
(1983) 12 CAL CK 0002
In the Calcutta High Court

State of West Bengal and Others

APPELLANT

Vs

SM. Belarani Debi

RESPONDENT

Date of Decision : 07-12-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : 88 CWN 274

Hon'ble Judges : N.G. Chaudhuri, J;Mookerjee, J

Bench : Division Bench

Advocate : Tapan Kumar Sengupta and Deb Ranjan Bera, for the Appellant;
Birendra Nath Ghosh and Madan Mohan Saha, for the Respondent

Final Decision : Dismissed

Judgement

Mookerjee, J.—The State of West Bengal for the purposes of construction of branch canal in connection with Kangsabati Reservoir Project, under the provisions of the land Acquisition Act, 1894, had acquired Plot Nos. 31, 32, 33, 34, 35 and 37 of mouza Bhaghushole, P.S. Garhbeta, District Midnapore measuring 7.44 acres. The respondents of these two appeals were owners of the said plots- having moiety share. Plot No. 31 measuring 62 decimals was a tank (bundh) which was being used for rearing fishes and spawning. Plot Nos. 32, 33 and 35 measuring 2.25 acres were recorded as Dhani Chharam (paddy lands). Plot Nos. 34 and 37 measuring 2.89 acres were recorded as Danga Patit. The trial court has not believed the" claim of the respondents that jute used to be cultivated upon the said lands. The Collector had awarded to each of the claimants Rs. 7098.50 p. as total compensation. At the instance of both the claimants, references u/s 18 of the Land Acquisition Act were made to the Land Acquisition Judge, Midnapore. The learned Additional District Judge, 2nd Court, Midnapore by the judgment under appeal allowed both the cases in part and enhanced the compensation payable" to each of the petitioners by a sum of Rs. 6974/- with interest at the rate of 6% per annum from the date of his order till payment. Being aggrieved thereby the State preferred these two appeals. The

claimants have also filed two memoranda of cross-objections. We dispose of the two appeals and the two cross-objections in the following manner.

2. We reject the extreme submission made by Mr. Tapan Kumar Sengupta, learned Advocate for the State, that the learned Judge of the court below had erred in determining compensation for the Plot No. 31 which was recorded as a tank, on the basis of the net annual income of the said tank for 12 years. In the case of *Raja Shyam Chunder Mardraj and others v. The Secretary of State for India in Council* 12 C.W.N. 596 the court had rejected the claim for compensation for incorporeal rights of fishery which had detached from the land within which they arose and were not subjects for acquisition. The Division Bench in *Raja Shyam Chunder Mardraj v. The Secretary of State (supra)*, had recognised that the land including the rights arising out of it could be the subject matter of acquisition under the Land Acquisition Act. A right to catch and carry away fish in specific portion of a tank or lake is a licence coupled with a grant, i.e., it is a profit as *prendre*, which is regarded in India as a benefit that arises out of the land and as such is immovable property (vide *Ananda Behera and Another Vs. The State of Orissa and Another*,). The purpose of compulsory acquisition is to acquire all interests which clog the right of the Government to full ownership of the land subject to payment of compensation of those interests in the acquired land (see *State of Kerala Vs. P.P. Hassan Koya*,). As part of value of owner all advantages which the land possesses, present or future, in the hands of the owner may be taken into consideration, and the owner is entitled to have the price assessed in reference to those advantages which will give the land the greatest value (see *Cripps on Compensation*, 10th Edition, paragraphs 4-013 at pages 680-81). When a tank or a reservoir was being used as a fishery it would be wrong to assess compensation for acquiring the same at half the rate of compensation payable for solid lands. Such method of determining compensation for an acquired tank may be relevant when an acquired tank may have to be filled up with earth for making it fit for building site. In a case like the present one, in, awarding compensation, the court is bound to take into consideration the special advantage of earning income by the owners by its use as a fishery and also its future potentialities to yield such return. The officers of the Land Acquisition Department of the State in their rate report (Ext. B) and also at the trial did not seriously dispute that the tank or bundh in Plot No. 31 was being used for purpose of spawning and their net earning per year was Rs. 1415/-. The Kanungo, Jnan Ranjan Bhattacharyya, opposite party's witness No. 1, admitted that he did not note in his report (Ext. B) that the said tank dried up in December and, therefore, the court below rightly rejected the said claim. The evidence given by the claimant's witnesses that the tank never used to get dry was more trustworthy.

3. The learned Additional District Judge has recorded that neither party could produce any registered deed in respect of sale of similar lands in the mouza in question. Thus, there was no reliable evidence about the price at the relevant time of comparable lands. Even if the claimants could not adduce any

documentary evidence on the point the State was bound to pay compensation for the acquired plots at least according to their valuation made in the rate report (Ext. B) prepared by the Land Acquisition Department of the State. In respect of the Plot No. 31 which was a tank used for fishery and spawning the court below had rightly adopted the principle of capitalising the actual and prospective profit from the said acquired plot (see Harish Chunder Neogy, Claimant Vs. The Secretary of State for India in Council , The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty,).

4. Mr. Ghosh, learned advocate appearing on behalf of the respondent cross-objectors, had submitted that in determining the valuation of Plot No. "31 the court below had erroneously taken only its 12 years purchase or net annual income. He has drawn our attention to the decisions of the Supreme Court in the case of (Ramachandraiah etc. Vs. Land Acquisition Officer, Sagar, , The State of Madras Vs. Rev. Brother Joseph, , State of West Bengal Vs. Shyamapada and Others, , The Collector of Kamrup Vs. Raj Chandra Sarma and Others,). In all these reported cases however, the Supreme Court had no occasion to determine what would be the appropriate number of years" purchase in case of compulsory acquisition of a tank fishery. In this matter no general or uniform rule as to the number of years" purchase can be laid down. Every case must depend on its own circumstances on the evidence given and the nature of the property. Number of years" purchase which it would be right to allow with regard to one sort of property might not be a fair allowance for other kind of property (see Heysham v. Bholanath Mallick 11 B.L.R. 1813). The reported cases have indicated that years" purchase may be fixed having regard to various factors, for example, expected return from a property, security or stability of such return and its duration, costs of collection, prevailing rate of interest etc. (see Parks on Principle and Practice of Valuation 4th Edition, Chapter-II). In the said book it has been indicated that the multiplier of the net rent to obtain capital value is known as the years" purchase and the security of the rent which a property produces is reflected in the years" purchase. Security in the form of percentage yield of capital is found by rent upon capital multiplied by 100 and years" purchase is found by dividing capital by rent. However, without engaging ourselves in intricacies of accounting, we may make a rough estimate of the capitalised value of the net earning from Plot No. 31 in the following manner.

5. In the absence of any contrary evidence we accept the evidence given by the claimant witnesses that they had erected an embankment which was 8/9 ft. in height and 300 ft. in length. The State did not challenge the statement of the claimant witnesses that the said embankment would have lasted for 25 years and the depth of the water was 5 ft. It is no longer disputed that the claimant used to rear fish in the tank. Spawning also used to be done. Since the claimants did not produce their account papers, we have accepted the figure of Rs. 1415/- as the net annual income of the tank as stated in the rate report (Ext. B). We have given due regard to the nature of income earned from rearing fish in a tank its uncertainties, fluctuations from year to year and also other hazards involved.

It is also very likely that the claimants had put their case somewhat high when they claimed that the embankment would have lasted for another 25 years. After taking all these various factors into consideration, we hold that valuation of Plot No. 31 ought to be made by capitalizing its net income of Rs. 1415/- for a period of 16 years, i.e. $\text{Rs. } 1415/- \times 16 = \text{Rs. } 22640/-$. Each of the claimant respondents are entitled to receive half of the said total amount of compensation. To the above extent the cross-objections would succeed and the judgment and decree given by the learned Additional District Judge in respect of the Plot No. 31 ought to be modified.

6. In the absence of any other documentary evidence on record regarding the market value at the relevant period of lands similar to the acquired plots, the court is left only with the Rate Report (Ext. B). and the oral testimonies as the basis for determination of compensation for these plots. Mr. Ghosh, learned advocate for the respondent cross-objectors, has rightly submitted that his clients were entitled to receive compensation for the different classes of the lands at the rates mentioned in the Rate Report (Ext. B) because the State is bound by the finding made by its own officers about the market value of similar lands. The learned Judge of the court below did not award compensation at least in respect of Danga and Danga Patit plots of the claimants at the rate of Rs. 1800/- per acre suggested by the Kanungo, who was examined as opposite party's witness No. 1. No reliance can be placed upon the observations of the Assistant Land Acquisition Officer, who had proposed in the said report lower rates of compensation because the said Assistant Land Acquisition Officer was not examined as a witness. The State did not also produce the materials, if any, on the basis of which the said officer had expressed his views about the prevailing prices of different categories of land. Therefore, the said part of the Rate Report (Ext. B) relating to the notings by the Assistant Land Acquisition Officer cannot be relied upon to determine the compensation payable for these plots. The opposite party's witness No. 1 also did not state anything about the rates suggested by the Assistant Land Acquisition Officer.

7. In the above view, the compensation for Plot Nos. 32, 33 and 35 which had been recorded as Dhani Chharam and Dhani Patit ought to be determined at the rate of Rs. 1415/- per acre as proposed by the Kanungo, the opposite party's witness No. 1, in his Rate Report (Ext. B). The remaining plot Nos. 34 and 37 were classified in the Report as Group B category for which opposite party's witness No. 1 had proposed Rs. 1800/- per acre as the rate of compensation.

8. Therefore, the learned Judge of the court below was not justified in awarding compensation for the aforesaid two categories of lands at the rates of Rs. 1400/- and Rs. 1500/- per acre which were even lower than the rates suggested in the Rate Report (Ext. B) prepared by the opposite party's witness No. 1. The two cross-objection to the above extent would also succeed. The learned Judge of the court below was also wrong in awarding interest at the rate of 6% per annum upon the compensation from the date of his judgment. The compensation

awarded for the plots of land including the tank together with statutory allowance thereon at the rate of 15% per annum would carry interest from the date of taking over of possession till payment.

9. We accordingly dismiss the two appeals and allow in part the two cross-objections and modify the judgment and decree of the court below. The compensation for Plot No. 31 would be paid by capitalising its net annual return of Rs. 1415/- for a term of 16 years. The compensation for Plot Nos. 32, 33 and 35 mouza Bhaglushole, P.S. Garhbeta, shall be paid at the rate of Rs. 1415/- per acre and compensation for Plot Nos. 34 and 37 shall be paid at the rate of Rs. 1800/- per acre. In addition the claimants will be entitled to solatium upon the compensation money at the rate of 15% and the total awarded sum shall carry interest at the rate of 6% per annum from the date of taking over possession of the acquired plots till payment.

There will be no order as to costs.

N.G. Chaudhuri, J.

I agree.