Chatterjee contends that compensation was determined by the learned Arbitrator on the basis of the documents evidencing contemporaneous transfers at the time of acquisition. There is no flaw or defect in the judgment for which the finding of the Arbitrator and the conclusion arrived at can be interfered with. Therefore, the order of the learned Arbitrator should be maintained. On the other hand, he claims interest and solatium payable on this compensation.

Appellant's reply:

4. Mr. Das, on the other hand, contends that there is no provision for payment of interest in Sub-section (3) of Section 8 of the 1952, Act neither there is any scope for granting solatium. At the same time, the contemporaneous documents on which reliance was placed did not show that those were contiguous lands. That apart, he has pointed out that these were sale deeds in respect of small

fractional areas for which higher price may be available but the valuation would differ when valuation of large tract of land is calculated. Therefore, such valuation cannot be an instance for determining the valuation of the land acquired. At the same time, in another case, this Court was pleased to hold the valuation of the acquired land contiguous to these lands at Rs. 12,000/- per acre. Therefore, compensation awarded cannot be sustained.

Order No. 15 dated 21st March 1996: Whether the claimants are entitled to compensation:

5. We have heard the respective Counsel at length. Mr. Chatterjee had relied on a decision in *Tandon Brothers v. State of West Bengal* 2001 (2) SCC 664 to support that the land requisitioned by the Central Government cannot be taken into consideration for the purpose of calculating the retainable land. But that decision would not help him since in the said decision the land comprised of tea garden which was acquired in 1964, and for such, compensation was payable till 1969 since under the West Bengal Estates Acquisition Act the entire land comprising of tea garden was allowed to be retained by a raiyat. Only after 1969, by the amendments of the Land Reforms Act a further ceiling was introduced where the concept of utility of the land for the purpose of the tea garden was introduced as a factor for consideration of minimum retention of land. This question was resorted to by the Government in 1977 after having passed an order allowing retention of the entire area in a bid to seek review of the same. But, however, the Court in such a context had held that the action was mala fide and that the requisition by Central Government would not be considered for the purpose of calculating ceiling and the area to be retained by a raiyat. Having regard to the facts and circumstances of that case, the said decision is distinguishable. Though one principle that emanates from the ratio is that a land requisitioned by the Central Government is outside the scope for the purpose of calculating ceiling for retention of the lands with regard to the question of payment of compensation when the requisition was made before the West Bengal Land Reforms (Amendment) Act came into effect and became applicable.

5.1. In this case requisition was made long before the Estates Acquisition Act came into force long before the Forest Act in the present form had come into effect in 1956. Therefore, acquisition that was proposed in 1975 related to requisition made in 1942. On the principle enunciated in the decision in *Tandon Brothers* (supra), this question is no more open to be considered as to whether the land would be vested and whether the land was forest land or not. Under Sub-Section (3) Section 8 of the 1952 Act, the compensation is payable on the market value as on the date of acquisition as if the land, as it stood on the date of requisition, was being sold, therefore, on that principle alone when the land was acquired under the Defence of India Act, it is no more open to the State to contend all these questions which has since been raised by Mr. Das.

5.2. That apart, no document was ever produced before the learned Arbitrator to show that this land was a forest land and was included in the declaration under

the Forest Act at any point of time before or after requisition, (subsequent declaration after requisition would not affect the claimant's right and after acquisition the land did not remain a forest land), nor there was anything to show that the records-of-right described this land as forest land and that this land stood vested in the State. Therefore, the Arbitrator was not supposed to look into the records, which were not produced before him, which might have been forwarded after the decision. At the same time, the alleged documents, which were purported to be forwarded by the Collector, have also not been brought on record in this appeal though it has been included in the Paper Book. Despite orders passed by us for production of records, no records have since been produced before us, neither any application under Order 41 Rule 27 CPC has been made nor any accommodation was sought for production of the documents or for opportunity to adduce evidence. On the other hand, Mr. Chatterjee points out that the records have since been lost or are untraceable.

5.3. In the circumstances, we cannot look into the materials sought to be relied upon by Mr. Das, which are appearing at pages 10 to 15. In the absence of any material before us, we cannot decide as to whether the land was forest land or that the land had vested in the State. On the other hand, in view of the principle laid down in the decision in Tandon Brothers (*supra*), we are not supposed to go into all these questions. Therefore, the claimants are entitled to the compensation and we are left only with the question as to whether compensation was correctly determined or not.

Whether solatium is payable under the 1952 Act:

6. Mr. Chatterjee had pointed out from Sub-section (2) of Section 8 that while computing recurring compensation certain ingredients are to be looked into as specified therein which included pecuniary loss due to requisitioning and damages caused to the property during the period of requisition. The "sal" trees standing on the land were cut down and an air field was developed. Therefore, on both these grounds, the claimant was entitled to certain compensation by reason of compulsory requisitioning of the property culminating in the acquisition, which is termed as solatium in the Land Acquisition Act. Therefore, the compensation should also include solatium apart from interest.

6.1. Mr. Chatterjee has not filed any cross-objection, therefore, we cannot look into such claim. Though Mr. Chatterjee wanted to rely on Order 41 Rule 33 of the Code of Civil Procedure, but the question being a little different, we do not propose to go into the same. The provisions which Mr. Chatterjee had relied upon are provisions relating to recurring compensation for damages that might have caused as soon as an air field was developed long before the acquisition, therefore, he might have received those components in the form of recurring compensation which admittedly he received. He also might have received compensation towards pecuniary loss due to requisition by way of recurring compensation. Those components having been included in the recurring compensation, he cannot claim it over again at the time of an acquisition. It is for that reason the

question of solatium was not included in Sub-section (3) of Section 8 where only market value was proposed to be paid. If solatium is asked for, in that event, it was open for the claimant to claim solatium to be included in the recurring compensation in terms of Sub-section (2) Clause (b) Sub-clause (i)(iv). Therefore, we are unable to agree with the submission of Mr. Chatterjee with regard to payment of solatium.

6.2. That apart, the Scheme of Section 8 does not contemplate payment of solatium for acquisition. Sub-section (3) lays down the policy of compensation payable on the acquisition of the property. Section 8(3) provides that the prices of the acquired property would have to be fixed as per open market value if it had remained in the same condition as it was at the time of requisition and being sold on the date of acquisition. Thus, the only consideration that can be made is as to the market value of the land on the date of acquisition of the property as it stood on the date of requisition. Thus, solatium is not a component of the compensation payable under the 1952 Act.

6.3. In *The Competent Authority, Special Deputy Collector, Land Acquisition (Defence), Hyderabad Vs. Thota Penta Reddy and Others*, the Andhra Pradesh High Court has also taken the same view that the solatium could not be awarded as a matter of law. "Just equivalent" does not always and necessarily include solatium. At the same time, in *Mawahedduddin and Others Vs. The Collector, Hyderabad*, a contrary view was taken by the Andhra Pradesh High Court that the Act by necessary implication did not exclude the application of the principle of payment of solatium; and the Punjab and Haryana High Court in *Hari Krishan Khosla Vs. State of Pepsu*, relied on by Mr. Chatterjee, had taken the view that solatium is also payable, but for the reasons discussed hereinbefore, respectfully we are unable to agree with the view taken therein. In *Rao Narain Singh (dead) by L.R.s. Vs. Union of India*, the Apex Court had held that the solatium is not available under the Rajasthan Land Acquisition Act (Act 24 of 1953). In *Union of India and others Vs. Sher Singh and another*, , the Apex Court held that the Arbitrator has no jurisdiction to award solatium under the 1952 Act. In these circumstances, in our view, solatium is not payable u/s 8(3) of the 1952 Act.

Whether the valuation made was correct and what shall be the just compensation:

7. In a given case when parties produce evidence of sales relating to the acquired land or lands in the vicinity of the acquired land and require the concerned Court to determine the compensation payable for such acquired land, such Court naturally resorts to what is known as "the Comparable Sales Method" of valuation of land relying on sale deeds relating to land forming part and parcel of land for determining value of the acquired land. Such a process was held correct. But prices fetched under sale deeds of small bits ought not to be made basis for determination of large extents of acquired land so also sale deeds produced relating to land situated in populous area in the city whereas the land acquired situated at a place further away from the city cannot be considered to

be of comparable land. It was so held in *Rao Narain Singh (dead) by L.R.s. Vs. Union of India*, following *Atmaram Bhagwant Ghadgay v. Collector of Nagpur* AIR 1929 PC 92 : 33 CWN 458.

7.1. The valuation is a notional one. The land has been valued at Rs. 25,000/- per acre on the basis of the deeds produced. Admittedly, those deeds were transactions relating to very small fractions of land, which might fetch high price for various reasons. Whereas the present land is a vast tract of land which cannot fetch such high price. That apart the lands, which were sold naturally, stood as it stood on the date of sale i.e: developed land not at a state as it were in 1942. Since it is a notional value that has to be determined on the basis as it stood on the date of requisition, which was not then developed, therefore, the price of developed land cannot be made available while awarding compensation under Sub-section (3) of Section 8.

7.2. It is to be borne in mind in the case of determination of compensation u/s 8(3) of the 1952 Act a notional value of the land as it stood on the date of requisition is to be found out if sold on the date of acquisition. Therefore, the price of a land as it stood on the date of requisition if sold on the date of acquisition cannot be said to satisfy the comparable method. The price has to be juxtaposed with a land with characteristic or in a state as it stood at the time of requisition. Such a principle cannot be said to be inconsistent with the principle for payment of compensation as settled by Courts. Inasmuch as, the claimant receives the recurring compensation determined u/s 8(2) revisable every 5 years. In the circumstances, we are of the view that the Arbitrator was not right in awarding Rs. 25000/-per acre on the basis of the contemporaneous deeds relating to developed lands produced on record.

7.3. In another case, we had occasion to deal with land of the same area viz in State of West Bengal and *Anr. v. Molla Amanulla and Ors.* 2002 (4) ICC 6: 2002 (2) CLJ 600 : 2002 (4) CHN 39 (DB) : 2003(1) CLT 346 where we had awarded Rs. 12000/- per acre. In our view, it would be justified if we award Rs. 12, 000/- per acre in this case as well. The land was acquired in 1975. The valuation is to be made notionally of the land as it stood at the date of requisition i.e., 1942 if sold on the date of acquisition i.e., 1975. When the land was acquired, it was not developed as it is today. We are supposed to keep in mind the utility of the land, as it stood in 1942, in the present day context, and the cost of development. At the same time, the compensation for damages to the property being one of the components of the recurring compensation, we cannot include the damage to the timber standing on the land. Therefore, in our view, the award of Rs. 25000/- per acre was not correct and ourselves having determined Rs. 12,000/- per acre in *Molla Amanulla (supra)* seems to us the just compensation, which we propose to award and the compensation as payable on the quantum be assessed.

Whether interest is payable on the compensation under the 1952 Act:

8. The 1952 Act does not provide for any specific provision in relation to grant of

interest on the compensation payable. But, at the same time, there is nothing to indicate that no interest would be payable under the said Act. Section 8 Sub-section (1) deals with determination of compensation both in respect of requisition and acquisition subject to Sub-sections (2) and (3). It provides in Sub-section (1) that in case no agreement could be arrived at between the parties, the question of compensation both for requisition and acquisition shall be referred to an arbitrator and the arbitrator shall, make an award determining the amount of compensation, which appears to him to be just. Thereafter, Sub-sections (2) and (3) provide as to how the compensation is to be assessed for requisition and acquisition respectively. In case of requisition, the provisions that have been provided are somewhat similar to Section 23(1) of the Land Acquisition Act (LA Act), whereas Sub-section (3) does not provide any such provision as to how the compensation is to be determined. Whether Section 23(1) of the LA Act would apply or not is not clear from the said provision. However, the Courts have occasion to deal with such questions and hold that Section 23(1) of the LA Act would be applicable. Such a view was taken by the Andhra Pradesh High Court in *The Competent Authority, Special Deputy Collector, Land Acquisition (Defence), Hyderabad Vs. Thota Penta Reddy and Others*, and *Mawahedduddin and Others Vs. The Collector, Hyderabad*, ; whereas in *Sonapur Tea Co. Limited and Ors. v. State of Assam*, 1994 4 SCC 746. , the Apex Court had held that the compensation should include not only the actual value of such lands but all damages directly consequent on the taking thereof under the statutory powers.

8.1. The Arbitrator was also not an Arbitrator within the meaning of the Arbitration Act as such there was no bar or prohibition in the grant of interest by the Arbitrator. Interest is payable on compensation when the dues payable are delayed, detained or defaulted and the person entitled to the same is deprived of its enjoyment and the same is being enjoyed by such person retaining the amount. Therefore, the principle of granting interest is attracted in the present case and the Arbitrator was competent to grant interest u/s 8(1) of the 1952 Act on compensation based on consideration of equity. The Act having not made any provision for payment of interest on compensation, in its discretion, the Court may allow or reject the claim of interest or fix such rate as the Court might think proper and also allow interest *pendente lite*.

8.2. Although there is no provision in the 1952 Act for awarding interest, but the power to determine compensation unlike LA Act, Sub-clause (d) of Section 8(1) of 1952 Act provides for "fair amount of compensation" whereas Sub-clause (e) widens it further by empowering the Arbitrator to award an amount, which appears to him to be just having regard to the circumstances of each case. What is just and fair cannot be laid down with precision. Compensation is paid to indemnify a person and it should normally be an equivalent or substitute of equal value. The interest is to make good the loss suffered by the claimant on delayed payment of compensation. The denial of interest would not be in interest of justice. It was so held in *Kalimpong Land and Building Ltd. and Another Vs. State*

of W.B. and Others, relying upon Union of India v. Hari Krishna Khosla 1993 . (2) SCC 149 : JT 1993 (5) SC 574. That interest is payable was also recognized in Abhay Singh Surana and Others Vs. Secretary, Ministry of Communication and Others, . The decision in Kalimpong Land & Bldg. Ltd. (supra) had also relied upon AIR 1928 287 (Privy Council) . In Balai Lal Pal v. State of West Bengal 70 CWN 363, the Calcutta High Court took the view that it is quite within the competence of the arbitrator to award interest on compensation assessed. The right to receive interest by the clamant is an equitable right which is payable on the unpaid purchase money or unpaid compensation. It was further held that even interest pendente lite can be granted though Section 34 of the CPC does not apply to proceedings before the arbitrator. The Calcutta High Court in this decision had followed the decision in The Province of Bengal Vs. Pawn Kissen Law and Co., wherein it was held that though Sections 28 and 34 of the LA Act are not made applicable, yet in the absence of any indication to the contrary, there was no reason why interest on the value of the land acquired under the Defence of India Act would not be awarded by the Arbitrator. Therefore, from the above discussion, it is clear that on equitable reasons interest is payable at the discretion of the arbitrator having regard to the facts and circumstances on the compensation determined u/s 8 Sub-section (3) of the 1952 Act.

Conclusion:

9. As discussed above, having regard to the facts and circumstances of the case, the claimants are entitled to compensation. Inasmuch as, there was no material to hold that the land stood vested on account of its being forest land by reason of issue of notification covering the same. Neither there was any material to hold that the lands stood vested in the State under the West Bengal Estates Acquisition Act. The land was requisitioned in 1942 when the ownership of the claimants/respondents to the land were not in dispute and they became entitled to the recurring compensation and continued to receive the same until the land was sought to be acquired in 1975. The land was sought to be acquired in 1975 at the hands of the claimants by reason of its requisition in 1942. In the absence of any material to the contrary, on the basis of the ratio decided in Tandon Brothers (supra), the same is to be excluded from the quantum of retainable land, and the right of the claimants' entitlement to compensation cannot be denied. The amount of compensation determined by the Arbitrator at Rs. 25,000/- per acre held on the basis of Comparable Sales Method on the strength of sale deeds evidencing sale of small bits of land as it stood on the date of the sale being developed one cannot be held to be correct and was not correct. Having regard to the situation considering the state of the land as it stood in 1942 sold in 1975 follow the valuation of similar lands held by us in Molla Amanulla (supra), we think Rs. 12,000/- per acre would be the just compensation u/s 8(3) of the 1952 Act. The provisions of the 1952 Act in Section 8(3) do not contemplate grant of solatium, since it has by implication included the same in the determination of the recurring compensation, which the claimants have already received, as discussed above. On account of delayed

payment on the principles of equity, interest is payable on the compensation under the 1952 Act.

Order:

10. In the result, the appeal is allowed to the extent indicated above. The compensation is to be paid at the rate of Rs. 12,000/- per acre. The amount deposited by the appellant in terms of the Court's order shall be treated as principal and in case it exceeds the compensation payable the balance shall be adjusted against interest payable on the principal as directed hereafter. The claimant shall be entitled to payment of interest at the rate of 6% per annum simple from the date of notification for acquisition till the date of deposit of the money/compensation by the Collector in terms of the Court's order and upon such amount so deposited. If there be any balance remaining payable to the claimant, in that event, interest on such balance part would be calculated from the date of issue of notice for acquisition till the date of payment. If the amount deposited is in excess of the amount of the compensation together with interest payable, such part of the amount already deposited be released, if not already released in full or in part, as the case may be, to the claimant on the basis of the documents placed before us, within a period of three months from the date of communication of this order and the balance be refunded to the appellant. The order of the learned Arbitrator is modified to that extent.

10.1. The appeal is, thus, allowed in part. There will, however, be no order as to costs.

11. At this stage, it is pointed out that there are certain things that the learned Counsel for the respondent wanted to point out. Leave is granted to do so on affidavit. Let this matter appear on the next Friday (30.7.2004).

Joytosh Baherjee, J.

I agree.

July 30, 2004

Dilip Kumar Seth, J.

In Re: CAN No. 6258 of 2004:

12. It was pointed out that the records of the learned Trial Court were not traceable. We, therefore, granted leave to the respondent to file an application containing necessary papers for reconstructing the Lower Court Records. Accordingly, this application has been filed.

12.1. Mr. Das, the learned Counsel appearing on behalf of the appellant, does not depute this proposition and does not object to the records being reconstructed on the basis of the documents annexed with this application.

12.2. Let this application be allowed and the documents annexed to this application be utilized for the purpose of reconstruction of the records of the

learned Trial Court in case the Trial Court records are untraceable. The application, thus, stands allowed.

Order No. 14 dated 21st March 1996:

13. After this order is passed in relation to the claim of Pradip Kumar Agasti and 4 others, it is pointed out that another order in the case of Raoson Ah Khan was also challenged in this appeal.

14. Mr. Chatterjee contends that since the appeal against Pradip Kumar Agasti and 4 others have been decided, so far as Raoson Ali Khan is concerned, in the eye of law, there is no appeal pending, since two cause of actions are different and cannot be joined together.

15. On the other hand, Mr. Das contended that the claimant might be different but the number of L.A. Case was the same, being No. 6 D.I.A. of 1972-73 and orders were passed serially on the same day as Order Nos. 15 and 14 dated 21" of March, 1996 respectively, therefore, there was no scope for preferring a separate appeal in respect of Raoson Ah Khan.

16. After having heard the learned Counsel for the parties, it appears to us that since the case number was one and the orders were passed serially in the same proceedings on the same date, the question that has been raised by Mr. Chatterjee would be too technical, therefore, we overrule his objection.

16.1. However, now coming to the question of merit, Mr. Chatterjee contends that this is a high land and Bastu in character and the quantum of the land is also only 66 acres which might be of special interest to the parties and cannot be equated with large tract of land. Therefore, the valuation as determined seems to have been correctly determined and the appeal should be dismissed without any interference with the award.

16.2. Mr. Das, on the other hand, had contended that in the earlier order in this appeal and in a similar case in State of West Bengal v. Molla Amanulla and Ors. 2002 CLJ 600 this Court had determined the valuation at Rs. 12,000/-, therefore, the same valuation should also be awarded in the present case.

16.3. The fact remains that the area of land is insignificant and the quantum of compensation is also not very high as of that in the case of Molla Amanulla (supra) and Pradip Agasti involving vast tract of land and where the major part of the lands were lands other than Bastu. When the quantum is less then it might have special value to particular person, particularly, when the land is a Bastu land; and as such the same is capable of fetching higher price. After having gone through the judgment, we do not think that this is a case fit for interference since the quantum of land is insignificant and the amount of compensation is only a paltry sum of Rs. 16,500/-.

Order:

17. Therefore, we are not inclined to interfere with the said award except that

the amount of award shall carry interest at the rate of 6% simple per annum from the date of the award till payment after adjusting the amount already deposited. In case any amount is deposited, that shall be treated as principal and the interest would be payable on the said amount from the date of acquisition till the date of deposit and if there be any balance (of principal) then interest would be payable till the date of payment of such balance amount. In case the amount deposited exceeds principal, the same will be treated as interest, which shall not carry any interest. If there be further excess, the same be refunded to the appellants. The amount already in deposit to the extent of principal and interest on the compensation payable be released in the same manner and time to the claimant.

17.1. With this observation, this appeal, in respect of Raoson Ali Khan in L.A. Case No. 6 D.I.A. of 1972-73 relating to Order No. 14 dated 21st March, 1996 is, thus, disposed of.

18. There will, however, be no order as to costs.

Joytosh Banerjee, J.

I agree.