

(1980) 02 CAL CK 0021

In the Calcutta High Court

Case No : F. A. No. 79 of 1960 with Cross Objection

State of West Bengal

APPELLANT

Vs

Paritosh Kr. Ghosh and Others

RESPONDENT

Date of Decision : 19-02-1980

Acts Referred:

Constitution of India, 1950 — Article 13(2), 31(2), 31A, 31B

Government Of India Act, 1935 — Section 296

Land Acquisition Act, 1894 — Section 19(1)(e), 23, 23(2), 8(3)(b)

Citation : 84 CWN 532

Hon'ble Judges : S.M. Guha, J;N.C. Mukherji, J

Bench : Division Bench

Advocate : A. N. Banerji and Tapan Kr. Sen Gupta, for the Appellant;C.D. Roychowdhury and Anath Nath Mondal, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Mukherji, J.—This appeal arises against an award passed by Sri K. N. Bhattacharya, Arbitrator, Nadia, in Arbitration Case No. 9 of 1956 dated 25th September, 1959. The award was passed on a reference to arbitration under Act XXX of 1952 Requisitioning and Acquisition of Immovable property Act, in respect of 155.07 acres of land from Mouza Raghunathpur J. L No. 82 P. S. Chakdah, District Nadia requisitioned by the State of West Bengal on behalf of the Central Government under sub-Rule (i) of Rule 75A of the Defence of India Rules on 24.4. 45 and subsequently acquired on 3.3.45 for the Kalyani Project. According to the claimants 184.93 acres of land of mouza Raghunathpur was requisitioned on 24.4.45 and that out of such requisitioned land 29.86 acres of land was de-requisitioned on 11.9.47 and the remaining 155.07 acres of land was acquired on 3.3.49. In view of the withdrawal of the claims by the tenants in favour of the claimants in respect of 3.78 acres of bastu land from the acquired land there is difference of 30 acres of land as stated by the claimants and as admitted by the opposite party. Such acquired lands comprise of mal, bagan and bastu land and also tanks and banks of tanks. According to the claimants the compensation

offered to them by the learned Land Acquisition Collector was grossly inadequate and unfair and they press their claim for enhanced valuation in respect of such acquired land. They further dispute the numbers and varieties of the trees which stood over such acquired lands and pray for enhanced valuation for trees and press for compensation for bamboos and barbed wire fencing. The learned Judge allowed the claims of the petitioners to a certain extent and passed an award as mentioned above. Being aggrieved by the aforesaid award, the State of West Bengal has preferred the present appeal. The petitioners have also filed a cross objection as some of their claims were negatived by the learned Arbitrator. Mr. Amar Nath Banerji, learned Advocate appearing on behalf of the State raises several objections specially regarding the land value assessed by the learned Arbitrator. He also attacks the award on the ground that value of the tanks has been assessed at a higher rate. With regard to the valuation awarded by the learned Arbitrator in respect of barbed wire and bamboos, Mr. Banerji does not seriously press his objection. In the cross objection the main ground that has been taken is that section 8(3)(b) has been struck down as ultra-vires of the Constitution in a case reported in A. I. R. 1968 Supreme Court 377 (Union of India v. Kamalabai Harjivandas Parekh) as it was found by the Supreme Court that the section contravenes Article 31 (2) of the Constitution of India. The other grounds in the cross objection are as follows :-- That the land value ought to have been assessed at a higher rate. The big tank ought not to have been valued as dried up tank and no compensation has been awarded for fish in respect of the big tank. Objection has also been raised with regard to the number of different trees as found by the Arbitrator and also with regard to the valuation made in respect of those trees. The other objection with regard to the valuation as made in respect of the bamboos. Though no ground was taken in the cross objection it was argued on behalf of the respondents that the claimants are entitled to 15% additional compensation on the amount awarded by the learned Land Acquisition Collector.

2. Mr. Banerji, to repel the argument advanced by Mr. Roy Chowdhury, learned advocate for the respondents, that the claimants were entitled to 15% compensation, cites before us a decision, reported in A. I. R. 1974 Calcutta 180 (Union of India v. Asit Kr. Mondal). This was a case under the Defence of India Rules. In this case, it was held as follows :-

Coming to the claim for solatium provided u/s 23(2) of the Land Acquisition Act, it appears that u/s 19(1)(e) the Arbitrator will have regard in determining the compensation for acquisition to the provision of sub-section (1) of section 23 of the said Act. The Defence of India Act and its Rules do not mention anything about sub-clause (2) of Section 23 in determining such compensation. In view of the fact that long before the Constitution came into force the acquisition was complete, it cannot be said that the absence of provision for solatium in the statute is in any way unlawful or contrary to the provisions of the Constitution which had no application. Accordingly we reject the claim for solatium made in respect of the compensation in all the appeals."

Mr. Banerji also refers to a recent decision, reported in A. I. R. 1979 Calcutta 230-83 C. W. N. 426 (Union of India v. Deben Adhicary). This was also a case under the Defence of India Act. It was held in this case that :

There is no provision in the Act for grant of any statutory allowance of 15% solatium Section 23(2) of the Land Acquisition Act cannot be imported into Section 19 of the Defence of India Act. Thus, the arbitrator was justified in now awarding solatium of 15/.

On the analogy of the provision of Defence of India Act, it is submitted by Mr. Banerji that in the present Act also there is no provision for additional compensation and as such Section 23(2) of the Land Acquisition Act cannot be attracted. We, therefore on the basis of the decision referred to above and also considering the fact that there is no provision for additional compensation in the present Act, negative the contention raised by Mr. Roy Chowdhury, learned advocate for the respondents.

3. With regard to the point raised on behalf of the respondents that Section 8(3) (b) of the Act has been struck down, Mr. Banerji submits that by the Constitution (First Amendment) Act of 1951 Article 31B was incorporated in the Constitution. Article 31B reads as follows :--

Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent legislature to repeal or amend it, continue in force.

Mr. Banerji submits that this amendment is retrospective and validates the Acts included in the Ninth Schedule, even though when enacted, the Act contravened the provision of Section 296 of the Government of India, Act, 1935. Article 31B being retrospective, it protects, with retrospective effect even those Acts which are included in the Ninth Schedule by subsequent amendment of the Constitution. After such inclusion, the Act, even though held unconstitutional and void by a previous judicial decision, becomes valid with retrospective effect and no reenactment by the competent Legislature is necessary. By Constitution (39th Amendment) Act, Act XXX of 1952 was included in the Ninth Schedule as Entry No. 89. Mr. Banerji in support of his contention relies on a decision reported in Jagannath Vs. The Authorised Officer, Land Reforms and Ors, . K has been held;

Article 31B and the Ninth Schedule have cured the defect, if any, in the various Acts mentioned in the said Schedule as regards any unconstitutionality alleged on the ground of infringement of fundamental rights and by the express words of Article 31B such curing of the defect took place with retrospective operation from

the dates on which the Acts were put on the statute book. These Acts even if void or inoperative at the time when they were enacted by reason of infringement of Article 13(2) of the Constitution, assumed full force and vigour from the respective dates of their enactment after their inclusion in the Ninth Schedule read with Art. 31B of the Constitution, The States could not, at any time, cure any defect arising from the violation of the provisions of Part III of the Constitution and therefore the objection that the Madras Ceilings Act should have been re-enacted by the Madras Legislature after the Seventeenth Constitutional Amendment came into force cannot be accepted.

Mr. Banerji next refers to a decision, reported in *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, . Their Lordships held as follows :--

Although the general rule is that a statute declared unconstitutional is void at all times and that its invalidity must be recognized and acknowledged for all purpose and is no law and a nullity, this is neither universally nor absolutely true, and there are many exceptions to it. A realistic approach has been eroding the doctrine of absolute nullity in all cases and for all purposes and it has been held that such broad statements must be taken with some qualifications, that even an unconstitutional statute is an operative fact, at least prior to a determination of constitutionality, and may have consequences which cannot be ignored.

As Act XXX of 1952 has been included by 39th Amendment Act as Entry No. 89 in the 9th Schedule and as Article 31B has been incorporated by the Constitution (First Amendment) Act of 1951, we have no hesitation to accept the argument advanced by Mr. Banerji that Section 8(3) (b) is a valid provision in the Act and that has not been struck down and as such, the method of valuation adopted by the learned Arbitrator is quite legal and does not call for any interference. The second contention raised by Mr. Roy Chowdhury also fails.

4. With regard to the claimants objection regarding the big tank in C. S. Plot No. 196 the learned Arbitrator found that at the time of requisition on 24.4.45 or at the time of acquisition on 3.3.49 there was no water in this big tank. The learned Arbitrator relied on the requisition schedule where there is a note in the Remarks column in the C. S. Plot No. 196 "dried up no fish" (Exts. 10 and D). In the recurring compensation Schedule for 1352 B. S. being Exts. 11/a and 11/c there is also a note "no fish" in the Remarks Column against the big tank being Plot No. 196. Though the claimants were not allowed recurring compensation for this big tank, they did not put forward any objection. The learned Arbitrator also relied on the oral evidence and as such found that Plot No. 196 lost the character of a big tank and was simply dried up land. Mr. Banerji submits that the learned Arbitrator was wrong in assessing the value of dried up tank at the same rate as high land. He ought to have assessed dried up tank as low land. He also submits that the learned Arbitrator was also wrong in assessing the valuation of the tank at a higher rate. It is the accepted principle that tank should be valued at half the rate of land value. Mr. Roychowdhury, on the other hand, contends that the

learned Arbitrator ought to have given much higher compensation for loss of fish. We are of the opinion that the learned Arbitrator ought to have awarded some more amount towards the loss of fish. But, as he has valued the tank at a higher rate, we do not propose to increase the amount.

5. With regard to the compensation awarded towards trees, the learned Arbitrator has taken into consideration the oral and documentary evidence in details and we do not find anything to interfere with the amount that has been awarded by the learned Arbitrator. As regards the barbed wire fencing, it has already been indicated that Mr. Banerji does not seriously press his objection and that being so, the compensation awarded by the learned Arbitrator towards the barbed wire fencing is accepted by us. As regards the compensation awarded for bamboos Mr. Banerji also does not press his objection seriously. It is contended on behalf of the claimants that the recurring compensation by the claimants for the loss sustained by them for non-user of bamboos during the period of requisition cannot debar from claiming the compensation for all the 22542 bamboos without any deduction and that they are further entitled to claim compensation for the rhizomes which were in existence in such bamboo clumps at the time of requisition. It was contended before the learned Arbitrator on behalf of the State that the normal life of bamboos is 5 years and that thereafter, it becomes dried and that as the claimants obtained recurring compensation for 22542 bamboos for 4 years at the rate of Rs. 8-5-0 per hundred annually they are only entitled to claim compensation for such bamboos for the remaining one year only at that rate. The learned Arbitrator accepted the contention which was put forward on behalf of the State and assessed compensation accordingly. We have nothing to interfere with the said assessment.

6. With regard to the land value, Mr. Banerji submits that the learned Arbitrator did not properly consider the number of documents which were filed on behalf of the State and although the learned Arbitrator rejected the documents filed on behalf of the claimants, the learned Arbitrator assessed the land value wrongly simply relying on the oral evidence. We have gone through the award passed by the learned Arbitrator carefully and we find that the learned Arbitrator has considered the entire oral and documentary evidence on record and has assessed the valuation accordingly. The learned Arbitrator has also considered the report of the valuer who was examined on behalf of the claimant. With regard to the land valuation also we find nothing to interfere. It is true that the requisition Schedule prepared at the time of requisition in 1945 was not produced before the learned Arbitrator on behalf of the State and no explanation was offered for the non-production of the same. On behalf of the State the requisition. Schedule prepared in 1947 was prepared and marked as Ext. D. This Ext. D. was found not to be the original requisition schedule prepared in 1945. This was apparent from the certified copy of the requisition schedule supplied to the claimants in 1945 being Ext. 10. The learned Arbitrator could not rely on Ext. 10 as the last five pages of this Ext. 10 is certified copy of some schedule supplied to the claimants not in 1946, but in 1948. As the claimants could not prove that the number of

different kind of trees was much more than what has been noted by the Collector, the learned Arbitrator had no other alternative than to reject the said contention. In this regard also we do not find anything to interfere.

In the result, the appeal is dismissed on contest without costs. The cross objection is also dismissed without costs. The award passed by the learned Arbitrator is hereby affirmed.

Sudhindra Mohan Guha, J.

I agree.