

(1989) 01 CAL CK 0010
In the Calcutta High Court
Case No : A.O.D. No. 520 of 1966

State of West Bengal

APPELLANT

Vs

Central Land and Building Society Ltd.

RESPONDENT

Date of Decision : 25-01-1989

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 18, 23(2), 4

Citation : 93 CWN 1009

Hon'ble Judges : G.N. Ray, J; Abani Mohan Sinha, J

Bench : Division Bench

Advocate : Amar Nath Banerjee and Debayan Bera, for the Appellant; Sailendra Bhusan Bakshi, Sumit Ghose and Krishna Gupta, for the Respondent

Judgement

G.N. Ray, J.—This appeal is directed against the judgment and decree dated 30th July, 1965 passed by learned Special L. A. Judge, Alipore in L.D. P. Case No. 64 of 1964(V) arising out of a reference u/s 18 of the Land Acquisition Act, 1894 read with West Bengal Land Development and Planning Act, 1948 (Act 21 of 1948) against the Collector's award in L.D.P. Case No. 18, of 1956. It is an admitted position that 2.447 acres of solid land and 413 acre land appertaining to tank, measuring in all 2.86 acres, in mouza Baderaipur, within Police Station Tollygunge in the District of 24 Parganas (now South 24-Parganas) were acquired for public purpose, namely, for settlement of immigrants under the West Bengal Land Development and Planning Act, 1948. Such acquisition was made by a Notification dated 17th July, 1956 u/s 4 of the said Act and published in the Calcutta Gazette. Under the provisions of the West Bengal Land Development and Planning Act, 1948 the compensation was payable according to the market value of the land as on 31st December, 1946. Against the award made by the Collector for the said acquisition, a reference u/s 18 of the Land Acquisition Act was made and the learned Special L.A. Judge in the said L.D.P. Case No. 64 of 1964(V), inter alia, came to the finding that the market value of the said land on 31st December, 1946 was Rs.700/- per cottah for solid land and Rs.350/- per

cottah for the land appertaining to the tank. The learned L.A. Judge on that basis, therefore, held that the respondent was entitled to get compensation at the said rate and it was also held by the learned Judge that the respondent was entitled to get interest at the rate of 6 per cent per annum on enhanced value from the date of possession, namely, from 27th December, 1957, until payment is made in Court. It appears that the claimant respondent made a prayer for solatium u/s 23(2) but such prayer was disallowed by the learned Special Judge. The State of West Bengal has, thereafter, preferred the instant appeal and the claimant respondent, namely, Messrs. Central Land & Building Society Ltd., has preferred a cross-objection against the decision of the learned L. A. Judge, inter alia, contending that they are entitled to get a much higher valuation for the acquired land and they are also entitled to solatium u/s 23(2) of the Land Acquisition Act. It may be noted in this connection that in a Bench decision of this Court made in the case of Monoranjan Routh & Ors. v. State of West Bengal, reported in 76 CWN 971, it was held that the provisions of the West Bengal Land Development and Planning Act in so far as it reduced solatium of 15 per cent payable under the Land Acquisition Act was ultra vires of the Constitution as the same offended Article 14 of the Constitution. Later on, another Division Bench of this Court in the case of Ramendra Nath Nandi v. State of West Bengal, reported in 79 CWN 593, held that valuation for acquisition of land under the said West Bengal Land Development & Planning Act, 1948 was not to be made with reference to 31st December, 1946 and such provision was also ultra vires and it was decided that such valuation should be made on the date of acquisition, namely, when the notification for acquisition has been published in the gazette. The learned Counsel appearing for the appellant, State of West Bengal, has submitted before us that after such decision valuation for acquisition under the said West Bengal Land Development and Planning Act is being made with reference to the market value of the land as on the date of notification u/s 4 and the solatium of 15 per cent as payable for acquisition under the Land Acquisition Act, 1894 is also being paid for such acquisition. In the present (sic)ase, the dispute arose as to what was the market value of the acquired lands on 8th August, 1956, namely, the date of publication of the notification u/s 4 of the said Act. It has been contended by Mr. Bakshi, learned counsel for the claimant respondent that price of land in and around the city of Calcutta had appreciated very rapidly after the communal riot in 1946 and after partition of this country in 1947. Mr. Bakshi has submitted before us that the Supreme Court in its decision made in the case of Mathur Prosad Ragharia v. State of West Bengal, reported in AIR 1971 SC 465, has noted that there had been considerable appreciation of the price of land between 1941 and 1946 and influx of refugees during the said period was also noted by the Supreme Court. Mr. Bakshi has submitted that the value of the land considerably appreciated even after 1946 and more so after 1947 because of the partition of the country and such fact was also judicially noted by this Court in the case of Nakul Chandra Dutta v. Ajit Kumar Chakraborty & Ors. reported in 86 CWN 866.

2. Mr. Bakshi has also submitted that the acquired lands were situated near Jadavpur Railways Station and was just behind the present State Transport Bus Terminus. The said area is now within the limits of the Calcutta Corporation and in 1956 the said area was quite developed and the lands in that locality fetched high price. In the aforesaid facts, this Court can take judicial notice of the changed circumstances. Mr. Bakshi has also submitted that even on modest estimation the market price of the land in question in 1956 must be held to be double the price which it could fetch in December, 1946. Accordingly even on the basis of the valuation made by the learned Special Judge, it must be held that the price of the solid land in 1956 when the notification was published was Rs. 1,400/- per cottah and the price of the land appertaining to tank was Rs.700/- per cottah in stead of Rs.700/- and Rs. 350/- per cottah respectively which were the values of the said lands in December, 1946 as held by the learned Special Judge. Mr. Bakshi has contended that the cross-objection should be allowed and the award of compensation should be on the basis of valuation of solid land at the rate of Rs. 1,400/-per cottah and of land appertaining to tank at the rate of Rs.700/- per cottah.

3. Considering the facts and circumstances of the case, it appears to us that there is substance in the said contention of Mr. Bakshi. This Court can take judicial notice of the fact that after had been influx of a large number of refugees and there had been development and expansion of the city of Calcutta and the area in question became highly populous at the time when the notification under Section 4 was published on August 19, 1956. In the aforesaid circumstances, we are inclined to accept the contention of Mr. Bakshi that the value of solid land since acquired under the said Act in the area in question had appreciated to the tune of 100 per cent within the said span of ten years and at the relevant time the price per cottah for solid land was Rs.1400/-on modest estimation. Similarly the price per cottah of the land appertaining to the tank wa Rs.700/- and the claimant respondent was entitled to compensation on that basis. It appears to us that the total solid land measured 2.447 acres and on the valuation of such solid land at the rate of Rs. 1460/- per cottah being the market value of such solid land at the relevant time, the market value comes to Rs.2,07,260.90 and the land appertaining to the tank measured 413 acre and at the rate of Rs.700/- per cottah for such tank land, the total market value of the land at the relevant period was Rs. 17,490.55 P. By this process the total market value of the entire acquired land comes to Rs. 2,24,751.45 P. It appears that if such valuation is accepted, which we hereby do, there will be an enhancement of the award of the learned L.A. Judge to the extent of Rs. 1,12,375.72. It appears that the court fee payable by the claimant respondent cross-objector on such enhanced value by Rs. 1,12, 375.72 is Rs.2,587.50P. Court fee of Rs. 1,04 2.50 P. has already been paid on the cross-objection. Therefore, the defecit court fee payable on the enhanced valuation by the cross-objector is Rs. 1,545.00p. The cross-objector is, therefore, directed to pay the said deficit court fee within two weeks from today. It has been contended before us by Mr. Bakshi, learned counsel for cross-

objector made in Bhag Singh v. Union Territory of Chandigarh, reported in AIR 1985 SC 1576, the claimant respondent is entitled to higher solatium at the rate of 30 per cent and also higher rate of interest and Mr. Bakshi has submitted that such a decree for higher solatium and also for higher interest should be made in this appeal. It, however, appears to us that in a very recent judgment of the Supreme Court in the case of Administrator General of West Bengal v. Collector, Varanasi, reported in AIR 1988 SC 943, the Supreme Court has noted that since the decision given in Bhag Singh's case is pending consideration before a larger Bench, the question of getting solatium and also higher interest should await final adjudication to be made by the larger Bench. We, therefore, dispose of the instant appeal and the cross-objection by directing that the claimant respondent will get a further award in addition to the award already made by the Special Land Acquisition Judge to the extent of Rs. 1,12,375.72 P. on payment of deficit court fee of Rs. 1,545.00P. by the cross-objector within two weeks from today. The cross-objector respondent will also be entitled to get solatium at the rate of 15 per cent on the total award amounting to Rs.2,24,751.45P. and the cross-objector respondent will also be entitled to get interest for the present at the rate of 6 per cent from the date of dispossession, that is, from the 27th December, 1957, on the total award receivable by the claimant respondent by this judgment.

4. Although the appeal stands disposed of to the extent above, the appeal will be treated as pending for the limited purpose of asking for higher solatium and higher rate of interest according to the ultimate decision of the larger Bench of the Hon'ble Supreme Court in Bhag Singh's case and only for that limited purpose the respondent will be entitled to mention the matter before this court and get further adjudication on the question of higher solatium and higher rate of interest. In view of the fact that this matter is pending for a long time and possession had been taken on 27th December, 1957 the Land Acquisition Collector, Calcutta without prejudice to the rights and contentions of the claimant respondent to ask for higher amount by way of solatium and higher interest at later date on the basis of the decision of larger Bench of the Hon'ble Supreme Court in Bhag Singh's case, is directed to issue an account payee cheque in favour of the claimant respondent company in accordance with this judgment within three months from the date of submission of the certified copy of the judgment and decree of this appeal.

There will be no order as to costs either in the appeal or in the cross-objection.

Abani Mohan Sinha, J.

I agree.