

(2002) 07 CAL CK 0071

In the Calcutta High Court

Case No : Appeal From Original Order No. 341 of 1988

The State of West Bengal and Another

APPELLANT

Vs

Molla Amanulla and Others

RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 24, Order 41 Rule 33, 107, 107(2), 96
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 11, 12, 15, 8, 8(2A)

Citation : (2003) 1 CALLT 346

Hon'ble Judges : Joytosh Banerjee, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Chandra Sekhar Das, Sridhar Kumar Panja and Amrita Sinha, for the Appellant; Amit Prokash Lahiri and Mintu Kumar Goswami, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—In this appeal, an award dated 21st March, 1996 passed by the Court of Arbitrator [Judge Special Court (EC Act) Durgapur appointed u/s 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (1952 Act)] in L.A. Case No.1 DIA/71-72 is under challenge.

2. Mr., Chandra Sekhar the learned counsel for the appellants, points out that while arriving at the valuation of the land acquired, the Court had not given any reason on the basis whereof it had arrived at a valuation of Rs. 12,000/- (Rupees twelve thousand only) per acre. He had taken us through the decision and had pointed out to the lacunae in the judgment.

3. Mr. Lahiri, learned counsel for the respondents, points out from the judgment that the Court had discussed the commercial valuation or other utility of the land in detail, though it might not have discussed the valuation available on the basis of the exhibits on record. He then contends that the claimants are entitled to solatium and additional compensation as payable u/s 23 of the Land Acquisition

Act in view of the decision in F.M.A. 254-259 of 1994 with F.M.A 117 of 1994 (Union of India v. Sudhangshu Kumar Mukherjee & Ors., disposed of on 4th September 2001. In the said decision the land was also acquired under the said 1952 Act. Therefore, this Court should award the same relief as was granted in the said decision.

Finding of the Reference Court:

4. After having heard the learned counsel for the respective parties, it appears that in the said order the importance of the land has been discussed. In the decision itself it has pointed out that there were market, cinema hall and other various amenities and the land is situated near bazaar. Therefore, the land is valuable. True, that while calculating the valuation u/s 8(2A) of the 1952 Act, the land is to be treated as it was requisitioned. The land was stated to be "Baid" which is agricultural land. But still then the vicinity of the land may be a factor for determining the valuation. If the land is situated around a place nearer to the market or Railway Station and the area is otherwise developed at the time when the land was acquired, in that event, the valuation of the "Baid" land can also be said to be of some value. Therefore, it is not true that the learned Arbitrator has not at all considered the question of valuation in order to come to the conclusion. That apart, he has referred to Exhibits 1 to 6, which are Deeds of transfer in respect of sale of land in the vicinity and having regard to those Deeds, he has arrived at the calculation that a sum of Rs. 12,000/- (Rupees twelve thousand only) per acre would be the value of the land acquired. In fact, the dates of the respective Deeds have not been mentioned in the order itself. Mr. Das has pointed out that in the absence of the dates of the Deeds, the judgment does not appear to be supported by appropriate reasons. But that will not defeat the order passed, simply because reference to the respective date of the Deeds has not been made. The exhibits are on record. If on the basis of these exhibits, the Court arrives at a decision in that event, this Court is not supposed to interfere with the finding having regard to the Deeds, which are on record, in case the finding can be supported by those Deeds.

Rules of procedure to be followed in an appeal u/s 11:

5. An appeal is provided u/s 11 of the 1952 Act against an award of the Arbitrator passed u/s 8 of that Act to the High Court. The Act does not provide for any procedure to be followed by the High Court in deciding the appeal. Though the Act had restricted application of the Code of Civil Procedure, 1908 (CPC) in respect of a proceeding u/s 8 of the Act before the Arbitrator and in relation to service of notice u/s 12 and 15 respectively and had provided for the procedure to be followed by the Arbitrator in Section 8 for determining the compensation payable, it is silent about the procedure to be followed in respect of an appeal u/s 11 of the Act. Thus, it appears that the legislature did not intend to provide for any procedure to be followed for deciding an appeal.

5.1. When a statute is silent on a procedural matter while making special

provision for appeal to a part particular forum, it is intended by the legislature that the procedure applicable to such appeal before such forum to govern the procedure. In the absence of special procedure provided, for such forum has to follow the procedure it ordinarily follows. An appeal from original decree or order before the High Court is governed by CPC and the Appellate Side Rules . Unless specific provision for exclusion of such procedure is provided for application of the procedure ordinarily followed by the High Court cannot be restricted. Therefore, in an appeal preferred u/s 11 against an award on a reference u/s 8 of the 1952 Act, the provision of the Code of Civil Procedure, 1908 (CPC) relating to appeals becomes applicable in the same manner as if the award passed on a reference u/s 8 is an original decree passed by a Court exercising Civil jurisdiction.

Scope and power of Appeal Court:

6. Section CPC prescribes an appeal from an original decree. Section 107 of CPC defines the power of the Appeal Court. An appeal Court may determine the case finally. It has same power as imposed by CPC on Courts of Original Jurisdiction in relation to suits instituted therein. The powers of the Appellate Court are more specifically defined in Order 41 Rules 24 and 33 respectively. Rule 24 of Order 41 CPC provides that if the evidence on the record is sufficient to enable the Appellate Court to pronounce the Judgment, it may finally determine the suit notwithstanding that the Original Court had proceeded wholly upon some grounds other than that on which the Appellate Court may proceed. Order 41 Rule 33 CPC provides that the Appellate Court has power to pass any decree and make any order as the case may require.

6.1. In the present case, Mr. Das had contended that no reason has been given for arriving at the conclusion. It is a settled principle that recording of a finding of fact without any discussion of the evidence is not a judgment at all. All such a Judgment cannot be said to be in accordance with law. The legislature had clothed the Appellate Court with a solemn duty of making a honest endeavour to make a proper order apprising of the merits of the case put forth by the parties. By reason of Sub-section (2) of Section 107 the powers and the duties of the appellate Court are co-extensive with that of the trial Court. It can appreciate the evidence and come to any decision both on fact as well as in law. If the evidence on record is sufficient, it can determine the suit finally. The question, however, undoubtedly is dependant on the materials on record and the view that might be taken by the Court.

6.2. In order to support the above contention, we may beneficially refer to the decisions in Upper Ganges Electric Employees Union Vs. Upper Ganges Valley Electricity Supply Co. Ltd. and Another, , Jogesh Chandra Roy Vs. State of West Bengal and Others, ; Prabhakar Vishnu Naik v. Union of India. AIR 1970 Bombay 85 and Mst. Bhagwanti Vs. Mst. Jiuti and Another, .

6.3. Therefore having regard to the powers that is invested on the Appellate

Court as discussed above, it is open to the Court to examine the materials on record and ascertain whether on the basis of such material, the finding of the learned trial judge could be upheld or reversed. Simply absence of reason to support finding does not empower the Appellate Court to reverse the decree and decide it itself and remand the suit. It is only when on materials it is sufficient that the finding could not be supported by the materials on record, then only the decree can be reversed. The materials are sufficient to arrive at the conclusion to which the trial Court had arrived, the appeal Court is not supposed to reverse the finding simply because the trial Court's decision is not supported by reason. Neither it can remand the same avoiding its responsibility conferred upon it by virtue of the provisions of CPC referred to above. Court has a duty to examine the materials on record and come to its own conclusion that whether on the basis of the materials on record the suit can be determined by the Appellate Court. If the materials on record are sufficient to decide the suit finally, the Appellate Court should not avoid its responsibility. On the other hand, it should proceed to determine the case in terms of the power conferred upon it by different provisions of CPC.

The principle applied:

7. In the present case, though detailed reasoning has not been given as to how the trial Court had come to the conclusion in respect of the valuation arrived at, but it had referred to Exhibits 1 to 6 on which it had based its conclusion. Those exhibits are on record. We propose to examine those exhibits and find out as to whether on the basis of such exhibits the finding or the conclusion arrived at by the learned trial Court could be supported by those exhibits. We are supposed to examine as to whether those are sufficient to arrive at a conclusion to which the learned trial Court has arrived.

7.1. From the Deeds, it appears that one of those was executed in 1963 and the other in 1966 and two were in 1970 and another in 1972. The land was requisitioned in 1971-72 and was acquired in 1975. Therefore, reliance can be placed on these Deeds for the purpose of arriving at a conclusion of compensation. From the Deeds, which was executed on 30th April 1963, being Exhibits No. 4 it appears that 84 decimals of land was sold for Rs. 15,243 and 12 annas (Rupees fifteen thousand two hundred forty three and twelve annas only). The land transferred under the said deed appears to be a "Bald" land. It appears to be situated in the same police station and around the same area. Thus If a land of same nature in the vicinity could have been sold for a sum of Rs. 15,243/- (Rupees fifteen thousand two hundred forty three only) in 1963, in that event, it cannot be said that the valuation arrived at Rs. 12,000/- (Rupees twelve thousand only) per acre is on the higher side. But it cannot be said that it is on the lower side since the other Deeds, which are almost contemporaneous shows valuation different from that of exhibit 4.

7.2 We have gone through all the exhibits and from the mean of the respective prices indicated therein, it seems that the valuation calculated at Rs. 12,000/-

(Rupees twelve thousand only) was Just and reasonable. Having regard to the said exhibits Nos. 1 to 6, therefore, we do not find any infirmity in the finding relating to the valuation arrived at by the learned Arbitrator in the order appealed against.

Claim of solatium etc. by the Respondents:

8. The question of grant of solatium and additional compensation is concerned, cannot be gone into within the scope of this appeal, since admittedly, the claimants, have not preferred any appeal against the said order. Neither they have preferred any cross-objection. Respondents can not get any relief in an appeal filed by the appellant challenging the order unless they challenge the said order either by way of appeal or by cross-objection. Now it is too late for the claimants to claim any relief since by now the period of limitation having expired, any appeal or cross-objection would be barred by limitation. As such, a right which could have been claimed, on account of inaction on the part of the claimants, such right having extinguished by operation of law, this question cannot be raised in an appeal preferred by the appellant. It is of valuable right accrued to the appellants by operation of law. Such right, therefore, cannot be lightly taken away. Therefore, the contention of Mr. Lahiri cannot be acceded to.

Order:

9. In the result, the appeal fails and is hereby dismissed. The award dated 21st March, 1966 passed by the learned Court of Arbitrator (Judge Special Court E.C. Act) Durgapur in L.A. Case No. DIA/71/72 is hereby affirmed.

The respondents/claimants shall be entitled to withdraw the amount deposited by the appellant in terms of the order of this Court, without furnishing security. In case any further amount is due and payable to the claimants/respondents, the appellant shall pay the same to the claimants/ respondents, on demand within 4 weeks of such demand.

There will however, be no order as to costs.

J. Banerjee, J.

10. I agree.