(1971) 12 CAL CK 0012

In the Calcutta High Court

Case No : A.F.O.D. No''s. 906 and 907 of 1967

State of West Bengal APPELLANT

Vs

Ganesh Chandra Mitra and Others RESPONDENT

Date of Decision : 10-12-1971

Acts Referred:
Land Acquisition Act, 1894 — Section 23, 54

Citation : AIR 1972 Cal 333 : (1973) 2 ILR (Cal) 635

Hon'ble Judges : M.M. Dutt, J;Arun K. Mukherjea, J

Bench : Division Bench

Advocate : Sachindra Chandra Das Gupta and Gouri Prasad Mukherjee, for the Appellant; Lala Hemanta Kumar and Narottam Chatterjee, for the Respondent

Judgement

M. M. Dutt, J.—These two appeals at the instance of the State of West Bengal are against the awards passed by the learned Additional District Judge, Purulia, in two land acquisition cases u/s 18 of the Land Acquisition Act, 1894.

2- The property acquired is a premises comprising buildings, land and a tank- The premises is known as ''Kamala Kutir''. The notification u/s 4 of the Act in respect of the acquisition of Kamala Kutir was published on May 16, 1960. The description of the premises and the buildings, fixtures and other amenities appertaining thereto, appear from the following portion of the judgment of the learned Additional District Judge, as follows :--

"The premises ''Kamala Kutir'' stand on 7.91 acres of land with a compound wall on all sides measuring 7 ft. 6 inches in height and 1931 Rft. in length. Within this boundary-wall, there was a Bungalow having a plinth area of 6061 Rft., with terraced roof on rolled steel joists and tees, all walls 20" thick at super structure containing a main hall covering a floor area of 692 sit, with a front Verandah of 900 sft., in marble floor and Mosaic dado, two rooms covering a floor area of 361 sft., having Mosaic floor and dado and five other rooms, septic latrine and bath and the remaining Verandahs having artificial stone floor and dado with electric fittings and glazed and Venetian shutters for outside doors and windows and panel shutters for inside doors and also containing a circular and cast iron stair case for going to the roof. Besides the main building as above, there was one Pucca structure with C. I. Sheet roof measuring 1058 sft., one Pucca structure with Khapra roof measuring 1053 sft., one Chala with Pucca structure and C. I, sheet roof measuring 12 sft. (?) one attached Chala with C. I, sheet roofing of 709 sft., one Pucca structure with C. I. sheet roofing measuring 866 sft. one attached Chala with C. I. sheet roofing measuring 396 Eft. one Pucca building measuring 1114 sft., one Pucca structure with Khapra roof measuring 144 sft., one Pucca walled house measuring 432 sft., one Pucca privy measuring 217 sft., one Pucca building measuring 377 sft, and one Pucca structure with C. I. sheet roof measuring 188 sft. In the premises there were further five pucca wells and two cisterns. There were also four Octagonal masonry gate pillars 13 ft. high above the ground level and M. C. Beam rail over the gate-opening joining the pillars and one M S. ornamental iron gate, one round masonry platform in front of the Bungalow 19''.6" diameter and one ft., high above the ground level, four cement statues on masonry base and six iron light-posts, one tank having a bed area of 1.23 acres with ridges measuring 1.51 acres and a Pucca Khat in it and also some trees. The main building was constructed in 1926 by late Lalit Kishore Mitra, who was a lawyer by profession and all other constructions within the premises were completed mostly by 1935, the tank only being constructed in 1938."

3. Although the premises comprise a compact area measuring 7.91 acres and surrounded by a boundary wall a portion of the area measuring 5.43 acres consisting of the entire homestead and a small portion of the bank of the tank appertains to mouja Puru-lia and the remaining portion measuring 2.48 acres consisting of the entire land and the major portion of the bank, appertains to mouja Raghabpur. In view of the fact that the area of the premises appertains to two moujas, two land acquisition cases were started by the Land Acquisition Collector.

4. The Land Acquisition Collector assessed the total amount of compensation in these two cases at a sum of Rs. 1.18.228.38 including the additional compensation u/s 23(2) of the Act. The different items and the compensation allowed by the Land Acquisition Collector in both the cases appear from his award, as follows :--

Rs. np.

1.

For 5.17 decimals of land classified as Bastu Bagan at the rate of Rs. 7,000/- per acre

36,190 00

2.

For 1.51 decimals of land classified as ail Rs. 291.00 per acre

439 41

3.

For bed of the tank measuring 1.23 decimals at the rate of Rs. 583/- per acre

717 09

4.

For excavation cost of 4.00000 cft. at the rate of Rs. 15/- Per thousand cft. less a depreciation of 25 % the tank being out of repair

4823 00

5. Towards the value of the Trees 429 78

6.

Towards the value of the structures excluding wells and cisterns

51.708 00

7. To value of the wells and cisterns 8.500 00

8.

Additional compensation at 15 % . . . .

15.421 10

5. The referring claimants who are the respondents before us in these two appeals made two applications u/s 18 of the Act objecting to the amount of compensation assessed by the L. A. Collector which gave rise to two land acquisition cases before the learned Additional District Judge. Purulia. The objections of the respondents as summarised by the learned Additional District Judge are as follows :--

"1. The Bastu Bagan land should have been valued at Rs. 12,000/- per acre.

2. The land of the ails and of the tank should have been classified as Bastu Bagan and compensation allowed at the rate of Rs. 12,000/- per acre.

3. The method of valuing the main building and some of the structures which had been let out to the D. F. O. at 20 times of the annual letting value is not the proper way of valuation of the structures. The L. A. Department ought to have accepted the valuation of the main building and the other structures as made by the Executive Engineer.

4. The excavation costs of the tank was based on an imaginary figure of 4,00000 cft., earth work and should not have been valued in that way and instead the compensation for the tank should have been assessed at 20 times the annual value of fish that were got from the tank every year, such annual value being Rs. 1,500/- per acre,

5. No valuation of the compound wall, the Pucca Ghat, the gates in the compound wall, iron posts for electric light, the statues and the platform was made by the Land Acquisition Department and these should have been valued correctly.

6. The trees were under-valued and the masonry wells were also undervalued."

6. Both the land acquisition cases were heard analogously by the learned Additional District Judge. The learned Additional District Judge enhanced the amount of compensation by Rupees 9.954.16 in L. A. R. case No. 18 of 1962 and by Rs. 90.635-84 in L. A. R. case No. 19 of 1962. Both the amounts included the additional compensation at the rate of 15 %. It does not appear from the award that any interest was awarded by the learned Additional District Judge u/s 28 of the Act on the excess amount awarded.

7. The respondents have also filed two cross-objections. The cross-objection in respect of F. A. No. 906 of 1967 has been valued by the respondents at Rs. 4,100/-. In the memo of cross-objection several grounds have been taken. Under the first ground, the respondents claimed that the learned Additional District Judge should have passed a decree for a further sum of Rs. 4,101/- in respect of the tank including the pucca ghat. In case the claim made in the first ground of the respondents is allowed, it will exhaust the valuation of the cross-objection and the question of granting reliefs to the respondents as claimed in the other grounds of the cross-objection, will not arise. The cross-objection in respect of F. A. No. 907 of 1967 has been valued by the respondents at Rs. 7,900/-. In the first ground of this cross-objection the respondents claim that the learned Additional District Judge should have passed a decree for a sum of Rs. 7,900/-in respect of the acquired property including the structures and fixtures. In the remaining grounds other claims have been made. In ground No. IX, the respondents have claimed additional sum of Rs. 5,430/- for 5.43 acres of land and also a further sum of Rs. 2,350/- for the boundary wall, platform, statues and iron posts and also a sum of Rs. 570/-for the trees standing on the acquired property. Besides the claims made in other grounds, the claim made in ground No. 1 exhausts the valuation of the cross-objection. The claims made under different heads in ground No. IX also exceed the valuation of the cross- objection.

8. Mr. Das Gupta, learned Advocate appearing on behalf of the appellant submitted before us that the respondents were not entitled to press either of the cross-objections inasmuch as the claims made by the respondents in either of the cross-objections exceeded the valuation of the respective cross-objections. We would have upheld the contention of Mr. Das Gupta had not Mr. Lala, learned Advocate for the respondents abandoned part of the respondents'' claim in respect of both the cross-objections so as to confine the respondents'' claim in both the cross-objections within the limit of the valuation of the cross-objections. So far as the cross-objection in F. A. No. 906 of 1967 is concerned, Mr. Lala abandoned the respondents'' claim in all the grounds excepting ground No. 1 and in F. A. No. 907 of 1967. Mr. Lala submitted that the respondents would only

press their cross-objection in respect of part of the claims made in ground No. IX, namely, in respect of claims for the additional sum of Rs. 2,350/- for the boundary wall, platform, statues and iron posts and also the additional-sum of Rs. 570/- for the trees standing on the acquired property. The other claims made in the other grounds including the claim for an additional sum of Rs. 5,430/- for 5-43 acres of land as contained in ground No. IX were expressly abandoned by Mr. Lala. We are unable to accept the contention of Mr. Das Gupta that even after the abandonment by the respondents part of their claims under both the cross-objections, the respondents were not entitled to press any of the claims made in either of the cross-objections. It is well settled that a plaintiff or an appellant is entitled to abandon part of the claim made by him in a suit or appeal so as to confine the suit or appeal within the valuation of the same or within the jurisdiction of the Court concerned.

9. The first contention of Mr. Das Gupta relates to the award of the learned Additional District Judge on the objection No. 1 of the respondents. The L. A. Collector assessed the value of the bastu bagan land at the rate of Rs. 7,000/- per acre. The respondents claimed that it should have been enhanced to Rs. 12,000/- per acre. The learned Additional District Judge, however, assessed it at the rate of Rupees 11,000/- per acre and enhanced the amount of compensation on that head by Rs. 20,680/-. Mr. Das Gupta submitted that in view of the documents of sale transactions filed by the respondents, the learned Additional District Judge should have assessed the price of bastu began land at Rs. 7,000/- per acre as made by the L. A. Collector.

10. It appears that the respondents filed certain documents containing transactions of sale. The documents are marked Exhibits 1 to 1 (e). Exhibit 1 relates to a property in mouja Nadiha and before us it was not relied on by either party. By the document Exhibit 1 (a) dated 4-1-1961, 3.95 acres of raiyati land was sold for Rs. 6,999/-, that is, at the rate of Rs. 1,772/- per acre, by the document Exhibit 1 (c) dated 3-9-1960, .48 acres of raiyati land was sold for Rs. 750/-, that is, at the rate of Rs. 1,652.50 per acre and by the document Exhibit 1 (d) dated 1-11-1961, 26 acres of bastu land was sold for Rs. 1,199/-, that is, at the rate of Rupees 4,615/- per acre. The lands covered by all these three documents are situate in mouja Raghabpur. By the sale deed Exhibit 1 (a), 1 cotta of bastu land was sold for Rs 600/- on 1-12-1958. that is, at the rate of Rs. 36,300/- per acre and by the sale deed Exhibit 1 (e) dated 9-12-1959, 1 cotta 13 chhataks of bastu land was sold for Rs. 949/-, that is. at the rate of Rs. 31,660/- per acre. These two sale deeds, namely. Exhibits 1 (a) and 1 (e) are sale transactions of land situate in mouja Purulia.

11. Mr. Das Gupta strongly relied on the sale deeds Exhibits 1 (a), 1 (b) and 1 (c) and contended that the respondents having themselves filed and relied on these documents, the valuation of the land in the acquired premises should have been made on the basis of these documents. It has been already stated that all these documents of sale have been filed by the respondents. These documents,

namely. Exhibits 1 (a). 1 (b) and 1 (c) do not at all support the contention of the respondents that the land should have been valued at the rate of Rs. 12,000/- per acre. There is no indication in the records for what purpose the respondents filed these three documents of sale. Mr. Lala submitted that as there was much dispute as to the class of land to which the bed of the tank belonged, the respondents had to file these documents showing the class of land adjoining the tank. It may be stated here that the L. A. Collector classified the bed of the tank as Gora III land and assessed compensation on the basis of that classification. The reason for this classification as given by the L. A. Collector is, that the lands adjoining the tank are Gora III land. It has been already stated that the tank is situate in mouja Raghabpur. Mr. Lala submitted that the respondents filed these documents, namely, Exhibits 1 (b) to 1 (d) for the purpose of showing that the lands in the neighbourhood of the bed of the tank are not Gora III lands, but they are superior to Gora III land and that the respondents also relied on the sale transactions embodied in these three documents for the purpose of determination of the price of the bed of the tank.

12. The aforesaid contention of Mr, Lala has much force. The tank is situate in the Raghabpur mouja and these three documents also relate to the said mouja. The rates of price at Which the lands covered by these three documents were sold, are much lower than the rate of price claimed by the respondents in respect of the bastu land appertaining to mouja Purulia. The highest of these rates is Rs. 4,615/- per acre under the sale transaction embodied in the document Exhibit 1 (d). It is not even the case of the appellant that the bastu land appertaining to mouja Purulia is valued at Rs. 4,615/-per acre. The L. A. Collector assessed the price of bastu-land in mouja Purulia at Rs. 7,000/- per acre. It is apparent from the valuation made by the L. A. Collector that he did not rely on these sale transactions in determining the market value of the bastu land in mouja Purulia. We are, therefore, of the view that these documents, namely. Exhibits 1 (b), 1 (c) and 1 (d) were relied on by the respondents for the purpose of snowing the nature of land adjoining the Gora III land and also in support of the claim for compensation for the bed of the tank. We have already pointed out that all these transactions of sale took place long after the date of the notification u/s 4. By the documents -- Exhibits 1 (a) and 1 (e) -- very small parcels of land were sold. In our opinion, these two sales are not at all comparable sales. The learned Additional District Judge was justified in not relying upon any of these documents including the documents Exhibits 1 (a) and 1 (e) relating to transactions of sale of land in mouja Purulia.

13. The L. A. Collector valued the bastu bagan land at the rate of Rs. 7,000/- per acre, that is. at the rate of RS. 117/- per cotta. There is nothing on record to show the basis on which the L. A. Collector assessed the price of the bastu bagan land at Rupees 7,000/- per acre. It has been simply alleged that the land was valued on the basis of sale transactions in the neighbouring areas. Our attention was not drawn to any such transactions from the records of the case nor do we find that any document evidencing any such transactions has been printed in the

paper book. The nature and situation of the land appear from the judgement of the learned Additional District Judge as quoted above. Although Exhibits 1 and 1 (e) are post notification transactions of small quantity of land, we get some idea about the price of bastu land in mouja Purulia. The learned Additional District Judge enhanced the price of bastu bagan land from Rs. 117/- per cotta to Rs. 183.33 per cotta, that is Rs. 11,000/- per acre. We do not consider that the price thus assessed by the learned Additional District Judge of bastu began land situate in mouja Purulia is either excessive or unreasonable. We would accordingly overrule the contention of Mr. Das Gupta that the learned Additional District Judge should have affirmed the value of the bastu land at Rs. 7,000/- per acre as made by the Land Acquisition Collector.

14. It appears from the evidence of the Land Acquisition Collector that the bed of the tank was classified as Gora III land and the same was valued at 1/12th the price of the home-stead land. The question is whether or not the bed of the tank can be classified as Gora III land. The documents filed by the respondents, namely. Exhibits 1(b), 1(c) and 1(d) do not show that the land in the locality of the disputed tank are Gora III lands. After assessing the value of the bed of the tank as Gora III land, the Land Acquisition Collector assessed the cost of excavation and by adding these two he fixed the value of the tank at Rs. 583/- per acre. The bank of the tank measuring 1.51 acres was valued by the L. A. Collector at the rate of Rupees 291/- per acre.

15. The method adopted by the Land Acquisition Collector appears to be erroneous. In the first place, there is no evidence that the bed of the tank is Gora III land. Secondly, it is curious that the bank of the tank should be valued at a much lesser price than the price of the tank land. The respondents claimed that the bank of the tank measuring 1.51 acres should be valued it the same rate as that of the homestead land It appears from Parks'' Principles and Practice of Valuations (4th Ed-page 72) that the Courts have adopted during the past few years a method of valuing tanks at one-half the value of solid land. Although the learned author has termed this method as a Rule of Thumb method, in our opinion, in the absence of proper materials enabling the Court to determine the value of the tank in a logical and scientific manner, it will not be unreasonable for the Court to adopt this method. The learned Additional District Judge has assessed the value of the tank land including the bank of the bank, that is, the entire 2.74 acres of land at 1/3rd the rate allowed for the homestead land. In view of the facts and circumstances of the case, we do not find any unreasonableness in the decision of the learned Additional District Judge in valuing the tank land at 1/3rd the value of the homestead land. We would accordingly overrule the contention of Mr. Das Gupta and uphold the finding of the learned Additional District Judge as to the value of the tank land.

16. The objection No. 3 of the respondents relates to the value of the structures including the main building. The respondents examined on Commission one Ananta Kumar Sen Gupta, who was an estimator in the office of the District

Board. Purulia. Ananta Kumar Sen Gupta valued, these structures appertaining to the acquired premises ''Kamala Kutir'' and submitted a valuation statement dated September 22, 1963, which was marked as Exhibit 1 by the Commissioner. This witness deposed that he estimated the cost of construction of the structures in the year 1926 and also the value of the structures in the year 1960. The value was determined by him according to the P. W. D. rate that was in force in the year 1926 in the then province of Behar. The respondents also relied on the estimate of valuation of the structures made by the Executive Engineer of the District. It appears from the evidence of the parties and it is not disputed before us that the Executive Engineer had to value the structures at the instance of the Land Acquisition Department. The Land Acquisition Department accepted the valuation made by the Executive Engineer in respect of all the structures excepting the main building. The reason for not accepting the valuation of the Executive Engineer of the main building is that on the date of notification, the D. F. O. (District Forest Officer) was a tenant of the main building at Rs. 200/- per month. The L. A. Collector valued the main building at 20 times the annual rent which comes to Rs. 40,800/- after deducting the collection and other incidental charges at 15 per cent, of the gross annual rental. It may be stated here, that the D. F. O. became the tenant in respect of the main building in the year 1946 at monthly rental of Rs. 150/-. When the owners of the building served a notice to quit on the D. F. O., the building was requisitioned by the Behar Government and the monthly compensation was fixed at Rs. 100/- by the Court. Lalit Mohon Roy, the Kanungo of the Land Acquisition Department was examined as the sole witness on behalf of the appellant and he admitted in his cross-examination that they did not ascertain the rent of neighbouring premises which were let out nor did they enquire about the probable rent of premises having same accommodation and facilities. They did not also ascertain the cost of collection and incidental charges in respect of the tenancy of the D. F. O.

17. We may at this stage refer to the accepted modes of valuation of lands acquired under the Act. They are (1) the price paid, within a reasonable time, in bona fide transactions of purchase of the land acquired or the lands adjacent to the land acquired, and possessing similar advantages; (2) the number of years'' purchase of the actual, or immediately prospective, profit from the lands acquired and (3) the opinion of valuers of experts (See Harish Chunder Neogy v. Secy. of State for India. (1907) 11 CWN 875; Special Land Acquisition Officer. Bangalore v. T. Adinaravan Setty, AIR 1959 SC 129). In the instant case, there is no evidence of bona fide transactions of sale of similar premises consisting of similar structures. In the absence of any such evidence the capitalisation of the annual rental for 20 years may represent the market value of the structures. The L. A. Collector relied on this mode of valuation as already stated above. It may, however, be pointed out that in capitalising the rental value for 20 years or in estimating the value on the basis of a number of years'' purchase of the actual or immediately prospective profit from the lands acquired, the rent must be the fair rent or the prevailing rent in the locality in respect of buildings having similar

advantages and amenities and the profit must be the actual or immediately prospective profit. The monthly rental of Rs. 200/- taken into consideration by the L. A. Collector for evaluating the main building is not the fair rent or rent prevailing in the locality in respect of buildings having similar advantages and amenities. We have already noticed the circumstances under which the D. F. O. occupied the building at a monthly rent of Rs. 200/-. We have also referred to the evidence of the Kanungo, who frankly admitted that nothing was done for ascertaining the prevailing rate of rent of buildings situate in the locality of the acquired premises and having similar advantages and amenities. The cost of collection and incidental charges were arbitrarily fixed at 15 per cent, of the gross annual rental without any basis therefore. In such circumstances, it is very difficult to uphold the valuation made by the L. A. Collector on the basis of the rent paid by the D. F. O. for the main building.

18. The learned Additional District Judge has rightly refused to accept the valuation of the main building as made by the L. A. Collector on the basis aforesaid. No reason has been given on behalf of the State why the valuation made by the Executive Engineer in respect of the main building was not correct. The Executive Engineer is an officer of the Government having expert knowledge about valuation. He is a disinterested person and no defect has been pointed out in the method of valuation adopted by him. The learned Additional District Judge has relied on the valuation made by the Executive Engineer in preference to that made by the L. A. Collector and the said Ananta Kumar Sen Gupta. We are of the same view as that of the learned Additional District Judge that the valuation made by the Executive Engineer in respect of the structures including the main building of the premises ''Kamala Kutir'' should be accepted.

19. Mr. Das Gupta, however, drew our attention to Exhibit ''C'' which is a letter from Shri K. P. Sen, officer on Special Duty. Education Department to the Deputy Commissioner. Purulia, dated February 23, 1960. In that letter it was stated that the owners of ''Kamala Kutir'' were agreeable to sell the property to the Government at a price of Rupees 1,00,000 provided payment of Rs. 75,000 was made immediately. Mr. Das Gupta submitted that the said offer was a good piece of evidence to show that the property was not worth more than Rupees 1,00,000 and that the compensation should not exceed the said amount. We may, however, refer to the evidence of the respondent Ganesh Chandra Mitra who while admitting in his cross-examination the said offer, stated that the same was made for the purpose of clearing the debts Apart from that there is no evidence that the Government accepted that offer or that the respondents pursued the said offer. It seems to us that the respondents were under pressing need for money for the purpose of clearing their debts. In view of that, we do not consider that the said offer of the respondents indicated the market value of the premises ''Kamala Kutir''.

20. The learned Additional District Judge allowed a sum of Rs. 3,000 for the compound wall, Rs. 1,000 for the gates. Rs. 100 for the platform. Rs. 30 for the

statues, Rs. 150 for iron posts, and Rs. 4,000 for the pucca ghat, that is in all Rs. 8.080. These structures were not valued by the L. A. Collector and accordingly no compensation was awarded by him on these items. In this connection we may refer to the cross-objection of the respondents, namely, ground No. 1 In F. A. No. 906 of 1967 and ground No. IX in F. A. No. 907 of 1967. There was some dispute about the existence of the pucca ghat. The Kanungo in his evidence stated that he did not see any pucca shat in the tank. This evidence of the Kanungo appears to be untrue. It appears from the schedule of acquired land (Exhibit ''B'') prepared by the Land Acquisition Department, that there is a reference to a cemented pucca ghat measuring 36'' x 30''. Ananta Kumar Sen Gupta, in his evidence stated that the tank had a good pucca ghat. The evidence of this witness and the appellant''s own document (Exhibit ''B'') conclusively prove the existence of a cemented pucca ghat. The learned Additional District Judge valued it at Rs. 4,000. The respondents have claimed a further sum of Rs. 4,000. We do not, however, consider that a further sum should be allowed to the respondents as claimed by them on account of compensation for the pucca ghat The boundary wall measures 7'' 6" in height and 1931 Rft. in length. The learned Additional District Judge has allowed only a sum of Rs. 3,000 as compensation for the boundary wall. The respondents in their cross-objection have Claimed a further sum of Rs. 2,050 for the boundary wall, platform, statues and iron posts. In the statement of valuation prepared by the respondents'' valuer, Ananta Kumar Sengupta, the boundary wall has been valued at Rs. 4.634. In view of the length and height of the boundary wall, in our opinion, the respondents should have been awarded at least the said sum of Rs. 4,634 as valued by the said Ananta Kumar Sengupta, We would accordingly allow a further sum of Rs. 1,634, which is, the difference between Rs. 4,634 and Rs. 3,000. We do not, however, allow the respondents'' claim in the cross-objection in respect of the platform, statues and iron Dosts.

21. The Land Acquisition Collector has valued the trees at Rs. 429.78 only. The learned Additional District Judge disallowed the claim of the respondents for further compensation for the trees. In their cross-objection the respondents have claimed a further sum of Rs. 570 on account of trees. In this connection we may refer to the list of trees (Exhibit ''A'') containing the names and other particulars of the trees standing on the acquired property. The list was prepared by the Land Acquisition Department, Purulia and it has gone in the evidence at the instance of the appellant. We find from this list (Exhibit A) that the trees have been valued at Rs. 1,682.89. The Land Acquisition Collector should have allowed the said sum on account of compensation for the trees, but curiously enough only a sum of Rs. 429.78 was allowed by the Land Acquisition Collector as compensation for the trees. This document (Exhibit A) was not noticed by the learned Additional District Judge. We would accordingly allow the cross-objection of the respondents and allow the additional sum of Rs. 570 on account of compensation for the trees.

22. Mr. Das Gupta did not challenge the findings of the learned Additional District

Judge on the objection No. IV of the respondents relating to the excavation cost of the tank.

23. For the reasons aforesaid, both the appeals are dismissed. The cross-objection of the respondents in F. A. No. 906 of 1967 is also dismissed. The cross-objection of the respondents in F A No. 907 of 1967 is allowed in part. The award of the learned Additional District Judge is modified to the following extent:-- The respondents shall be entitled to an additional sum of Rs. 1,634 on account of compensation for the boundary wall and a further sum of Rs. 570 on account of the trees. The respondents are also entitled to a sum of 15 per cent on the market value of the land u/s 23(2) of the Act. The respondents shall also be entitled to interest on the excess amount awarded by the learned Additional District Judge as modified by this judment from the date on which possession of the acquired premises was taken by the Collector, that is, from June 22. 1962 to the date of payment of such excess amount in Court. The L. A. Collector shall make payment in Court of the outstanding amount of compensation within three months of the date of communication of the award to him as modified by this judgment. Save as stated above, the rest of the award of the learned Additional District Judge will stand.

24. In view of the facts and circumstances of the case, the parties are directed to bear their own costs in this Court both in respect of the appeals and the cross-objections.

Arun K. Mukherjea, J.

25. I agree.