

(1977) 03 CAL CK 0029
In the Calcutta High Court
Case No : A.F.O.D. No"s. 921-922 of 1964

The State of West Bengal

APPELLANT

Vs

Dhanesh Bijoy Sahana and Others

RESPONDENT

Date of Decision : 18-03-1977

Acts Referred:

Land Acquisition Act, 1894 — Section 23(2)

Citation : AIR 1977 Cal 457 : (1978) 1 ILR (Cal) 209

Hon'ble Judges : Ramkrishna Sharma, J; Pradyot Kumar Banerjee, J

Bench : Division Bench

Advocate : N.C. Chakravarty and N.G. Das, for the Appellant; P.N. Mitter and S.K. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Banerjee, J.—These two appeals at the instance of the State of West Bengal arise out of a land acquisition reference. By notification dated 20th February, 1958, part of C. S. plot No. 244 of Khatian No. 212, Mouza Kenduadihi, was sought to be acquired. F. A. 921 of 1964 is in respect of garden, area being 2-70 acres and F. A. No. 922 of 1964 is in respect of Bastu and Tara land being 1.41 and Order 42 acres respectively. In making the reference to the Court u/s 18 of the Act, the Land Acquisition Collector stated that the valuation has been assessed on the basis of the sale figures of land sold in the Mouza and those have been obtained from the Registration Department and as per provision of the Land Acquisition Act. It is stated that the land was valued at Rs. 8.500/- per acre. The referring claimant not being satisfied filed an application u/s 18 of the Land Acquisition Act for reference. It must be stated that the lands were acquired under the relevant provision of the Act II of 1948. The Land Acquisition Collector assessed the valuation of the land in question at the rate of Rs. 142/- per cottah. The Land Acquisition Judge raised it to Rs. 300/- per cottah and thereupon this application was made. It must be pointed out that after the valuation has been fixed neither the Land Acquisition Collector nor the District Judge gave 15% compensation u/s

23(2) of the Land Acquisition Act. It appears that the referring claimant did not claim the 15% compensation in his application for reference. The learned Judge, while he disposed of the reference, stated that the Land Acquisition Collector awarded at the rate of Rs. 142/- per cottah and that there was no material before the Court on what basis the Collector arrived at the valuation fixed by him.

2. Mr. Chakravarti on behalf of the appellant contended that the learned Judge was wholly wrong in stating that there was no material before the Court to indicate the Collector's basis for arriving at the valuation fixed by him. He argued that in his reference to the Court u/s 18 of the Act it has been specifically stated that the valuation has been assessed on the basis of the sale figure in the Mouza and as such there was indication how the valuation was arrived at.

3. Mr. Mitter on behalf of the respondent however contended that u/s 19(1)(d) of the Land Acquisition Act the ground on which compensation has been determined must be stated. In the order of reference one basis has been given u/s 19(1)(d) of the Land Acquisition Act. Section 19(1)(d) is in the following terms :--

"19 (1) (d), if the objection be to the amount of the compensation the grounds on which the amount of compensation was determined."

It has been held in the cases reported in 6 CWN 406 : 34 CWN 599 (Privy Council) and State of West Bengal Vs. Secretary, Union Club, Purulia, , that the Land Acquisition Collector must give the basis on when the valuation has been assessed. In the present case, it is stated that the valuation was assessed on the basis of sale figures in the Mouza and those have been obtained from the Registration Department but unfortunately when the respondent's witness came to the box neither did he say what was the value of the land nor did he file any document upon which the valuation was fixed by him. On the other hand he said that he has fixed the valuation. Ext. A which is a statement of structure and valuation does not show any detail as to the valuation of the land. No document was filed by the respondent to justify the valuation at the rate of Rs. 142/- per cottah. On the other hand the respondent has filed two documents in support of his contention that the valuation of the land should be assessed at Rs. 300/- per cottan. One of the documents which is Ext. 2 shows a sale of 5 cottas of land in the vicinity at the rate of Rs. 300/- per cottah. In our opinion. Ext. 1 does not give any clue and that being a document of 1948 cannot be any basis for coming into the valuation of the land in question. But Ext. 2 is a very relevant document. In our opinion. Ext. 2 gives a guidance to the Court for fixing the valuation of the land in question. It is true that the valuation of a small plot may not be a criterion for coming to the decision in respect of a larger area and it has been held by the Supreme Court in the case reported in The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, that the large area of land cannot possibly fetch a price at the same rate at which small plots are sold. The witness No. 1 for the petitioner stated that there are two roads by two sides of the acquired plot. There are residential houses near the acquired plot. There is a school and Bankura Sammilani College. He also stated that the acquired land is worth Rs.

300/- per cottah. These facts have not been challenged at all in cross-examination by the respondent. In fact, reading the evidence of P. W. 1 and the Kobala together we are not inclined to vary the order of the learned Judge for the fixation of price of the land in question on this score. We, therefore, affirm the fixation of valuation by the learned District Judge in respect of the land in question at the rate of Rs. 300/- per cottah.

4. Mr. Mitter then contended that the learned District Judge should have allowed 15% compensation u/s 23(2) of the Land Acquisition Act which the referring claimant is entitled, to,

5. Mr. Chakraborty however contended that as the respondent, has not filed any cross-objection to the appeal, the respondent is not entitled to raise this plea at all. Mr Mitter contended that it is a duty of the Court or the Collector to give 15% compensation to the awardee and it is not for the referring claimant to apply for it. More so the provision of Section 8(2)(a) of the Act II of 1948 was hold to be ultra vires by this Court. In that view of the matter it is argued by Mr. Mitter that this question does not arise. In Section 23(2) of the Land Acquisition Act it is stated that the Court shall award 15% compensation over the awarded money for the compulsory acquisition of the land in question. Section 23(2) is in the following terms : --

"23 (2). In addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market value, in consideration of the compulsory nature of the acquisition".

Therefore, in our opinion, the award of 15% compensation is a must for the Court in every cases in consideration of the compulsory nature of the acquisition. In our opinion, the learned District Judge and the Land Acquisition Collector were wrong, in not awarding 15% compensation and in that way failed in their duty to make the award in accordance with Section 23 (1) and (2) of the Land Acquisition Act and as the Appellate Court against the said award, it is our duty also to give effect to the statutory provision. It is not necessary, therefore, in our opinion, that any cross-objection should be filed for the purpose of agitating the claim for 15% compensation above market value of the land in question.

6. Before we allowed Mr. Mitter to argue this point about 15% solatium, Mr. Chakraborty wanted notice and the matter was adjourned, and thereafter we heard Mr. Mitter and Mr. Chakraborty on this point. After hearing Mr. Chakraborty and Mr. Mitter on this point we are of the opinion that the respondents must get 15% solatium u/s 23(2) of the Land Acquisition Act.

7. We, therefore, dismiss the appeals filed by the State Government but vary the awards to the extent that over and above the awarded money, the respondents will get 15% solatium. The appellant must pay the 15% compensation of the market value and the said sum will carry an interest at the rate of 6% from the date of the award till the date of payment.

8. It is stated before us that the compensation money awarded in F. A. No. 922 of 1964 has already been withdrawn by the respondents on furnishing Bank guarantee. The Bank guarantee will stand dissolved after two months.

9. There will be no order as to costs.

R.K. Shabma, J.

I agree.