

(1971) 11 CAL CK 0014

In the Calcutta High Court

Case No : A.F.O.D. No. 740 of 1964 and Cross-objection

The Union of India (UOI)

APPELLANT

Vs

Radharani Ghosh

RESPONDENT

Date of Decision : 30-11-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8(3)

Citation : AIR 1972 Cal 343

Hon'ble Judges : M.M. Dutt, J;Arun K. Mukherjea, J

Bench : Division Bench

Advocate : Chandidas Roy Choudhury and Amaresh Chakraborty, for the Appellant; Apurbadhan Mukherjee and Gopal Chandra Narayan Choudhury, for the Respondent

Judgement

Arun K. Mukherjea, J.—This is an appeal from a decision dated 29 May 1963 of the learned Arbitrator, Alipore. 24-Parganas in connection with an award of compensation for certain properties which were originally requisitioned by Government under Sub-r. (1) of Rule 75-A of the Defence of India Rules on 3 March, 1942 and thereafter permanently acquired on 27 March 1947 under the Requisitioning and Acquisition of Immovable Property Act, 1952, hereinafter referred to as the Act XXX of 1952.

2. The facts which are in short compass are ss follows :--

The properties relate to five plots of land in Mouza Sultanpur and two plots of land in Mouza Jangalpur. The lands in Mouza Jangalpur are within North Dum Dum Municipality, The Land Acquisition Collector made an award in favour of the claimant for the total sum if Rs. 47.943-3 annas. In making this award he valued the land at the rate of Rupees 2,000/- per bigha and the tanks at Rupees 1,000/- per bigha and awarded a lump sum of Rs. 986-13 annas for the trees standing on the land and also a sum of Rs. 23,422/- for the structure standing thereon,

3. The respondent claimant on being dissatisfied with this award, made a reference to the Arbitrator. After this reference was made, the referring claimant came up to this High Court for determination of the question whether the provisions of Section 8(3)(b) of Act XXX of 1952 the Requisitioning and Acquisition of Immovable Property Act, 1952 are ultra vires. This Court, however, did not decide that question and disposed of the Rule that was obtained by the claimant on the following terms :

(a) The Arbitrator will give his award according to law.

(b) The arbitrator will give his finding as to value of the properties on the date of requisition as well as on the date of acquisition.

(c) Liberty was given to the petitioner to take the point of ultra vires at the hearing.

Thereafter the matter was heard before the learned Arbitrator. The claimant examined two witnesses viz., Shri T. K. Ghosh. a Chartered Engineer and Valuer and one Birendra Nath Ghosh. The opposite party, that is to say, the State of West Bengal, also examined two witnesses, namely, the Surveyor of the Office of the Land Acquisition Collector, 24-Parganas as well as one Officer of the C. P. W. D. who was at the material time posted at Dum Dum Air Fort. The learned Arbitrator after hearing the evidence increased the amount of compensation awarded by the Collector to Rupees 75,988.94 p. In making this award the learned Arbitrator gave Rs. 3,000/- as compensation for each bigha of solid land and Rs. 1,500/- per bigha of tank. Further, he allowed the lump sum of Rs. 5,523/- as compensation for the trees and the sum of Rs. 35,164.38 p. as compensation for the structure standing on the land.

4. In computing the compensation for land and tank the learned Arbitrator proceeded on the basis of the prices obtaining at the date of requisition. Pursuant to the directions of the High Court, however, the learned Arbitrator also determined the values of the solid land and the tank as on the date of acquisition; these he found to be Rs. 4,500/- and Rs. 2,250/- per bigha respectively.

5. The State of West Bengal have now come on appeal from the award of the Arbitrator. The referring claimant has also filed a cross-objection.

6. The appellant's main objection in the grounds of appeal centred round the valuation of the land and the tank. But this objection is no longer tenable in view of the recent Supreme Court decision. The appellant Union of India wanted to contend that the compensation for the lands and tanks should have been fixed at a lower figure. The appellant naturally accepts the position that the compensation should be fixed on the basis of the value at the date of requisition and not on the basis of the value obtaining on the date of acquisition. The claimant, of course, claims the value as on the date of acquisition.

7. The entire contention of the appellant on this ground fails for the simple

reason that it is now settled law that in a case like this where land is acquired after an earlier requisition the compensation should not be limited to the value on the date of requisition but that it should be fixed at the value of it on the date of acquisition.

8. This question came up for decision in Union of India (UOI) Vs. Kamlabhai Harjiwandas Parekh and Others, Mitter, J. in delivering the judgment on behalf of the Court held that Clause fb) of Section 8(3) of Act XXX of 1952 was ultra vires Article 31(2) of the Constitution In so far as that clause directed that the excess of the value of the land arrived at in terms of the Land Acquisition Act in comparison with twice the price which the requisitioned property would have fetched in the open market if It had been sold on the date of requisition was to be ignored. In order to understand the ratio of his Lordship's judgment, it is necessary to set out the provisions of Sub-section (3) of Section 8.

"The compensation payable for the acquisition of any property u/s 7 shall be-

(a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and had been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less".

Mitter, J. observes that Clause fa) of Section 8(3) lays down the principle aimed at giving the owner of the land something which approximates its just equivalent on the date of acquisition. Clause fb), however, directs the Arbitrator to measure the price arrived at in terms of Clause fa) with twice the amount of money which the requisitioned property would have fetched if it had been sold on the date of requisition and to ignore the excess of the price computed in terms of Clause fa) over that in terms of Clause fb). Following the principles laid down in The State of West Bengal Vs. Bela Banerjee and Others, his Lordship observes further that the basis provided by Clause (b) has nothing to do with the just equivalent of the land on the date of acquisition. His Lordship. in fact, held that there is no principle for such a basis. On this ground his Lordship refused to accept the proposition that Clause fb) satisfied the requirements of Article 31(2) of the Constitution,

9. The learned Arbitrator in this case allowed twice the price of the property as on the date of requisition. On this ground he allowed Rs. 3,000/- per bigha for land and Rs. 1,500/- per bigha for tank. In view of the Supreme Court decision to which we have just made a reference, there remains absolutely no scope for complaint against the Arbitrator's award so far as the appellant is concerned. On the contrary, the referring claimant is right in her contention that the Arbitrator should have given compensation on the basis of the value at the time of acquisition. Fortunately for us, the learned Arbitrator following the earlier directions given by this High Court has given us his finding as to the value of the lands and tank on the date of acquisition. He has valued the lands at the rate of

Rs. 4,500/- per bigha and the tank at the rate of Rs. 2,250/- per bigha. There can be no manner of doubt that the claimant should get compensation for the lands and tank at this rate. In fact, the learned Advocate appearing for the appellant did not press this part of the grounds of appeal before us at all. He was obviously mindful of the decision of the Supreme Court. He pressed his claims only on two grounds, namely, as regards the valuation of the trees and the valuation of the structures.

10. According to the appellant, the Arbitrator's valuation of betel nuts and Mahogany trees is not supported by any evidence and is arbitrary. It was also contended by the appellant that the learned Arbitrator's assessment of the compensation for structures was wrong in so far as he did not allow proper depreciation of the property in regard to the structures. The claimant, on the other hand, in her cross-objection has claimed that the value of Mahogany trees should be at least Rs. 4,500/-. She does not complain about the compensation awarded by the Arbitrator in regard to the structures.

11. So far as the trees are concerned, we have gone into the evidence and also the judgment of the learned Arbitrator and we are of the opinion that the learned Arbitrator was not justified in rejecting the evidence of the valuer. Shri T. K. Ghosh to the effect that each of the Mahogany trees should be valued at Rs. 500/-. The learned Arbitrator allowed only Rs. 50/- for each. The learned Arbitrator does not give any reason for this except making a general observation regarding the valuer's evidence that he had no knowledge of the conditions obtaining in the locality. In our opinion, it is well-known that Mahogany trees are very valuable and considering that Dum Dum is practically contiguous to Calcutta, we cannot ignore the valuation of the expert regarding the value of Mahogany trees merely because the expert has come from Calcutta and has no knowledge of local condition. We think it would be quite fair and reasonable to value the Mahogany trees at the rate of Rs. 300/- each.

12. Our attention was drawn to the Arbitrator's valuation of the betel nut trees at Re. 1/- for each tree on the basis of the evidence of witness No. 1 for the opposite party even though the witness had actually stated that the value of betel nut trees was Rs. 10/- each. Perhaps this was a mistake on the part of the learned Arbitrator but this point has not been taken in the cross-objection and we do not allow this objection to be raised at this stage.

13. We finally come to the valuation in regard to the structures. We have carefully considered the manner in which the learned Arbitrator has determined the value of the structures. He had annexed to his decision a schedule in which he has itemised all the different structures and then set out side by side (i) the Collector's assessment, (ii) the assessment of the valuation expert of the claimant, (iii) the assessment of the valuation expert of the opposite party and finally, (iv) his own assessment. Looking at this comparative chart we find absolutely no reason to cavil at what the Arbitrator has done in assessing the compensation for structures. The complaint that he has not allowed deduction for

depreciation is not true. In fact, he has allowed deduction at the rate of 25 per cent., as will appear from page 49 of the paper-book.

14. In this view of the matter, the appeal fails on all the grounds. The cross-objection succeeds on two points, namely, as to the value of the land and tank and also as to the value of the Mahogany trees.

15. The appeal is dismissed and the cross-objection is allowed in part. The award of the learned Arbitrator is affirmed with the following modification : The compensation for the solid land should be given at the rate of Rs. 4,500/- per bigha and compensation for tank is to be given at the rate of Rs. 2,250/- per bigha. The value of the Mahogany trees should be determined at the rate of Rs. 300/- for each. If the State of West Bengal has already deposited the amount awarded by the learned Arbitrator in Court, the claimant will get interest at 4 per cent, per annum on the difference between the Collector's award and the Arbitrator's award from the date of acquisition upto the date of such deposit. The claimant will, however, get interest On the difference between the award made by this Court and the award of the learned Arbitrator from the date of acquisition upto realisation at the rate of 4 per cent. Per annum.

16. There will be no order as to costs in the appeal. The claimant will get costs in the cross-objection.

M.M. Dutt, J.

17. I agree.