
(1958) 07 CAL CK 0004

In the Calcutta High Court

Case No : A.F.O.O. No. 10 of 1953 with cross-objection

State of West Bengal

APPELLANT

Vs

Bibhuti Bhusan Chatterjee and Others

RESPONDENT

Date of Decision : 11-07-1958

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 24, 24(6)

Citation : AIR 1959 Cal 572 : (1959) 2 ILR (Cal) 381

Hon'ble Judges : P.N. Mookerjee, J;P.K. Sarkar, J

Bench : Division Bench

Advocate : Nirmal Chandra Chakravarty, for the Appellant;Amarendra Nath Gupta and Satindra Nath Roy Choudhary, for the Respondent

Judgement

P.N. Mookerjee, J.—This is the State's appeal, arising out of a Land Acquisition proceeding. The acquired land is a strip 6 ft. wide by the side of a public lane (Ganesh Banerjee Lane) in Dhakuria and the acquisition is on behalf of the Municipality for widening that lane. The strip stretches in length along Ganesh Banerjee Lane which adjoins, it on the west and its width (6 ft.) abuts on the main thoroughfare Sarat Ghose Garden Road which is to its adjacent north. It measures 3 kattas, 10 chittaks and 30 sq. ft. and it forms part of c.s. plot No. 658 (of mouza Dhakuria) which has an area of 41 acre and belongs to the claimants-respondents.

2. The relevant notification u/s 4 of the Land Acquisition Act is dated the 27th February, 1947. It was published in the Calcutta Gazette on the 16th March, 1947. Statutory declaration u/s 6 of the Act was made on the 23rd February, 1948, and it was published in the Calcutta Gazette on the 26th February, 1948. The Collector gave his award on the 27th October, 1948, valuing the land at Rs. 1,000/- per katta, and for trees etc. he awarded Rs. 40/- and his total award, including the usual statutory allowance at 15 per cent., came up to Rs. 4,262-10-8p.

3. The claimants were not satisfied and they applied for a reference to the

learned Land Acquisition Judge. That reference was duly made and it was registered as Land Acquisition Case No. 56/49 (v) of the Court of the Special Land Acquisition Judge at Alipore. This valuation reference was eventually heard by Sri M.L. Chakraverty who enhanced the Collector's award to Rs. 10,646-4-11p, the actual enhancement being Rs. 5,383-10-3p (including statutory allowance), the price of land having been fixed by the learned Land Acquisition Judge at Rs. 2,500/- per katta. Aggrieved by this enhancement, the State of West Bengal has preferred the present appeal. The claimants-respondents have filed a cross-objection with a view to get further enhancement.

3. The short point that arises in the appeal is as to the proper value of the acquired land. That is also one of the questions in the claimants' cross-objection which seeks, further, enhancement of the award for costs and interest as made by the learned Land Acquisition Judge.

4. As to valuation of land, we have to decide a point of principle and then determine the quantum in the light of that principle and upon the evidence in the case. The point of principle is of first impression and of some importance. It is argued by the State that the strip being 6 ft. wide it should be valued on the basis of valuation of similar strips and, as a strip 6 ft. wide cannot constitute a building site, in valuing it, the standard of valuation of building plots cannot be of any assistance. The claimants, on the other hand, contend that the strip should be valued, taking into account its value to the owner with all its existing advantages and all its possibilities and potentialities, that is, as part of the best plot at the site or in the neighbourhood. We do not think that either of the above two views is correct. In our opinion, both appear to lean towards extremes and the true view would be that the acquired strip would be valued as part of the claimants' c.s. plot No. 658 taking into account its (that is, the c.s. plot's) value to the owner with all its existing advantages and all its possibilities and potentialities. If the acquired strip had been the only land, belonging to the claimants at the site, and not part of a bigger plot, belonging to them, the State's argument would have been unanswerable. If, on the other hand, the said strip had been part of the best plot at the site or in the neighbourhood, the claimants' contention ought to have been accepted. Neither the one nor the other, however, represents the actual situation. The acquired strip is part of c.s. plot No. 658, belonging to the claimants, and it should, accordingly, be valued as such taking into account, as we have said above, the value of the said plot to the owner with all its existing advantages and all its possibilities and potentialities--vide AIR 1925 91 (Privy Council) , vide also Swarnamanjuri Dassi Vs. Secy. of State, . We have, therefore, to find out, in the light of our foregoing observations, the average rate per katta of c.s. plot No. 658 and value the acquired I strip at that rate. That will be the true principle! and the true method of valuing the acquired strip.

5. As to the relevant evidence of valuation, it is unsafe to rely on the oral evidence and we prefer to proceed on the documentary evidence on record. The

State has filed two kobalas, or, rather, certified copies thereof, which have been marked as Exts. A and A(1). They do not, however, constitute any helpful material on the point. Ext. A, though a kobala, dated the 12th March, 1947, really gives the price of the year 1945, the relevant agreement for sale being of date 27th May, 1945. The other kobala, Ext. A(1), again, is in respect of a Hindu Woman's estate, though, apparently, for legal necessity, and is, moreover, a transaction between close relations and, besides, this also is of the year 1946, or, rather, the early part of it, being dated the 6th February, 1946. The lands, again, of the above two kobalas appear to have been, more or less, in the interior of very big tracts, not very much developed at the time of those sales. In these circumstances, the above two kobalas cannot furnish any true criterion of land value in the locality at or about the time of acquisition or the relative date of notification. The claimants' kobalas, Exts. I and 1(a), however, are much better from this point of view and much more helpful on the above point of valuation. They are dated the 18th April, 1957, and the 4th January, 1947, and the relative agreements for sale appear to be of the dates 30th March, 1947, and 6th December, 1946, that is, near about the relevant date (27-2-47) of notification, one being prior and the other subsequent but, in neither case here, their chronological difference having any appreciable effect on local land value on any reasonable hypothesis. These are, therefore, very relevant as to the point of time of valuation, material for purposes of this case. They are also in respect of lands which, with some adjustments, may afford a comparable basis for valuing the claimants' c.s. plot No. 658 in terms of our observations, made hereinbefore. By way of adjustments, deductions will have to be made on account of the largeness of size of the said c.s. plot and its distance from the Dhakuria railway station and from the other amenities of bazar, school etc. which are very much nearer the two kobala plots. These plots, again, were in the Tanupukur locality which appears to have been fairly developed at the time of the two kobalas and the said plots were sold as part of a land development scheme. And, on the evidence before us, we think that, for largeness of size, a deduction of 10 per cent. would be appropriate and for lesser amenities and distance from the railway station and the more developed area of Tanupukur, even as it stood at the date of the two kobalas, Exts. 1 and 1(a), a deduction of 20 per cent. would be quite legitimate. The kobalas, again, give an average rate of Rs. 2850/- per katta. Deducting 30 per cent., we get Rs. 2,000/- per katta in round figure and that, in our opinion, is the proper value of the disputed strip. We would, therefore, reduce the learned Judge's award only to this extent that the value of the acquired land should be at the rate of Rs. 2,000/- per katta in place of Rs. 2,500/- per katta, as taken by him, with corresponding statutory allowance.

6. A point was raised by the learned Government pleader Mr. Chakraverty that as the widening of Ganesh Banerjee Lane, for which the present acquisition was made, would benefit the claimants by increasing the value of the remaining portion of their land in c.s. plot No. 658, that benefit or increase in value should be set off against the value, to be awarded to the claimants for the said

acquisition. We do not think that this contention is correct, and we would only point out Section 24(6) of the Land Acquisition Act as a sufficient answer to the State's above argument.

7. As to the remaining questions of costs and interest, as raised in the cross-objection, we do not think that anything need be said beyond stating that, in the circumstances of this case, the award of proportionate costs to the claimants is eminently justified and that interest should be at the rate of 6 per cent. per annum as per Section 28 of the Act, the learned Judge's award of 3 per cent., as mentioned in his judgment (award) being evidently a mistake as is shown by the correct figure in the decree drawn up on his award (judgment).

8. In the result, then, both the appeal and the cross-objection are allowed in part and the land value awarded by the learned Judge, viz., at the rate of Rs. 2,500/- per katta, is reduced to Rs. 2,000/- per katta with corresponding reduction in the statutory allowance, and interest would be at the statutory rate of 6 per cent. per annum and the order for proportionate costs in the court below will be maintained, the actual figure in that respect being, of course, varied due to our reduction of the enhancement, granted by the learned Judge, and, subject to the above variations, the award of the court below will stand.

9. Let a fresh award be drawn up by the court below in terms of this judgment.

10. There will be (no?) order for costs in this Court, either in the appeal or in the cross-objection.

Sarkar, J.

11. I agree.