

(1957) 01 CAL CK 0019
In the Calcutta High Court
Case No : A.F.O.D. No. 74 of 1954

State of West Bengal

APPELLANT

Vs

T.N. Gupta

RESPONDENT

Date of Decision : 02-01-1957

Acts Referred:

Calcutta Improvement (Appeals) Act, 1911 — Section 3(2), 63(9)
Land Acquisition Act, 1894 — Section 23, 24, 54, 6

Citation : AIR 1959 Cal 65 : (1958) 1 ILR (Cal) 346

Hon'ble Judges : Renupada Mukherjee, J; P.N. Mookerjee, J

Bench : Division Bench

Advocate : Pramatha Nath Mitra and Sushil Kumar Banerjee, for the Appellant;
Atul Chandra Gupta, Kushi Prasun Chatterjee and Bhabani Prasun Chatterjee, for the Respondent

Final Decision : Partly Allowed

Judgement

P. N. Mookerjee, J.—This is a valuation appeal arising out of a reference u/s 18 of the Land Acquisition Act. The State is the appellant before us and claimant No. 2 T. N. Gupta, who was the tenant of the acquired premises, is the contesting respondent. This claimant was the proprietor of the Standard Machinery Co. and he had his factory in the acquired premises. For the purpose of his factory, the claimant had built certain structures and installed machineries and the disputed claim in this appeal relates exclusively to the award made by the Tribunal in respect of some of these structures and machineries.

2. The premises acquired bore Municipal Nos. 200 and 201, Manicktola. Main Road. The acquisition was made in connection with Improvement Scheme No. VI-M of the Calcutta Improvement Trust. As far back as November 18, 1926, the Government had sanctioned the plan of a proposed public street, known as Manicktola Alignment No. III. That proposed street was to pass through premises No. 200, then known as premises No. 113. Within the Alignment portion also claimant had built certain structures with the permission of the Chairman,

Calcutta Improvement Trust, by executing two agreements u/s 63(9) of the Calcutta Improvement Act. These agreements are not very material for our present purpose but a later agreement, dated April 12, 1948, will require careful consideration as it has great apparent bearing on the question of compensation for the structures within the Alignment portion.

3. The above Alignment (No. III) was converted into a Scheme (No. VI-M) under Government sanction, dated March 11, 1946, to which the present acquisition relates. The notification u/s 4 of the Land Acquisition Act was published in the Calcutta Gazette on August 1, 1946, and the Section 6 declaration followed on June 12, 1947. Respondent Gupta filed his compensation claim for structures and fixtures including machineries at the figure of Rs. 5,40,000/- and he also claimed separate compensation of Rs. 1,50,000/- for loss of earnings and damage to business and cost of removal and a further sum of Rs. 4,000/- as cost of filling up certain tanks in the acquired premises. Twice the machineries were inspected by the Trust expert Mr. B. C. Ghose and the two lists made by him on the two occasions are Exts. 25 and 2 or M(i) in: the case.

4. In favour of the respondent Gupta the Collector's award was as follows ;

(i) Structures ... Rs. 51,000

(ii) Machineries ... Rs. 87,140

(iii) Loss of earnings ... Rs. 10,000

(iv) Cost of removal ... Rs. 5,000

Rs. 1,53,140

plus the usual statutory allowance of 15 p. c. ... Rs. 20,721

Total ... Rs. 1,73,861

5. Gupta was not satisfied and he applied for a reference u/s 18 of the Land Acquisition Act repeating his claim figures as set out above. The reference was duly made by the Collector and it was accepted in part by the Tribunal which enhanced the Collector's award in this claimant's, favour, by Rs. 49,210/- plus statutory allowance of 15 per cent on the relevant part of it as shown below.

The enhancement was made under the following, heads :

(i) On Machineries ... Rs. 31,360

(ii) On Structures ... Rs. 9,850

(iii) On Loss of earning ... Rs. 9,000

Total ... Rs. 49,210

For the statutory allowance the loss of earnings portion (Rs. 3,000/-) had to be excluded and so the claimant got his additional 15 per cent on Rs. 41,210/-. The

Tribunal also awarded the claimant interest at the rate of 6 per cent p. a. on the enhanced amount, as set out above, from the date of possession till deposit in the Tribunal.

6. The State has appealed and its contentions, broadly put, are as follows :

(a) The enhancement on machineries is vitiated by reliance on inadmissible evidence and contravention of Clause Seventhly of Section 24 of the Land Acquisition Act as amended by the Calcutta Improvement Act;

(b) In valuing the structures and awarding compensation for the same, the Tribunal erred in taking into consideration the alignment structures which ought to have been excluded from compensation in view of the Agreement (Ext. C-2) dated April 12, 1948; and

(c) Nothing should have been awarded in the present case under the head loss of earnings" and even the Collector's award of Rs. 10,000/- under that head was erroneous and in enhancing the same by Rs. 8,000/- the Tribunal was guilty of a greater error.

7. We shall presently examine these contentions seriatim in all their relevant details.

8. At the time of the acquisition, claimant Gupta had in the acquired premises 72 items of machineries. Of them 16 items were lying loose and they were removed by the claimant and according to the admitted case of both parties they were not the subject-matter of acquisition. Of the remaining 56 items, there was agreed and accepted valuation in respect of 31, which were mostly what We may call heavy basic machineries, either of foreign or indigenous make, and purchased by the claimant. As there is no dispute regarding these 31 items, these also do not concern us at the present moment. We are thus left with 25 items. Of these, three items, viz., 17, 23 and 48, of Ext. 2 or Ext. Mfl) were purchased by the claimant and they were in the nature of basic machineries and the remaining 22 were products of his factory which were used only for demonstration purposes and have been designated as "demonstrative machineries". There was keen dispute between the parties in the Court below as to whether these 25 items were to be valued as scraps or as machineries. On the evidence before it, the Tribunal refused to value them as scraps and it assessed their valuation and the relative compensation treating them to be machineries and allowing necessary depreciation for their age, user and condition. This was essentially a matter of assessment or appreciation or appraisal of evidence and, Mr. Mitter realised his difficulty in bringing it within the legitimate scope of permissible challenge under Sub-section (2) which specifies the grounds of appeal in a case, coming under the relevant appeal provision, Clause (b) of Sub-section (1) of Section 3 of the Calcutta Improvement (Appeals) Act, 1911, which admittedly governs the present case. He did not dispute that the section quoted, namely, Section 3 (2) of the Calcutta Improvement (Appeals) Act, 1911, which was as rigid as the second appeal section (Section 100) under the Code of Civil Procedure, precluded

all challenge to assessment or appreciation of evidence unless it was vitiated by an error of law or material irregularity of procedure, applicable to the case, but he contended generally in regard to the above items that the Tribunal was guilty of relying on inadmissible evidence and, in regard to some at least, viz., Nos. 36, 37, 41, 42, 45, 47, 49 and 54, the Tribunal's finding was based on no evidence and, further, that item No. 48 should have been altogether excluded from compensation in view of the relevant clause Seventhly of Section 24 which the Tribunal failed to take into consideration, thereby committing an obvious error of law. On this part of the case, therefore, Mr. Mitter's challenge is confined to the above 25 items of machineries and the other items do not require consideration in the present appeal.

9. On item No. 48, the Filter Press, Mr. Mitter is entitled to succeed. This machinery was purchased in December 1947 which was long after the relevant date of declaration u/s 6, namely, June 12, 1947. Obviously, therefore, it was not in the acquired premises and did not form part of the acquired property on the said date and could come in for compensation under the Act only if it can be brought under the exception mentioned in the said clause Seventhly of Section 24. In clear terms that clause excludes from compensation all additions or improvements to land acquired "after the date of publication of the declaration u/s 6 unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair." No compensation, therefore, can be claimed or allowed under the Act in respect of this Filter Press (Item No. 48) unless it falls within the exception, mentioned above. It is impossible, however, to regard it as covered by the said exception and Mr. Gupta, appearing for the claimant, did not make any serious attempt to bring it under that head. To fall within this exception, the addition or improvement must be necessary for the maintenance of any building in a proper state of repair. It is impossible to hold that the Filter Press (item No. 48) could satisfy that description and come within that category. No compensation, therefore, can be claimed or allowed in respect of it in the present proceedings for determination of compensation under the Land Acquisition Act as amended by the Calcutta Improvement Act. The claimant installed this particular machinery after the date of the relevant declaration at his risk. Whether he was entitled to remove that piece of machinery as not forming part of the acquired land or whether he is entitled to claim damages or compensation under the general law for its removal and sale by the acquiring authority does not strictly arise for consideration in this proceeding which is, as we have said above, one under the Land Acquisition Act as amended by the Calcutta Improvement Act for determination of compensation thereunder. We do not, therefore, express any opinion on the above question or questions. We would only add that this particular machinery was removed and sold by the Trust without any protest from the claimant respondent and it was sold along with other pieces of machineries for a lump total price of Rs. 30,000/-.

10. In the above view, we would disallow the compensation of Rs. 2000/-, awarded to the claimant by the Tribunal in respect of this disputed machinery

(Filter Press Item No. 48), and the Tribunal's award for machineries will, accordingly, be modified or reduced to that extent.

11. As regards the other items of disputed machineries, also, the appellant's case must fail. Of the value of item No. 36, there is, it is true, no evidence except that of the claimant and his valuer Mr. Kapoor and the Trust's valuer Mr. Ghose and the two exhibits M (1) and 25, which were lists prepared by Mr. Ghose at his two inspections and his estimated figures of valuation, mentioned therein. We are unable, however, to accept Mr. Mitter's argument that none of these items of evidence is or are admissible in law or relevant on the point of valuation in June 1947, which is the material time for our purpose. The different items of evidence at least show valuations of the disputed machineries both before and after June, 1947, and the Tribunal in relying upon them for purposes of finding out the valuation in June, 1947 did not commit any error of law and particularly when the Trust's expert Mr. Ghose valued this particular item of machinery in Ext. 25 at Rs. 2,000/-, however tentative that valuation might have been, the Tribunal's valuation at the same figure cannot, in the circumstances of this case, be reasonably objected to by the State. (His Lordship went "through the evidence relied on by the Tribunal in respect of other items, and proceeded) : We, therefore, reflect Mr. Mitter's submissions on this part of the Tribunal's award.

12. On the question of structures within the Alignment portion, the appellant State has a good case in view of the agreement, (Ext. C-2), dated April 12, 1948. The agreement is perfectly clear on the point and reference need be made only to the concluding part of the recital or preamble portion of the agreement and to paragraph 2 of its operative part. Referring to these structures as additional structures which were erected with the Chairman's permission u/s 63(9) of the Calcutta Improvement Act, the agreement recites as follows :

"And whereas the Board has given notice in writing to the owner to remove the said additional structures on or before the tenth day of June, 1947; And Whereas the owner has requested the Board to allow the said additional structures to remain until the said premises are acquired by the Land Acquisition Collector which the Board has agreed to do on condition that the owner agrees not to claim any compensation for the said additional structures on such acquisition."

and paragraph 2 which follows the witnesseth part runs as follows :

"The owner agrees and undertakes not to make on any ground whatsoever any claim for compensation or otherwise in relation to the said additional structures on acquisition of the said premises under the Land Acquisition Act, 1894, in execution of the said Scheme No. VI (M) and to reimburse the Board such cost as may be required to acquire the tenant's interests (if any) with regard to the said additional structures."

The quoted extracts can have only one meaning, namely, that the owner Gupta, who is the claimant respondent before us, agreed to claim no compensation for

these additional structures on acquisition of the premises under the Land Acquisition Act that is, in the present proceedings and there was good reason for it. Under the original agreements (Exts. C and C-I) u/s 63 (9) of the Calcutta Improvement Act, the claimant was entitled to retain and use these additional structures until expiry of the period of the notice to be given thereunder.

That notice was duly given and under it the claimant had to quit on or before June 10, 1947. The acquisition was actually made and possession taken in February 1952. For this extra period of about 5 years the claimant retained possession and user of the additional structures under the new agreement Ext. C-2 and this or something like this must have been foreseen by him when he entered into that agreement. It is no wonder, therefore, that he agreed to claim no compensation whatsoever for these additional structures,--and indeed as we shall show presently he relinquished all claims to these structures,--in the event of acquisition. The loss, so undertaken, was apparently more than offset, or expected to be so, by the retention of possession and user during the extra period.

13. That under the agreement (Ext. C-2) the present claimant agreed to give up all claims to these additional structures and to relinquish even his earlier right to remove them in the event of acquisition of the premises is perfectly clear when we consider this agreement in the proper context, namely, in the background of the two earlier agreements (Exts. C and C-I) which are recited therein. These two earlier agreements were executed u/s 63 (9) of the Calcutta Improvement Act and contained the visual terms that the owner would remove the structures on being called upon to do so by the Chairman of the Trust. That was, of course, to be without compensation, or, in other words, the owner was not entitled to any compensation for compulsory removal of the structures on notice. The owner had, however, the right to remove the structures which meant that they were not to be treated as included within or forming any part of the subject-matter of the acquisition and this right was expressly mentioned in the two agreements (Exts. C and C-I), The agreement (Ext. C-2), however, is singularly silent on the point and a comparison of the language of the three agreements and the absence of the clause of removal and of any provision of notice in this subsequent agreement (Ext. C-2) sufficiently indicate that the owner agreed to give up all his rights in respect of the additional structures (including the pre-existing right of removal and all claims to compensation). We are unable to take the view that the agreement (Ext. C-2) merely extended the time of removal under the agreements (Exts. C and C-I), or under the notice issued in pursuance thereof. It rather seems to us that the owner in consideration of the Board's allowing him to retain the said structures until acquisition agreed that on such acquisition he would lose all rights in respect thereof and would not be entitled to claim any compensation for such loss or otherwise in respect of these structures. We hold, therefore, that by the agreement (Ext. C-2) the owner disabled himself from claiming any compensation in respect of the disputed structures in case of acquisition of the premises under the Land Acquisition Act. It is unnecessary for

us to say anything more in this appeal on this aspect of the matter save what we shall presently say on the legal effect of the said agreement on the present proceeding.

14. This brings us to the crucial question on this part of the case, namely, whether the agreement as aforesaid between the owner (claimant) and the Board can or ought to be given effect to in Land Acquisition proceedings, or whether such proceedings should be decided without reference to or ignoring the said agreement, leaving the parties to their remedies under the general law for enforcement of any such agreement. The law on the point is not very clear but so far as this case is concerned there is not much complexity. Even under the decision of the Judicial Committee, reported in AIR 1946 75 (Privy Council) , on which very strong reliance was "placed by Mr. Gupta, the Collector is entitled though not bound to consider and act upon the agreement and similar is the position of the Tribunal and this Court in reference and appeal. That the agreement will be binding and operative between the Trust and the owner (claimant), admits of no doubt, vide *Fort Press Co. Ltd. v. Municipal Corporation of the City of Bombay* 49 Ind App 331:27 CWN 418 : (AIR 1922 PC 365) (B). It is of course not binding on the Collector and he is entitled to disregard it in as proper case. He is, however, free also to give effect to it in the Land Acquisition proceedings. That at least is beyond question and that is sufficient for our present purpose. There is nothing in the present records to indicate that the Collector disregarded the agreement (Ext. C-21. On the other hand it seems to us that he acted upon the said agreement and the Tribunal was in error in thinking otherwise. The Tribunal further was of the opinion that if the Collector had disregarded the agreement it had no power to act upon it. We do not think that the Tribunal is so powerless in the matter. It is entitled to examine the propriety of the Collector's action. After all the Tribunal just as the Collector has to decide the case according to law within the limits of its jurisdiction. It cannot certainly enforce or decree specific performance of the contract but, short or that, it is plainly entitled to give effect to it. If, in law, a particular position has been established between the two parties, the Trust and the owner, the Land Acquisition Collector and the Land Acquisition Court in discharging their duties of deciding the matter before them in accordance with law are entitled to act upon that position and, in our opinion, the Land Acquisition Court is even entitled to act independently in the matter and take a view different from the Collector's on the effect of the agreement on the Land Acquisition proceedings. If, for example, an estoppel has been created between the parties to the agreement and the Collector refuses to recognise it or give effect to it, the Land Acquisition Court is entitled to disagree and give effect to its own views by applying the law of estoppel and then giving effect to the agreement. It would otherwise be acting contrary to law (Vide *Ananta Ram Banerjee Vs. Secretary of State*, , and the unreported case *Nalin Behary Bose v. Secretary of State*, (F.A. No 125 of 1934 decided by D. N. Mitter and S. K. Chose JJ. on 27-7-1936 (Cal) (D), cited therein). This Court, again, sitting in appeal over the Land Acquisition Judge, is in

no worse position and it can also, in a proper case, give effect to the agreement where that has been disregarded by both the Collector and the Land Acquisition Judge, although it was binding between the parties to it. It is unnecessary to prolong this discussion as in the present case the Collector not having disregarded the agreement (Ext. C-2) and the Tribunal having failed to act upon it upon the wrong assumption that the Collector had disregarded it, we are perfectly entitled to take it into consideration and give effect to it as we have little doubt that it is a valid and binding agreement between the Trust and the owner (claimant) and is not vitiated or affected by any legal infirmity. We, accordingly, hold that the Tribunal erred in awarding compensation for the structures within the alignment portion and its award in that respect also, amounting to Rs. 11072/-, should be set aside. The appeal on this point too, therefore succeeds.

15. It remains now to consider the award under the head of loss of earnings." Without the least hesitation we reject the State's extreme argument that the respondent-claimant is not entitled to any compensation under this head. It is argued that the land acquired, including the fixture machineries etc., is being fully paid for and thus the claimant is getting the capitalised value of their income. Removable machineries have been removed by the claimant and they retain their income-producing capacity. There is, therefore, no question of any loss of earnings and no question of any compensation for the same. The argument is inherently fallacious. The compensation, for the land and the fixture machineries is not the same thing as compensation for loss of the business or even of the factory with its actual and potential income value. The income which the claimant was deriving from his factory or business was not simply the product of the machineries--not to speak of the fixture machineries alone. It was also the product of labour, skill etc. The loss of that income is certainly not compensated by paying for the machineries alone. This is not a case where the income is derived from only the land acquired without the assistance of any other factor so as to be fully covered by the compensation paid for the land. There the income arises wholly or totally from the land acquired and the compensation determined on the market value of the land under the clause firstly of Section 23 sufficiently includes the loss of that income. The loss of earning, however, with which we are concerned here is of a different character, the income or earning arising not merely from the land acquired (including the fixture machineries) but from other factors as well, namely; labour, skill etc. Such loss of earning does not obviously come under the clause firstly of Section 23 which compensates only the loss of the acquired land but would fall under the clause fourthly of that section. Taking into consideration the award of Rs. 4,000/- under the head of cost of removal under the next clause fifthly (which should be kept in mind in the above connection in the circumstances of the present case), we do think that the claimant respondent is entitled to get under the head of loss of earnings a sum of Rs. 15,000/- in place of Rs. 10,000/-, awarded by the Collector, and the enhanced figure of Rs. 18,000/- of the Tribunal. In calculating as above, we have

duly taken into consideration the claimant's inability to get a suitable site for re-establishing his business as also the extension of time, granted to him by the Collector to vacate the old site. We have practically accepted the Tribunal's basis of calculation, namely, two years' loss of earnings at the rate of Rs. 9000/- per annum, and made suitable deduction for the extension period of 3 to 4 months which the claimant obtained from the Collector for delivery of possession. We think that will be a fair assessment of the loss of earnings or the compensation therefore which the claimant can legitimately claim in the circumstances of this case. We assess it accordingly.

16. In the result the appeal is allowed in part and the Tribunal's award is modified by disallowing the compensation of Rs. 2,000/- awarded by it in respect of the Filter Press Machinery (Item No. 48) and the amount of Rs. 11,072/- awarded in respect of the structures within the alignment portion and by reducing the figure under the head of loss of earnings from Rs. 18,000/- to Rs. 15,000/-. In all, the Tribunal's award is reduced by Rs. 16,072/-. Interest at the rate of 6 per cent p.a. as allowed by the Tribunal will remain but it will be calculated only on the reduced figure over the Collector's award as per this judgment. The claimant respondent will also be entitled to one-third of his costs of this appeal from the appellant, the award of costs as made by the Tribunal being maintained so far as that Court, namely, the Court below, is concerned.

Renupada Mukherjee, J. :

17. I agree.