
(1967) 08 GAU CK 0001
In the Gauhati High Court
Case No : First Appeal No. 9 of 1960

Sudhir Chandra Deb Nath and another	APPELLANT
Vs	
State-Union Territory of Tripura	RESPONDENT

Date of Decision : 23-08-1967

Acts Referred:

Constitution of India, 1950 — Article 31B
Land Acquisition Act, 1894 — Section 18, 23, 4, 6, 8(1)(b)

Citation : AIR 1967 Guw 56

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Advocate : A.K. Shyam Choudhury, for the Appellant; H.C. Nath, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

C. Jagannadhacharyulu, J. C.

1. This is an appeal filed by Sudhir Chandra Deb Nath and Ananta Chandra Dev Nath against the judgment and decree, dated 30-4-1960, in Land Acquisition Case No. 41 of 1956, on the file of the Additional District Judge, Tripura, to set aside the same and to grant them compensation at the rate of Rs. 1600/- per "kani".

2. On 29-6-1956 the Land Acquisition Officer of Agartala (District Magistrate and Collector) passed an order for issuing a notification u/s 4 of the West Bengal Land Development and Planning Act of 1948 (West Bengal Act XXI of 1948), as extended to Tripura, by Notification No. 86-J, dated 1-8-1950, by the Government of India, Ministry of States, for acquisition of land measuring 3.80 acres in mouja New Model Village for the construction of Industrial Training Centre. The notification was published in the extraordinary issue of the Tripura Gazette, dated 11-7-1956. The Land Acquisition Officer passed an order on 28-7-1956 for publishing declaration in the Gazette u/s 6 of the said Act. Notices u/s 9 of the Land Acquisition Act (Act I of 1894) were also published calling upon

the interested parties to appear before the Land Acquisition Officer and to make their claims. On 16-10-1956, he passed an award awarding compensation to the claimants at the market value of Rs. 200/- per "kani" of land, as on 31-12-1946, u/s 8 (1) (b) of the West Bengal Land Development and Planning Act and allowed the statutory compensation of 15 per cent and interest at 6 per cent per annum from 15-5-1953, the date of taking possession up to 15-12-1956.

3. The appellants herein were not satisfied with the amount awarded to them and got a reference made u/s 18 of the Land Acquisition Act (Act I of 1894) for fixing the correct amount of compensation. The learned Additional District Judge recorded evidence, oral and documentary, and upheld the award passed by the Land Acquisition Officer and the market value of the land as on 31-12-1946. Hence the appeal by both the claimants.

4. The land of the first appellant which was acquired by the Land Acquisition Officer is 20 "decimals" (? of kani) covered by jote No. 197 in mouja New Model Village. The land of the second appellant was also of the same extent covered by the same jote No. 197 in mouja New Model Village.

5. The first question that falls for determination is regarding the fixation of the date, on which the market value of the lands in question prevailed for being taken into consideration in fixing the compensation. Section 8 of the West Bengal Land Development and Planning Act, 1948 (Act XXI of 1948), under which the lands were acquired runs as follows, after its amendment by West Bengal Land Development and Planning (Amendment) Act 1955 (West Bengal Act XXIII of 1955).

8 (1). After making a declaration u/s 6, the State Government may acquire the land and thereupon the provisions of the Land Acquisition Act. 1894 (hereinafter in this section referred to as the said Act), shall so far as may be, apply:

Provided that--

(a) if in any case the State Government so directs; the Collector may, at any time after a declaration is made u/s 6, take possession, in accordance with the rules, of any beel, baor, tank or other watery area, or any waste or arable land in respect of which the declaration is made and thereupon such land shall vest absolutely in the Government free from all encumbrances;

* * *

Section 8 (1) (b) of the said Act prior to its amendment by West Bengal Land Development and Planning (Amendment) Act, 1955 (West Bengal Act XXIII of 1955) ran as follows:--

(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 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. Section 8 (1) (b) was amended by the West Bengal Land Development and Planning Amendment Act, 1955 (West Bengal Act XXIII of 1955) and after the amendment the relevant portion of the said second paragraph in Section 8 (1)(b) runs thus:

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.

7. The amendment made by the West Bengal Land Development and Planning Amendment Act of 1955 was brought into force in Tripura from 7-3-1960, as published in the Tripura Gazette Extraordinary, dated 21-3-1960. So the legal position in Tripura prior to 7-3-1960 was that the market value with regard to any land acquired for any public purpose as defined by Section 2 (d) of the West Bengal Land Development and Planning Act of 1948 was to be determined as on 31-12-1946 and the excess market value as on the date mentioned in the first clause of sub-section (1) of Section 23 of the Land Acquisition Act (Act I of 1894) should not be taken into consideration. But, after the amendment was introduced in Tripura i.e., after 7-3-1960, the said date of 31-12-1946 was to be taken into account only in the case of market value of land acquired for settlement of immigrants, who have migrated into the State of West Bengal (here - Tripura) on account of circumstances beyond their control. Both the Land Acquisition Officer and the Additional District Judge took the date of 31-12-1946 as the date for fixing the market value of the lands in question, since they were acquired for a general public purpose prior to the introduction of the amendment in Tripura.

8. The contention of the learned Counsel for the appellants regarding the said date is three-fold. His first contention is that the provision in Section 8 (1) (b) of the West Bengal Land Development and Planning Act that the market value as on 31-12-1946 should be considered is repugnant to the provisions in Section 23 at the Central Act namely, the Land Acquisition Act (Act I of 1894) and that it is Illegal and cannot be followed. This was also what was held by the Supreme Court In the The State of West Bengal Vs. Bela Banerjee and Others, . But, after the Supreme Court rendered the above decision, the Constitution of India was amended by the Constitution of India (4th Amendment Act of 1955), by which Arts. 31, 31A, 305 and the 9th Schedule mentioned in the Article 31B of the

Constitution were amended. In the 9th Schedule the West Bengal Land Development and Planning Act of 1948 as amended by the subsequent Acts was added making the said Act valid notwithstanding the decision of the Supreme Court. So, the 4th Amendment of the Constitution of India validated the said Act and Section 8 of the West Bengal Land Development and Planning Act. The same point came up for decision previously in this Court and this Court held likewise: Vide *Kiranmay Sen Gupta v. Chief Commr. and Administrator, for Union Territory of Tripura*, AIR 1962 Tri 13. So, there is no force in the contention that the date of 81-12-1946 fixed by Section 8 (1) (b) is unconstitutional.

The second contention of the learned Counsel for the appellants is that the Additional District Judge disposed of the matter on 30-4-1960 after the amendment was brought into force in Tripura on 7-3-1960 and that, therefore, the Additional District Judge should have held that the date of 31-12-1946 should be considered in a case covered by Section 2 sub-clause (i) of clause (d) of the West Bengal Land Development and Planning Act i.e., to a case of acquisition of land for settlement of immigrants, but that in the present case the lands were acquired for constructing the Industrial Training Centre and that the market value should have been fixed as on the date mentioned in the first clause of sub-section (1) of Section 23 of the Indian Land Acquisition Act (Act I of 1894). But, the amendment made by the West Bengal Government by the West Bengal Amending Act XXIII of 1955 was not made applicable retrospectively in Tripura. Unless it was made specifically retrospective, it could not apply to the present case, wherein the lands were acquired in 1956 before the Amending Act came into force in Tripura. The date of disposal of a case makes no difference. So, this contention also fails. The third contention of the learned Counsel for the appellants is that they took the lands from the Government under settlement in 1948 by paying Rs. 250/- per kani as premium and undertaking to pay Rs. 5/- towards annual rent and -/5/- annas towards cess for each year per kani and that if the market value is to be fixed as on the date of 31-12-1946, it would work out injustice and hardship to the appellants. The learned Government Advocate argued that the appellants purchased the lands in open auction, that the prices of lands gradually increased from 1946 and that, therefore, they paid heavy premium. But, it is not at all necessary to decide whether the lands were granted on settlement or sold in auction, inasmuch as the Court is bound to grant compensation according to law with reference to the market value prevailing on the date of 31-12-1946 fixed by Section 8 (1) (b) of the West Bengal Land Development and Planning Act, 1948.

9. The next contention of the learned Counsel for the appellants is that even if the market value prevalent on 31-12-1946 is to be taken into consideration, both the Land Acquisition Officer and the Additional District Judge erred in fixing a low value at Rs. 200/- per kani. The judgment of the Additional District Judge on this point is very laconic. The burden of proving what the correct value of the land was on 31-12-1946 lies on the appellants. No reliance can be placed upon the oral testimony of witnesses, examined on behalf of the appellants, regarding the

price of the land But, they filed Exts. P-1 to P-4 registered sale deeds to prove the market value of the land. Ext. P-1 is dated 20-3-1359 T. E. Le., 1949 A. D. which shows that 18 gandas, 1 kara and 1 krant of land in Abhoynagar with two huts were sold for Rs. 2,200/-. This sale deed cannot be taken into account inasmuch as it relates to 1949 A. D. Ext. P-2 is a registered sale deed dated 29-4-1952 A. D. under which the first appellant sold away 10 "decimals" of land at Rs. 400/-. This is also of no avail, since it does not show the market value on 31-12-1946. Under Ext. P-3 dated 28-8-1357 T.E. (1947 A.D.) about 18 "decimals" of land were sold for Rs. 700/-. This can be taken into account, as the date of sale is near about 31-12-1946 A. D. But, it is not clear what other properties were sold with the land. The price of each "decimal" works out at Rs. 38.8 paise. Ext. P-4 registered sale deed is dated 11th Magh. 1357 T.E. corresponding to 1948 A. D. under which 80 "decimals" of land with pond in mouja Indranagar were sold for Rs. 2,499/-. Each "decimal" of land was sold for Rs. 31-23 paise. It also cannot be taken into account as the sale deed was executed in 1948 A. D.

10. As against the above documents, the respondent filed Exts. D-1 to D-3 registered sale deeds. Under Ext. D-1, 17 kanis of nal land were sold for Rs. 600/- on 18-9-56 T.E. The Land Acquisition Officer relied on this sale deed, as it was executed in 1947 A. D., the date being near 31-12-1946. He, however, fixed the market value of lands in question at Rs. 200/- per kani being half of the market value covered by Ext. D-1, on the ground that the land covered by Ext. D-1 was more costly being nal land than the lands in question, which are "table tilla". But the lands were acquired for the purpose of construction of Industrial Training Centre. A "table tilla" land is as valuable as nal land, if not more and better fitted for building purposes. Besides, the lands in question are near Agartala town. So the Land Acquisition Officer should have fixed the value at Rs. 400/- per kani as mentioned in Ext. D-1. Ext. D-2 is another registered sale deed dated 7th Magh, 1356 T. E. corresponding to 1947 A. D. under which 100 "decimals" of land in extent in Jagatpur mouja were sold for Rs. 1000/-. So, each "decimal" was sold for Rs. 10/-. Ext. D-3 is another registered sale deed dated 18th Falgoon, 1356 T. E. corresponding to 1947 A. D. under which about 115 "decimals" of land in mouja Jagatpur were sold for Rs. 300/-. This would work out at Rs. 3/- per "decimal". As Ext. D-1 relied on by the Land Acquisition Officer relates to land near the lands in question, I too would act upon it and fix the rate at Rs. 400/- per kani as mentioned in Ext. D-1. This was also the market value of the land covered by Ext. D-2.

11. The learned Counsel for the appellants stated that there were fruit bearing trees on the lands and that no compensation was paid to them in respect of those trees. But, in the petitions for reference filed by the appellants no reference was made to the trees.

12. In the result, the appeals are allowed and the market value of the lands in question as on 31-12-1946 is fixed at Rs. 400/- per kani. The appellants are

entitled to compensation at this rate together with the statutory compensation, and interest according to law. They are also entitled to proportionate costs in the appeal.