
(1973) 05 CAL CK 0031
In the Calcutta High Court
Case No : A.F.O.D. No. 345 of 1958

The State of West Bengal

APPELLANT

Vs

Phanindra Kumar Kundu and Others

RESPONDENT

Date of Decision : 10-05-1973

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : AIR 1973 Cal 441

Hon'ble Judges : Sen Gupta, J;A.K. Sinha, J

Bench : Division Bench

Advocate : N.G. Das, for the Appellant; Sudhir K. Dutta, for the Respondent

Final Decision : Partly Allowed

Judgement

A.K. Sinha, J.—This appeal is by the State of West Bengal against the judgment and decree of the Additional District Judge, Howrah, arising out of a Reference Case u/s 18 of the West Bengal Land Acquisition Act briefly in the following circumstances:--

The claimants-petitioners were the owners of certain lands together with building comprising more or less an area 35 cottahs 6 chattacks 12 sq. ft. situate on Telkalghat Road now known as Nityadhan Mukherjee Road within the municipal area of Howrah. By a notification dated 21-11-45 u/s 4 of the Land Acquisition Act (1 of 1894) the above premises were notified for acquisition and declaration was published in the Calcutta Gazette dated 14-6-51. The Special Land Acquisition Collector, Howrah, gave an award on 29-8-52 of a total sum of Rs. 57,477-7-3 on land and Rs. 22,493-3-0 on the buildings and other structures standing on a portion of such land with additional statutory compensation of 15% amounting in all to Rs. 91,966-3-5 as compensation in favour of the claimants as also a small fraction of the same in favour of the holder of the superior interest in respect of the said premises. Both the claimants, namely, Phanindra Kumar Kundu & Ors. as also the holder of the superior interest of the acquired premises made an application for reference u/s 18 of the Land Acquisition Act challenging

both the valuation and apportionment as given by the Special Land Acquisition Collector in his award whereupon the matter was referred to the learned Judge for determination of both the questions.

2. The matter eventually came up before the Additional District Judge, Howrah, who enhanced the value and assessed the value of the land at a fiat rate of Rs. 2,000/-per cottah and awarded compensation of a total sum of Rs. 70,833.50 for the land and as regards the buildings and other structures also enhanced the valuation and awarded a total compensation of Rs. 40,136-3-0. These two sums calculated with the value of the trees came to Rs. 1,11,041-8-0 and with statutory compensation of 15% amounted in all to a sum of Rs. 1,27,697.10 and accordingly modified the award of the Collector. As regards the claim of the superior interest holder, namely, Prosad Bala Devi and others Reference Case being Misc. Case No. 124 of 1953 was dismissed without costs. That is how, in short, the State of West Bengal felt aggrieved and preferred the present appeal.

3. It appears that the learned Judge rather followed somewhat peculiar procedure for assessing the valuation of land and buildings by appointment of a Commissioner. The claimants-respondents, namely, the Kundus applied for appointment of a Valuer named P. C. Chatterjee of No. 12, Old Post Office Street, Calcutta, presumably for giving his opinion as to the market value of both the lands and the structures at the material time before the Court. While allowing such petition the learned Judge however appointed one J. M. Sen. Deputy Assessor of Howrah as Commissioner for the purpose of local inspection and for submission of a report on the valuation of the property in suit as prevailing, as appears from his order dated 6-8-1955, in or about 21-11-45 after taking into consideration the points referred to in the petitioners' application and also other facts that may be deemed necessary by the Commissioner. To this procedure, however, objections were raised on behalf of the State but not actually decided. The Commissioner submitted a report both on the valuation of the land and structures but he was not examined as a witness on behalf of either side in this case, as appears again from the order No. 70 dated 4-6-57. Both the claimants and the State filed however detailed objections against the report of the Commissioner. It is not, however, clear from the subsequent order or from the records of this case as to what happened actually to these objections. It is now contended on behalf of the State relying upon a note portion of a decision of this Court in *Secretary of State v. Baijnath Goenka* reported in (1908) 12 Cal WN 200 that the Commissioner's report is not admissible. Such a procedure is unwarranted and the report submitted by the Commissioner is not admissible as the Court cannot delegate its function upon the Commissioner to find out the valuation of the acquired property. It is unnecessary for the purpose of this case to go into such questions for it appears that these objections were not pressed during the hearing of the case on behalf of the State. As already noticed the State also did not want the Commissioner to go into the witness box for offering himself to cross-examination at least on the question of valuation both as regards the land and building as estimated by him. Further, having regard to the

facts and circumstances of this case we are not prepared to hold that the valuation of both building and land as made by the Commissioner appointed by the Court was altogether inadmissible. We have no doubt that he gave his opinion as an expert and we have equally no doubt that such opinion for the purpose of correct assessment of valuation of the disputed property can be gone into by the Court for effective determination of real question in controversy between the parties. There is also nothing to indicate in the circumstances of the case from his report that the Court delegated its judicial function to such Commissioner for determination of the valuation of the disputed property finally. Accordingly, it cannot be held that the Court was entirely wrong in considering the report of the Commissioner for determining the question of valuation of both the land and the buildings in this case.

4. Now, excepting the Commissioner's report, one Bhupendra Kumar Kundu, one of the claimants-respondents and two other witnesses on behalf of the claimants were examined. The State examined only one and also adduced in evidence certain documents, namely, a registered conveyance in respect of certain premises situate at some distance from the disputed land and buildings and also an award given by the Special Land Acquisition Collector, Howrah, in respect of some other lands and the report of the Kanungo who valued the land and also the structures on the basis of which the Collector gave his award. We do not think that the evidence of the claimant Bhupendra is of any special importance in this case excepting that he has disclosed the monthly rent of the disputed premises which used to be occupied by Europeans at Rs. 250/- and then let out subsequently to the Government on a monthly rent of Rs. 140/- plus taxes. The witness No. 2, an assistant in the Assessment Department of the Howrah Municipality, proved the municipal valuation of certain premises, namely, No. 9, Church Road, Howrah, occupied by the Head Master, Howrah Zilla School to prove that the annual valuation of the premises was assessed at Rs. 9128/- in 1946-47. The other witness of the claimants who was Ward Surveyor also was brought into the witness box to prove apart from the valuation of the premises occupied by the Head Master, Howrah Zilla School, two other premises, namely, 10, Church Road and No. 4/2, Buckland Road evidently to show that valuation of these premises were higher. The only witness on behalf of the State is a Kanungo to prove the report of the previous Kanungo, Nirapada Chatterjee, as already noticed. The only reason which weighed with the learned District Judge in rejecting the valuation made by the Collector with regard to the land was that in assessing such valuation the system of valuation by belt ought not to have been followed. He rejected the evidence of sale (Ext. B) on the ground that it was at a distance of one-fourth of a mile from the disputed premises and therefore should not have been taken as a guide for fixing the valuation of the disputed land. The learned Judge also did not accept alternative method of valuation made by the Commissioner in two belts, namely, the front portion and back portion in which the front portion was valued at the rate of Rs. 3000/- and back portion of the land at the rate of Rs. 2000/-per cottah and then he deducted 12.5% for

largeness of the area and arrived at a figure of Rs. 71,565-4-0 for the entire land. By the second method he valued the entire area at the rate of Rs. 2,000/- per cottah and his total valuation in that way came to Rupees 70,833-5-0. On perusal of the report we find that the second method as noticed by the learned Judge is not quite correct for it appears that in the second method the Commissioner had adopted several grades of valuation and then arrived at the total figure of Rs. 70,833-5-0. In our opinion, the reason given by the learned Judge for rejecting the valuation of such a large area of land by belt system cannot be accepted as correct for the principles of valuation by dividing the land acquired into front land and back land, though normally should not be accepted, has long been followed. In fact as early as in ILR 1876 Cal 103, Prem Chand Boral v. Collector of Calcutta, Garth, C. J. accepted this mode of valuation and since then there have been series of cases in which such method has been adopted as correct. Without being exhaustive in this matter we may say that each case will depend upon its own facts and no hard and fast rules can be laid down rejecting such a procedure in all cases. Applying that test to the facts of the present case it appears to us that the land value of the back portion cannot be the same as that of the front portion. It may be that there is some opening even in the back portion through a small land but that cannot be held as a proper or sure basis for valuing land at the same rate with that of the front portion in respect of such a large area, further, no evidence has been adduced to show on behalf of the claimants that if the lands were sold in plot wise it would fetch the same price in respect of all the plots. We, therefore, think that the valuation on dividing the lands in front and back portion on a belt system as made by the Collector was not incorrect in the facts and circumstances of this case and having regard to the situation, nature and extent of the land and considering the fact that it does not have same frontage on both sides with opening to the road of same dimension, we cannot agree with the valuation made by the learned Judge at a flat rate of Rs. 2,000/- per cottah. This apart, the Commissioner in his report has referred to certain transactions relating to value of the lands of adjoining areas but never disclosed those materials in his report. So, considering the matter from that aspect it will be unsafe to rely on such a report and accept the valuation as made by the Commissioner. Accordingly, we reject the valuation of the land as made by the learned Judge and agree and affirm the award made by the Collector, namely, at the rate of Rs. 2,000/- for the front portion and Rs. 1400/- for the back portion.

5. Now, on the question of valuation of the building and other structures on the land there is really no substantial difference. The State could not although the report of the Kanungo was proved, furnish the basis of the rate of Rs. 10/- per sq. ft. at which rate construction of the building was estimated. The learned Judge was quite justified in considering the rate given by the Commissioner as depicted in the schedule of the Calcutta Corporation in fixing the rate at Rs. 20/- per sq. ft. and deducting 50% which was also deducted by the Collector on the basis of the Kanungo's report on account of depreciation and thus arriving at a

total figure of Rs. 28,450/- deducting again a sum of Rs. 1,500/- on account of repairs and assessing the value at Rs. 26,950/-. The difference thus between the Collector's valuation and that arrived at by the learned Judge will be roughly about Rs. 9,000/- on the building. As regards the valuation of the other structures following the same basis, we think, the learned Judge was equally justified in accepting the valuation of the Commissioner as made by him and revealed in his report. We are not inclined to accept also the Kanungo's report equally for the same reason because the basis of the valuation of about Rs. 6,000/- on account of other structures in the Kanungo's report could not equally be explained. In our opinion, the learned Judge was right in assessing the total value of the building and structures at Rs. 40,136-3-0.

6. The matter if considered on the basis of the rental value would yield practically the same result. It is in evidence that at one time the building and the other structures used to fetch monthly rent of Rs. 210/- which was subsequently reduced to Rs. 140/- per month. There has not been any standardisation of rent of the building or other structures under the Rent Control Act. So, taking the mean of these two rents which would come to Rs. 175/- as fair and proper rent for the disputed building and structures, we will arrive at the annual valuation of Rs. 2,100/-. Having regard to the locality, situation and surrounding environment and other amenities and advantages it would be proper to accept the capitalised value of 20 years' purchase on the annual value and that will amount to Rs. 42,000/-. That being so, the learned Judge was quite right in accepting the figure given by the Commissioner on the valuation of the building and structures. Now, there is no dispute regarding the value of the trees which was assessed at Rs. 72-0-0. In view of what has been stated above the total amount of compensation would be as follows :

Value of the land

—

57,477-7-3

Value of The building and other structures

—

40,136-3-0

Value of the trees

—

72-0-0

Total

Rs.

97,685-10-3

On this total figure the claimants will be entitled to a statutory compensation at the rate of 15%.

7. Mr. Dutta pressed his cross-objection. This cross-objection, however, will be dismissed excepting as regards the interest which, in our opinion, having regard to the provisions of Section 28 of the Land Acquisition Act the claimants will be entitled to get on the enhanced value at the rate of 6% from the date of possession till realisation.

8. Accordingly, this appeal is allowed in part. We modify the judgment and decree of the Special Land Acquisition Judge to the extent indicated above and the cross-objection is also allowed to the extent only in respect of interest as indicated above. We direct the Collector to pay excess amount, if there is any, on adjustment.

9. There will be no order as to costs.

Sen Gupta, J.

10. I agree.