(1991) 07 CAL CK 0032

In the Calcutta High Court

Case No : F.A. No. 390 of 1988

The Collector, Land Acquisition, Darjeeling — APPELLANT

Vs

Sudhangsu Sil and others — RESPONDENT

Date of Decision : 01-07-1991

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 30(1)
Land Acquisition Act, 1894 — Section 18, 23, 23(1A), 4

Citation : AIR 1992 Cal 246 : (1992) 2 ILR (Cal) 145

Hon'ble Judges : Siba Prasad Rajkhowa, J;Shamsuddin Ahmed, J

Bench : Division Bench

Advocate : Tapan Sengupta, S.K. Chatterjee and Debayan Bera, for the Appellant; S.B. Bakshi Sudhis Das Gupta and Tapan Roy, for the Respondent

Judgement

S.P. Rajkhowa, J.—This appeal is directed against the judgment and decree dated 31st July, 1987 passed by the learned District Judge, Darjeeling in Misc. Judicial (Land Acquisition) Case No. 11 of 1977.

2. This case relates to acquisition of land with building and garden known as ''Sailabhas'' at Kalimpong for accommodation of Civil and Criminal Courts at Kalimpong and Soil Testing Laboratory of the Agricultural Department under L.A. Case No. 3/5 of 1976-77. The total area of the land is 2.115 acres comprising homestead, garden, sukha, bamboo and road classes of land recorded in the settlement record of Mouza Kalimpong town, J.L. No. 56, P. S. Kalimpong, District Darjeeling, covered by C.S. Plot Nos. 7901, 7902, 7903, 7904, 7905, 7906 and 7907. The property has been acquired by Notification No. 26056-L.A. dt. 24-10-75 published in the Calcutta Extra Ordinary Gazette of the same date and Declaration No. 21552-L.A. dt. 23-12-76 published in Calcutta Extra Ordinary Gazette dt. 24-12-76. The total award of compensation given by the Collector is Rs. 2,95,255/-.

3. The claimants filed an application u/S. 18 of the Land Acquisition Act before the Collector and accordingly the Collector made a reference to the District

Judge. After considering the evidence on record the learned District Judge allowed the reference and awarded compensation which is as follows:

(a) Rs. 2,20,979/- for land measuring 2.115 acres;

(b) Rs. 2,61,463/- for building and other structures;

(c) Rs. 30,000/- for fittings;

(d) Rs. 10,000/- for trees;

(e) Rs. 22,181/-

for compensation u/S. 23(1-A) of the L.A. Act @ 12 per annum from 24-10-75 to 3-3-76;

(f) Rs. 1,56,732/-

for compensation u/ S. 23(2) of the L.A. Act of the total valuation of the land including building, fittings and trees @ 30 per centum.

TOTAL Rs. 7,01,355/-

Rupees Seven Lac One Thousand Three Hundred Fifty-five). Less the amount already drawn

(g)

Interest at the rate of 9% per annum on the excess amount of Rs. 2,32,187/- from the date of award of the Collector to the date of payment u/S. 28 of the L.A. Act.

(h)

Cost of the proceeding fixed at Rs. 2000/- to be paid by the Collector to the claimants.

4. Being aggrieved by the judgment and decree, the State has preferred this appeal.

5. The learned counsel for the appellant has mainly urged before us that the learned District Judge erred in law in enhancing the value of the acquired land to Rs. 7,01,355/-from Rs. 2,95,255/- as awarded by the Land Acquisition Collector and that the reasons given for this increased rate is against the evidence on record; that the claimants filed an objection before the L. A. Collector claiming a total sum of Rs. 1,00,000/- for change of residence, place and business and incidental charges but that the learned District Judge erred in law in enhancing the amount of compensation and further erred in law in appointing a Commissioner and placing reliance on Ext. 1 and that the learned District Judge erred in law in allowing Rs. 10,000/- for the trees, Rs. 30,000/- for fittings in the building and Rs. 2,61,463/- for the building and other structures.

6. From the evidence on record we find that the claimants produced before the

learned District Judge, the following sale deeds for laying the foundation for assessing the value of the acquired land:-- Ext. 3 is a sale deed executed on 18-6-75 showing a transaction of a parcel of vacant land measuring 31'' x 62'' = 1922 sq. ft. of D.I.F. Plot No. 104 (old) situated at D. S. Gurung Road of Kalimpong Municipality and within the D.I.F. area of Kalimpong at a consideration of Rs. 13,000/-; Ext.3(a) is a sale deed dt. 14-7-75 showing a transaction of a parcel of vacant land measuring 20'' x 19'' = 380 sq.ft. of Plot No. 227-A situated at Murghi Hatta within the Kalimpong Municipality, Ward No. II, for a consideration of Rs. 1.200/-Ext. 3(b) is a sale deed dt. 23rd July, 1975 showing a transaction of a parcel of vacant land measuring 126 1/2 sq. ft. of D.I.F. Plot No. 106 (old) situated within the D.I.F. area of Kalimpong Municipality for a consideration of Rs. 4,501/-; Ext. 3(c) is a sale deed dt. 4-9-75 showing a transaction of a parcel of vacant land measuring 1950 sq. ft. covered by Plot Nos. 746017 and 43512, situated within the D.I.F. area Kalimpong Town for a consideration of Rs. 5000/- and Ext. 3(d) is a sale deed dt. 29-9-75 showing a transaction of a parcel of vacant land measuring 30'' x 35'' sq.ft. under Plot No. 502/E under Kalimpong D.I.F. area for a consideration of Rs. 1000/-. As against the aforesaid sale deeds, the respondents also produced 2 sale deeds to counter the enhanced value of the land set forth by the claimants. Ext. A is a sale deed dt. 5-2-75. It shows a transaction of land measuring 0.33 acres under Plot No. 405, Holding No. 418 situated at Bong Development Area, Kalimpong Municipality, Ward No. XV for a consideration of Rs. 7000/- Ext. B is a sale deed dt. 18-3-75 showing a transaction of 0.97 acre in lease-hold Plot No. 257, Holding No. 362 in the Kalimpong Development Area for a consideration of Rs. 9000/-.

7. The land was acquired by Notification No. 26056-LA. dt. 24-10-75. The sale deeds produced by both sides were executed within 1975 and before the date of acquisition. As such these documents may be taken into consideration for founding a basis for assessment. But the difficulty is, all these documents have shown transactions relating to small parcels of land although these are in close proximity to the acquired land. However in Administrator General of West Bengal Vs. Collector, Varanasi, Varanasi, the Supreme Court has ruled that "it is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. The principle that evidence on market value of sales of small, developed plots is not safe guide in valuing large extents of land with potentialities for urban use has to be understood in its proper perspective." As such we are going to rely upon these documents. While assessing the valuation of the acquired land, the learned District Judge has relied on the evidence of D.W. 2 Sanjay Lama, Amin attached to the Sardar Land Acquisition Office. Darjeeling and the valuation report (Ext. 1) of the Valuer appointed by the Court. The Valuer was Sri L. K. Mukherjee, Registered Govt. Valuer and Chartered Surveyor. Unfortunately the said Valuer had died before he could be examined as a witness in support of his report. But this valuation was made in presence of both the parties to the reference and so

the report was relied upon by the learned Judge. There being no other expert report on the valuation, we are also inclined to rely upon the same. In assessing the valuation, the Valuer took the average rate per acre on the basis of total areas and the total consideration of Exts. 3, 3(a), 3(b), 3(c) and 3(d). Total area comes to 6562 sq. ft. and the total consideration comes to 24,700/-. At this rate, the rate per acre comes to Rs. 1,63,964. To this amount he added Rs. 45,000/- and taking the average he came to Rs. 1,04,482/- per acre and accordingly the valuation of the acquired land measuring 2.115 acres comes to Rupees 2,20,979/-. The amount of Rs. 45,000/- was the valuation per acre assessed by the Collector for an area proposed to be acquired for the Kalimpong College which was subsequently abandoned. So we are not inclined to take into consideration the assessment of the Collector in so far as it relates to the land proposed to be acquired for the Kalimpong College. Instead thereof we want to take into our consideration the price of the land shown in Exts. A and B produced on behalf of the Collector. The Valuer did not take these two documents into consideration on the ground that these two transactions were made before the financial year 1975-76. But we do not accept the reasoning of the Valuer in rejecting these two documents. All the above mentioned exhibited sale deed were made within 1975 and prior to the acquisition of the land in question. The total consideration of Exts. A and B is Rs. 16,000/-. At this rate the value per acre for the land under Exts. A and B would be Rs. 12,307/-. Following the principle shown by the Valuer, we add this amount of Rs. 12,307/- to Rs. 1,63,964/- and by taking the average we assess the value of the acquired land at Rs. 88,135/- per acre. Thus the total value for 2.115 acre comes to Rs. 1,86,405/-.

8. As regards the valuation of the building and other structures the learned District Judge has fixed the valuation at Rupees 2,61,463/- by taking the average of the valuation made by the Collector and the Valuer as there was no other reliable evidence for making assessment. It has been held by the Supreme Court in the reported case mentioned above that it is permissible to value property estimating separately market value of land with reference to the date of pre-liminary notification and add to it value of structures as at that time. As such we do not think that the learned District Judge was not justified in assessing the value of the structures separately or that the valuation on this score was excessive.

9. As regards the valuation of the fittings, the learned District Judge has assessed it at Rs. 30,000/-. In our opinion this is reasonable.

10. As regards the valuation of the trees the learned District Judge has assessed it at Rs. 10,000/-. Considering the class, qualities and quantities of the trees in the acquired land, we do not think that the amount assessed by the learned District Judge is unreasonable.

11. While dealing with the question of payment of solatium and interest on excess compensation the learned District Judge, relying on Bhag Singh and

Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, has held that the provisions of Ss. 23 and 28 of the Land Acquisition Act as amended by the Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984) shall be applicable to the instant case. The Notification u/S. 4 of the Act was made on 24-10-75 and the possession of the main building and the annexed building in the acquired land was taken on 14-2-76 and 3-3-76 respectively. The award was made by the Collector in 1977. So the learned District Judge awarded 12% interest on the market value of the properties assessed from 24-10-75 to 3-3-76 and awarded solatium at the rate of 30% on the total amount of compensation of land including buildings, fittings, and trees and interest at the rate of 9% per annum on the excess amount as per provision of S. 28 from the date of Collector''s award to the date of his payment. It may be noted that K. Kamalajammanniavaru (Dead) by Lrs. Vs. Special Land Acquisition Officer, and approved of the opinion expressed in State of Punjab Vs. Mohinder Singh and Another, . But Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., has overruled Bhag Singh and Mohinder Singh and reiterated the view expressed in Kamalajammannaivaru. This means that the award of 30% solatium will apply only where the award appealed against was made by the Collector or the Court during the period between 30 April, 1982 and 24 September, 1974. In a recent decision reported in AIR 1990 SC 981 (Union of India v. Filip Tiago De Gama) Supreme Court has discussed the earlier decisions of that Court in the above noted reported cases and has held that the benefit of higher solatium would also be available in cases where award is made after 24-9-84. Anyway the learned District Judge is perfectly justified in allowing 30% solatium u/ S. 23(2) of the Act. But the same cannot be said in respect of his granting 12% per annum on the market value of the acquired properties for the period from 24-10-75 to 3-3-76. The learned District Judge has allowed this 12% in view of the amendment of S. 23 of the Act in insertion of the following sub-section, namely "(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier". Interpretation of this amended provision came up, we think for the first time, before the Supreme Court in Filip Tiago De Gama (supra). The Supreme Court has held that the legislature has given a new starting point for operation of S. 23(1-A) for certain cases and that this will be clear from the transitional provisions made in S. 30, sub-sections (1)(a) and (b) of the amending Act. In that case notification acquiring land of the petitioner was issued in 1967 and the award was passed by the Collector in 1969 and therefore, no proceeding was pending before the Collector on 30-4-82, the date prescribed by S. 30(1)(a) of the amending Act. Sub-section (1)(b) of S. 30 of the amending Act was also not applicable as the proceeding was initiated before 30-4-82. So the Supreme Court held in that case that the petitioner was not entitled to the benefit of additional compensation u/s

23(1-A). In the instant proceeding before us the notification u/S. 4 of the Act was made on 24-10-75 and the award was made by the Collector in 1977. So it is clear that no proceeding was pending before the Collector on 30-4-82. Under the circumstances and in view of this decision of the Supreme Court we hold that the learned District Judge has erred in law in granting additional compensation u/s 23(1-A) of the Act as such we strike down that part of the impugned award of the learned District Judge as regards additional compensation at the rate of 12% on this score.

12. As regards interest, the claimants shall be entitled to the interest at the rate of 9% per annum on the excess amount of compensation from the date of the possession by the Collector u/S. 28 of the Act, for one year and thereafter @ 15% till the date of payment.

13. The learned District Judge has fixed Rs. 2,000/- as cost of the proceeding to be paid by the Collector to the claimants. We do not like to interfere in this order.

14. In the result the appeal partly succeeds, the impugned award passed by the learned District Judge stands modified to the extent as indicated above. We hereby direct the Collector to pay the balance of compensation to the claimants within a period of 6 months from today. Having considered the facts and circumstances of the case we leave the parties to bear their respective cost of this appeal.

S. AHMED, J.

15. I agree.

16. Appeal partly allowed.