(2006) 08 CAL CK 0028

In the Calcutta High Court

Case No : F.A. No. 90 of 1998

State of West Bengal APPELLANT

Vs

Dhirendra Kumar Mitra and Others RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 300A, 31, 31(2), 31B
Land Acquisition Act, 1894 — Section 23(1A), 23(2)
West Bengal Land Development and Planning Act, 1948 — Section 2, 4, 8, 8(1)

Citation : (2007) 1 CHN 591

Hon'ble Judges : Sanjib Banerjee, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Tapan Banerjee and Washef Ali Mondal, for the Appellant;Debnath Ghosh, Chandana Biswas and Monica Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Kalyan Jyoti Sengupta, J.—This appeal assails the judgment and decree passed by the learned Special Land Acquisition Judge in L.D.P. Case No. 35 of 1980(V) dated 23rd December 1987. The land in question was acquired by the Government under the provisions of the West Bengal Land Development and Planning Act, 1948 (in short the said Act). Being aggrieved by the award passed by the Land Acquisition Collector, the respondents/claimants applied for reference of this matter before the learned Additional District Judge at Alipore. It was contended before the learned Judge that the Collector had passed the award taking into consideration the market value as provided in the proviso to Section 8 of the said Act. The learned Judge after taking into consideration the market value that prevailed on the date of notification, which was produced on behalf of the State; and also the evidence adduced by both the parties, came to a conclusion that the respondents/claimants were entitled to Rs. 14,846/- per cottah, being the market value prevailing on the date of notification. That apart 12% u/s 23(1A) and 30% u/s 23(2) of the Land Acquisition Act was also awarded. The respondent/claimants were also awarded interest at the rate of 9%

per annum on the said value per cottah from 3rd of January, 1974 to 2nd of January, 1975 and further 15% per annum from 3rd of January, 1975 till payment was made by the Collector. ''

2. Attacking the judgment and award of the learned Judge, Mr. Banerjee, appearing for the appellant (State of West Bengal), submits that under the provisions of Section 8, particularly the proviso to the said section, the learned Judge fell in error in accepting the market value of the land prevailing on the date of notification as the date, for taking into account the market value has been specifically provided in the statute itself. In support of his submission, Mr. Banerjee contends that though initially the Supreme Court, in the case of The State of West Bengal Vs. Bela Banerjee and Others, , held the aforesaid provision as ultra vires but in view of deletion of the provision of Article 31 and further amendment of the aforesaid provision in 1955, the provision of the said proviso has full force. And in that context evidence was adduced, before the learned Judge, relying on the market value prevailing in the year 1946, as mentioned in the proviso. This being the position, according to Mr. Banerjee, the judgment, passed by the learned Judge, is totally perverse and is not sustainable in the eye of law and the same should be set aside and the award passed by the Land Acquisition Collector should be restored.

3. Learned Counsel for the respondent/claimants, on the other hand, contends that the proviso to Section 8 of the said Act has been declared ultra vires by a decision of this Court which was subsequently affirmed by a Supreme Court decision reported in 1954 SCR 558, State of West Bengal v. Bela Banerjee and as such it has lost all its force and cannot have any applicability in the instant case. His further contention is that the subsequent amendment of the Constitution by way of deletion of Article 31 followed by insertion in the 9th Schedule and further subsequent amendment of the said Act in 1955 re-introducing the same provision has no value in the eye of law in view of three subsequent Division Bench decisions of this Court. He has drawn our attention to the decisions reported in Monoranjan Routh and Others Vs. State of West Bengal, , Ramendra Nath Nandi and Others Vs. State of West Bengal and Others, , Ramendra Nath Nandi and Ors. v. State of West Bengal and Ors. and 1979(2) CLJ 169 , State of West Bengal v. Land Development Bureau represented by Jiban Krishna Nandan and Ors. and contends that the learned Judge has followed the provision of law rightly by allowing the market value prevailing on the date of notification and not the date mentioned in the proviso to Section 8.

4. We have considered the respective contentions of the parties and have also gone through the evidence adduced by the parties and the judgment of the learned Judge. Before we decide the question on facts, we shall advert to the legal issue raised by learned Counsel for the appellant.

5. It is an admitted position that the Supreme Court in Bela Banerjee''s case (supra) had declared that latter part of proviso (b) to Section 8 of the impugned Act which fixes the market value on 31.12.1946, as the maximum compensation

of lands acquired under it offends against the provision of Article 31(2) unconstitutional and void. In the context of the aforesaid Supreme Court decision, we think it proper to reproduce the proviso (b) to Section 8 of the said Act:

(b) In determining the amount of compensation to be awarded for land acquired in pursuance of this Act the market value referred to in clause first of Sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of the land on the date of publication of the notification under Sub-section (1) of Section 4 for the notified area in which the land is included subject to the following condition, that is to say.

If such market value [in relation to land acquired for the public purpose specified in Sub-clause (i) of clause (d) of Section 2] exceeds by any amount the market value of the land on the 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration.

6. The market value of 1946 cannot be just and adequate for the land which was acquired in the year 1974 and the same has also been held in the decision reported in Lakshmi Narayan Dutta Vs. The State of West Bengal, . That apart L.N. Dutta''s case was also considered by another Division Bench of this Court in the case of State of West Bengal v. Land Development Bureau represented by Jiban Krishna Nandan and Ors. reported in 1979 (2) CLJ 169 wherein it was held that the said judgment cannot be accepted to be a good law and in paragraph 7 of the said judgment Their Lordships observed as follows:

Mr. Das appearing on behalf of the appellant State has no doubt drawn our attention to on earlier decision of this Court in the case of (2) Lakshmi Narayan Dutta Vs. The State of West Bengal, . There, the learned Judges no doubt overruled the appellant''s contention that the proviso to Section 8(1) was ultra vires the Constitution. Their Lordships held as such in view of the retrospective incorporation of Article 31B in the Constitution and incorporation of the West Bengal Land Development and Planning Act in the 9th Schedule. What was argued by the appellant before Their Lordships in that case was that the proviso providing for an artificial basis for assessment of the compensation does not provide for just compensation, and as such is unconstitutional. In other words, the Constitutional validity of the provision was challenged on the limited grounds by invoking the principles laid down by this Court in (3) The West Bengal Settlement Kanungoe Cooperative Credit Society Ltd. Vs. Mrs. Bella Banerjee and Others, affirmed by the Supreme Court in Akhlakali Hayatalli Vs. The State of Bombay, wherein it was held that Article 31(2) required a just amount to be given for any property acquired and if the amount which law gives be not just or reasonable then it cannot be regarded as compensation within that clause. Their Lordship, however, held that in view of the retrospective incorporation of Article 31B such principle can hardly be invoked any further for declaring the provision to be unconstitutional since the Act itself has been incorporated in the 9th Schedule. We shall consider hereinafter the effect of the incorporation in the 9th Schedule but we should point out here and now that in the case of (2) Laxminarayan Dutta (supra) this Court was not invited to consider the Constitutional validity of the impugned provision on the ground of the same violating Article 14 of the Constitution. Nor was it brought to the attention of the learned Judges that the impugned provision having been incorporated in the statute be an amendment made long after the Act was brought into the 9th Schedule, is not entitled to the protection of Article 31B. This aspect was considered for the first time in the case of Ramendra Nath Nandi. That aspect was considered for the first time in the case of Ramendra Nath Nandi. That aspect not having at all been raised before this Court in the earlier decision of Laxminarayan Dutta and there being no decision on the point, we are not in a position to hold that there is in substance any conflict between the two decisions.

7. Another Division Bench of this Court in the case of Ramendra Nath Nandi (supra) after examining the amended provision of Section 8(1)(b) made by way of amendment Act 1955 and deletion of Article 31 and incorporation of 9th Schedule, held that the said provision was ultra vires of the Constitution.

8. This question, time and again, was raised by the State unsuccessfully and we find in another Division Bench of this Court in Ashoke Kumar Base and Anr. v. State of West Bengal 1982 (1) CHN 384 , wherein clause (b) of proviso to Section 8 of the said Act has been held ultra vires and the same has been elaborately discussed in paragraph 7 of the said judgment which runs as under:

7. So far as this Court is concerned, it is now settled law that the said clause (b) of the proviso to Section 8 of the West Bengal Land Development and Planning Act was ultra vires and therefore, in determining the amount of compensation for acquisition under the said Act for the purpose of the settlement of immigrants who had migrated to the province of West Bengal on account of circumstances beyond their control the market value in relation to the lands acquired in excess of the amount the market value of the land on December 31, 1946 cannot be lawfully left out of consideration. In other words, in respect of acquisition made under the said Act for the purpose mentioned in Section 2(d)(i) of the West Bengal Land Development and Planning Act, the State would be bound to determine and pay compensation according to the market price prevailing on the date of the notification u/s 4 of Act.

9. In the aforesaid judgment, Their Lordships also took note of the earlier two decisions, i.e. Ramendra Nath Nandi and Land Development Bureau (supra).

10. It is true that Article 31 has been deleted from the part under fundamental rights but in 1976. Article 300A has been incorporated. Article 300A provides that acquisition of land with due process of law. Text of the said provision is set out hereunder:

No person shall be deprived of his property save by the authority of law.

11. Authority of law in our view is that the law which is acceptable and workable. If any provision of law apparently suggests any absurdity such law cannot be said to be law for the purpose of application. Provision of law always strikes a balance between the persons benefited and affected. It is absurd and naive to think that a property should be acquired at a price for the benefit of certain section of people depriving another. Moreover, as we observe that provision of this proviso is apparently absurd and an absurd provision of law cannot stand the test on the anvil of Article 14 of the Constitution. Article 14 of the Constitution guards against any arbitrariness or irrationality, be it a legislative action or an executive action. This proposition is well-settled by the Supreme Court and High Courts by numerous decisions.

12. In such circumstances, we are unable to accept the contention, raised by Mr. Banerjee, that the learned Judge fell into error in quantifying the compensation accepting the market value on the date of notification and not accepting the market value as mentioned in the proviso. In our view the learned Judge had awarded a just and reasonable compensation taking into consideration the location, advantage and disadvantage of the acquired land. This fact-finding, in our view has not been challenged at all. On plain reading of the judgment, we do not find any absurdity at all. We, therefore, uphold the judgment of the learned judge.

13. The appeal, accordingly, fails.

14. There will be no order as to costs.

15. Xerox certified copy be supplied to the parties within a week from the date of such application.

Sanjib Banerjee, J.

16. I agree.

