

(2004) 02 CAL CK 0039
In the Calcutta High Court
Case No : F.A. No's. 262-265 of 1997

The State of West Bengal

APPELLANT

Vs

Sk. Golam Ali and Others

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Land Acquisition Act, 1894 — Section 23(1A), 51A
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 7(1), 7(3)(4),
73(4), 8

Citation : (2004) 2 CALLT 34

Hon'ble Judges : Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Himangshu Basu, Dipti Bhattacharya and Uday Chakraborty, for the Appellant; Debayan Bera, Bidyut Roy and Sakti Prasad Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

Dilip Kumar Seth, J.—All these four appeals are taken up simultaneously since these involve similar question of fact and law.

2. Assailing the judgment and decree passed in L.R.A. Case Nos. 215 to 218 of 1993(V) passed by the learned Additional Special L.A. Judge, 1st Court, 24 Parganas (South) on 11th of April, 1994, Mr. Basu argued that the valuation was disproportionately enhanced relying on an inadmissible document. The document (Ext. 1) on which reliance was placed was not proved. According to him, Section 51A of the Land Acquisition Act, 1894 (1894 Act) though permits reception of evidence without examination of the vendor and the vendee of the document yet it does not permit the Court to treat such evidence as sacrosanct. The Court has to weigh the evidence in order to arrive at a conclusion, which the Court did not do. According to him, the Court did not apply its mind and had simply followed the earlier judgment, which did neither operate as *res judicata* nor as a precedent. Mr. Basu further contended that there was no provision for grant of

recurring compensation and referred to Section 7(3)(4) and Section 8 of the West Bengal Land Requisition and Acquisition Act, 1948 (1948 Act) to contend that the recurring compensation was not payable. Mr. Basu had relied on various decisions to support his contention, as advanced by him. He also contended that no basic norm was indicated as to how the valuation of the Danga and Doba land were assessed. Therefore, the judgment is liable to be set aside.

3. Mr. Bera for the respondents contended that the Ext. 1 was accepted by the appellant and that the same was also tendered by the appellant, being Ext. A, in the proceedings and submitted before the Court that the same should be treated as the yardstick for determining the compensation. Therefore, all these submissions which Mr. Basu had made were ineffective and without any basis. On the other hand, he contended that though the claimants did not prefer any cross appeal or cross objection yet under Order 41 Rule 33 of the CPC (CPC), they could claim the benefit which was otherwise payable in law to them and which had since been denied in infraction of the provisions of law, viz. the component payable u/s 23(1A) of the 1894 Act was not included in the compensation. He relied on the decision in *Tulsi Charan Mukherjee v. State of West Bengal*, (2003)2 CLT 556 (HC) and pointed out that such amount payable u/s 23(1A) of the 1894 Act was also payable in respect of acquisition under the 1948 Act. However, in his usual fairness he conceded that it was payable only with effect from 1st April 1994 and not prior thereto, as was held in *Tulsi Charan Mukherjee* (supra). In this case, the award was passed before the date when the amendment Incorporated became effective and as such, this principle might not apply in this case. We appreciate the fairness of Mr. Bera in pointing out the case against himself. He again relied upon the decision in *State of West Bengal v. Molla Amanulla*, 1 (2003) CLT 346 (HC), where it was held that unless cross appeal or cross objection was filed, the claimant was not entitled to raise any claim and contended that this ratio seemed to be in conflict with the provisions contained in Order 41 Rule 33 CPC and the ratio decided in the decisions of the Supreme Court.

4. After having heard the learned counsel for the respective parties, it appears that the compensation, payable u/s 23(1A) of the 1894 Act was made applicable in respect of compensation payable under the 1948 Act by reason of the amendment incorporated in Section 7 Sub-section (1) of the 1948 Act through the West Bengal Land Requisition and Acquisition (Amendment) Act, 1996, being Act 25 of 1996. But this amendment was made effective from 1st of April 1994. This question had cropped up for consideration in the decision in *Tulsi Charan Mukherjee* (supra), where we had occasion to hold that compensation under this head Section 23(1A) of 1894 Act payable under the 1948 Act, was effective from 1st of April 1994. In cases where the award was made under the 1948 Act before 1st of April, 1994, compensation under this head could not be made available. As rightly pointed out by Mr. Bera, in his usual fairness, we do not find any merit on the claim of Mr. Bera for invoking provisions of Order 41 Rule 33 CPC for omission to include the component u/s 23(1A) of the 1894 Act in the

compensation payable under the 1948 Act having regard to the facts and circumstances of the case.

5. We may now examine the question raised by Mr. Bera with regard to the principle laid down in *Molla Amanulla* 1 (2003) CLT 346 (HC) (supra) being contrary to the provisions of Order 41 Rule 33 Code of Civil Procedure. In *Molla Amanulla* (supra), it was not pointed out that there was any infraction of any law or that any amount otherwise payable in law was denied. At the same time, in this decision the scope of Order 41 Rule 33 CPC was not considered since such a scope was not germane to the issue involved in *Molla Amanulla* (supra). Such contention may be open to be agitated in an appropriate proceeding,

6. Now coming back to the question raised by Mr. Basu, we find that he relied on the decisions in *Special Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc.,* ; *Sub-Collector, L.A.O. Vs. Koppiseti Appala Narasomma*, ; *State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others*, ; *State of Haryana Vs. Ram Singh*, and . There is no doubt about the ratio and the propositions laid down in these decisions. We are one in agreement with the proposition laid down therein. Section 51A of the Land Acquisition Act permits reception of evidence without proof of or examination or cross-examination of the vendor or the vendee of the document. According to Mr. Basu, the document, on the basis of which the judgment in Ext. 1 (Ext. A) was passed, was not considered by the Court while passing the judgment which is in Ext. 1 or even in this judgment under appeal. Therefore, though this document could be received in evidence yet the Court was bound to consider the evidentiary value of the said document and weigh the same and then come to its own conclusion. The proposition was supported by decisions cited by Mr. Basu. But, in the facts and circumstances of the case, as it appears from the judgment under appeal at page 44 of the Paper Book that this document was produced by both the claimant and the State appellant and the same document was marked Ext. 1 for the claimant and Ext. A for the appellant. Both the learned advocates had submitted that the rate of compensation allowed in the said judgment should be accepted as the yardstick for determination of the market value of the land in question. Thus the Court was not called upon to deal with the said document in Ext. 1/Ext. A. Therefore, the Court was neither required nor invited to come to its own conclusion. There was no scope for the Court to come to its own opinion, when a particular document was admitted by the parties and both of them had relied upon the same. When such a stand was taken, the Court was not supposed to go into such question until and unless it was alleged or it appeared to the Court that there was any collusion between the parties or that the Court was misled or any fraud was acted upon the Court. Mr. Basu had not raised any such contention. Unless there was a question of limitation, the Court was not supposed to go into such question suo motu until it appeared to it that the stand taken by the parties were result of collusion or an attempt to practice fraud the Court. From the materials, we do not find that the Court could have taken such a view in the facts and circumstances of the case and even before this Court Mr. Basu did not raise

any such contention. Therefore, on facts, the contention raised by Mr. Basu, supported by the decisions cited by him, cannot be accepted. 7. After having considered the materials placed before us and going through the materials on record, we do not find any reason to differ with the view taken by the learned L.A. Judge.

8. In the result, the appeal fails and is hereby dismissed.

9. There will, however, be no order as to costs.

10. Before we part with, we record the submission of Mr. Bera that the compensation payable under the decree had since been deposited in this Court on 29th of April, 1998 but the calculation of interest was made till 31st of March, 1997, therefore, his clients are entitled to the interest for the period from 1st of April, 1997 till 29th of April 1998. The respondent/appellant shall deposit the said interest part of the amount with the learned Registrar General within three months from this date and also furnish a Statement of Calculation. The claimants shall be entitled to withdraw the amount already deposited together with interest already accrued thereon as well as the amount of interest for the period 1st April 1997 till 29th April 1998 after deposited in terms of this order, after deduction of the requisite charges. The learned Registrar General shall release the said amount, upon proper identification of the respective claimant upon his satisfaction, within a fortnight from the date of making such application by the claimant through their advocate-on-record before this Court. Such release is to be made on the basis of the order passed by this Court.

R.N. Sinha, J.

11. I agree.