

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Raja Basu Chowdhury

F.A. 39 of 2019

Land Acquisition Collector
versus
Sri Akshay Kumar Khamrai.

For the Appellant : *Mr. Supratim Dhar,*
Mr. Dhananjay Nayak.

For the Respondent : *Mr. Sudhakar Biswas,*
Mr. Sukanta Das.

Hearing is concluded on : *24th August, 2022.*

Judgment On : **10th November, 2022.**

Raja Basu Chowdhury, J. :

1. The present appeal has been filed challenging the judgment and decree dated 15th September 2016 passed by the Court of the learned Additional District Judge, 5th Court, Paschim Midnapore in L.A. Case No. 20 of 2010.

2. Origin of the instant *lis* dates back to 26th November 1979, when two notices under section 3(1) of the West Bengal Land (Requisition and

Acquisition) Act, 1948 (hereinafter referred to as Act II 1948) were issued and forwarded to the respondent. The said notices were in Form 1 and the respondent was required to deliver possession of the land as described in such notices on 4th December, 1979 (hereinafter referred to as the said notices). As would appear from the above, the plots of land were requisitioned by the State and possession thereof was taken over on 4th/5th December, 1979. Although it would be apparent from the requisition notices, that the plots of land were requisitioned for the purpose of establishing Milk Chilling Plant, yet the land was not acquired until the time hereinafter mentioned. No steps were taken by the Land Acquisition Collector to initiate any acquisition proceeding under the provisions of Act II 1948. In fact, for about two decades, no steps were taken to acquire the aforesaid land, by issuing any notice under section 4(1) of Act II 1948.

3. With the passage of time Act II 1948, which was a temporary Act was re-enacted and extended from time to time to give a fresh lease of life to the same. However, after 1997, the Act II 1948 lost its validity. By such time, however, several requisition proceedings had been initiated, acquisition in respect whereof, was either yet to commence or the same was not complete. Thus, to overcome the aforesaid incongruous situation, the Land Acquisition Act of 1894 was amended by West Bengal Act No. VII of 1997 and Sub-sections 3A and 3B were inserted. This enabled the state to overcome the problem of losing pending requisition proceedings, the same also afforded an opportunity to the state to

acquire the same. In the present case the aforesaid requisition proceedings under Act II of 1948, were subsequently converted to an acquisition proceeding under Land Acquisition Act 1 of 1894 (hereinafter referred to as the Act I 1894) by issuing notices under section 3A and 3B of Act I 1894.

4. Records would reveal that such acquisition proceedings did not ultimately culminate in an Award and stood lapsed. Still later, on a writ application filed by the respondent, which was registered as W.P. No. 7332 (W) of 2004, this Hon'ble Court by an order dated 10th September, 2004, having found that the land in question was utilized by the requiring body, directed that the Land Acquisition Collector to issue a notice under section 4 of Act I 1894 and to ascertain compensation within a period of three months from the date of publication of notice and after serving notices on all interested persons.

5. Pursuant to the aforesaid direction, Land Acquisition case was initiated for acquisition of 2.45 acres and 0.25 acres of land respectively in Mouza Durlavgunj and Bila respectively, P.S. Garhbeta, District Paschim Midnapore, by issuing notification under section 4(1) of the Act I of 1894, publication whereof was made on 3rd November 2004.

6. Records would further reveal that in the land acquisition proceedings subsequent to publication of declaration under section 6 of Act I 1894, the same was renumbered as LA Case No 3 of 2004-05 and the L.A. Collector passed an Award on 3rd July, 2007, under section 11 of Act I of

1894. Notice of Award under Section 12(2) of Act I 1894, was duly served on the respondent.

7. The respondent had received the compensation awarded by the Collector, under protest and had thereafter by written application addressed to the Collector sought for reference of the matter, for determination of compensation by Court, in terms of section 18 of Act I 1894. On contested hearing by a judgment and decree dated 30th August, 2011 passed by the learned Additional District Judge, 5th Court, Paschim Midnapore in L.A. Misc. Case No. 20 of 2010 the compensation payable in favour of the respondent was determined.

8. A review application, being J. Misc. Case No. 10 of 2011, was filed by the respondent seeking review of the aforesaid judgment and decree dated 30th August, 2011, *inter alia*, on the ground that the learned Court ought to have directed the L.A. Collector to pay interest @ 9% per annum for one year from the date of possession i.e. 5th December, 1979 and thereafter @ 15% on the excess amount of compensation.

9. By a judgment and order dated 6th February, 2012 the learned Court allowed the review application on contest and partly modified the judgment dated 30th August, 2011, thereby directing the L.A. Collector to pay interest in terms of section 28 of Act I 1894, on the excess amount of compensation including solatium as awarded by the Court at the rate of 9% per annum, from the date on which the Collector had taken possession of the land in question, for the period of one year and at the

rate of 15% per annum, from the date of expiry of the period of one year, till payment of such excess amount of compensation in Court.

10. Records would reveal that the appellant had challenged both the judgment and decree dated 30th August 2011 passed by the learned Additional District Judge, 5th Court, Paschim Midnapore in LA Misc. Case No. 20 of 2010 as also the order dated 6th February, 2012 passed in J. Misc. Case No. 10 of 2011 arising out of L.A. Misc. Case No. 20 of 2010 by which the judgment and order dated 30th August, 2011 was modified. The same was registered as FAT 386 of 2012. Records would further reveal that a cross appeal was also filed by the respondent which was registered as COT 21 of 2013.

11. By judgment and order dated 12th September 2014 a Coordinate Bench of this Court observed that the learned Additional District Judge, 5th Court at Paschim Medinipur, while determining the compensation did not take into account the classification of the land and the issue needs further evidence. As such, the matter was remanded, so as to afford an opportunity to adduce evidence with regard to the classification of land. The question whether the landowner is entitled to valuation as on the date of notification under section 4 of Act I 1894 and also compensation for the period from 5th December, 1979 was kept open, to be decided in accordance with law, with a further direction upon the learned trial Court to readmit the matter under its original number and to proceed and try out the same.

12. Consequent upon the same the matter was heard by the learned Court below and by judgment and decree dated 15th September, 2016, passed in L.A. Case No. 20 of 2010, the Learned Additional District Judge, 5th Court, Paschim Medinipur allowed the L.A. case and the J. Misc. Case upon ascertaining the classification of land and by determining the compensation payable to the respondent.

13. Being aggrieved, the appellant has preferred the instant appeal which was registered as F.A. No. 39 of 2019. At the time of admission of the appeal, the appellant pursuant to directions passed by a coordinate bench of this Hon'ble Court dated 16th January, 2019, had deposited a sum of Rs 40,00,000/- (Rupees Forty lakhs) only with the Registrar General of this Hon'ble Court.

14. Mr. Dhar, learned advocate appearing in support of the appeal submits that the learned Court below did not segregate the amount of compensation payable in respect of different classes of land. The learned Judge had also not taken note of the largeness of the land while determining the compensation payable to the respondent; the rates at which the smaller plots are sold cannot be the criteria for determining market value of land in respect of larger plots. No reasoning has been given by the learned Judge to arrive at a figure of Rs. 75,000/- per decimal. Drawing our attention to the evidence-in-chief and cross-examination of the PW1, he submits that the plots of land in question were vacant at the time of acquisition. Such fact has not been considered at all by the learned Judge.

15. Placing reliance upon the judgment delivered in the case **Shaji Kuriakose & Anr. -Vs.- Indian Oil Corporation Ltd. & Ors.** reported in **(2001) 7 SCC 650**, he submits that while fixing market value of the acquired land, comparable sales method of valuation is preferred, than other methods of valuation of land. The factors which are to be considered for determining valuation have been set forth in the said judgment. Drawing our attention to paragraph 3 of the aforesaid report, it is submitted that the land covered by sales must be smaller similar to the acquired land and the size of plots of land covered by sales be comparable to the land acquired. The learned Judge has not taken into consideration the aforesaid factors. On such ground itself the judgment impugned should be set aside.

16. He argues that the learned Judge had also erred in awarding excess amount of compensation in the form of interest from the date when possession was taken. The learned Judge ought to have awarded interest from the date of issuance of notification under Section 4 of Act I 1894 and not from the date on which possession had been taken. He further argues, if the claimant is entitled to market value from the date of notice under section 4 of Act I 1894, in such case the claimant should not be entitled to interest from any date, anterior to such date when the aforesaid notification was published.

17. Placing reliance upon the judgment delivered in the case of **Siddappa Vasappa Kuri & Anr. -Vs.- Special Land Acquisition Officer & Anr.,**

reported in **(2002)1 SCC 142**, he submits that starting point for computing compensation under Section 23(1-A) of Act I 1894 @ 12% per annum on the market value, commences on and from the date of publication of the notification under section 4(1) of Act I 1894 and the same continues up to the date of Award or taking over possession whichever is earlier. The Hon'ble Supreme Court has made it clear that determination of compensation for the aforesaid purpose would at best be limited to the date of publication of notice under section 4 of Act I 1894 and not prior thereto. As such the learned Judge had erred in awarding interest from the date of possession, which is prior to the notification issued under Section 4 of Act I 1894.

18. Reliance has also been placed upon the judgment delivered in the case of **R.L. Jain -VS.- DDA & Ors.**, reported in **(2004)4 SCC 79**. In the said case, the Hon'ble Supreme Court in paragraphs 17 and 18 of such report had taken a view that the landowner is not entitled to interest under the Act I 1894 from the date of possession for the purpose of determination of compensation, if such possession is taken before the preliminary notification. He argues that the judgment impugned is contrary to law and should be set aside.

19. *Per Contra* Mr. Biswas, learned advocate appearing for the respondent, draws our attention to exhibit nos. 7 to 11 and 14 & 15, pages 10 & 11, Part-II of the paper book and he takes us through record of rights to identify the classification of land. He then takes us to the

several exhibits, the sale deeds and submits that the aforesaid sale deeds are comparable to the land acquired and have been rightly taken into consideration by the learned Judge, for deciding the market value of land.

20. It is submitted, that admittedly, possession of land had been taken over in the year 1979. The order dated 10th September, 2004 by virtue whereof the instant acquisition proceedings were initiated had not been challenged by the appellant. The same would demonstrate that the land had been utilized by the appellant long back, though the lands remained un-acquired. Consequent upon direction passed by the Hon'ble Court on 10th September, 2004 in W.P. No. 7332 (W) of 2004, a notification under Section 4 of Act I 1894 had been published. According to Mr. Biswas, the claimant ought to be awarded additional interest @ 15% per annum on the amount awarded by the Land Acquisition Collector, from the date of taking over possession and not from the date of publication of notification under Section 4 of Act I 1894. The issue as regards right to receive compensation in the form of damages for the period when possession was actually taken over, till the period of publication of notification under Section 4 of Act I 1894 is no longer *res-integra*. Relying upon the judgment delivered in the case of **Balwan Singh & Ors. -Vs.- Land Acquisition Collector & Anr.**, reported in **AIR 2016 SC 1565**, he submits that considering paragraph 18 of the judgment in **R. L. Jain (Supra)** the Hon'ble Supreme Court in the case of **Madishetti Bala Ramul (dead)1 LRS -Vs.- Land Acquisition Officer**, reported in **(2007)**

9 SCC 650 took a view that the additional interest @ 15% per annum on amount awarded by the Land Acquisition Collector, to be a reasonable amount to be paid to the claimant for the period from the date dispossession till the date of notification under Section 4(1) of the Act I, 1894. The above view had also been accepted in the case of **Tahera Khotoon & Ors. -Vs.- Revenue Divisional Officer/Land Acquisition Officer & Ors.**, reported in **(2014) 13 SCC 613**. Accordingly, he submits that the claimant should be awarded 15% interest as damages for the period for which he had remained out of possession till the date of issue of notification under Section 4 of the said Act I, 1894.

21. He submits that the judgment delivered in the case of **Shaji Kuriakose & Anr. -Vs.- Indian Oil Corporation Ltd. & Ors.**, reported in **(2001)7 SCC 650** and the judgment delivered in the case of **Siddappa Vasappa Kuri & Anr. -Vs.-Special Land Acquisition Officer & Anr.**, reported in **(2002)1 SCC 142**, are otherwise distinguishable on facts and have no bearing to the instant case. Mr. Biswas further submits that this Hon'ble Court in exercise of its power under Order 41 Rule 33 has ample authority and jurisdiction to pass such decree or orders as are required to be passed. In support of the aforesaid proposition, he places reliance upon the judgment delivered in the case of **K. Muthuswami Gounder -Vs.-Palaniappa Gounder** reported in **AIR 1998 Supreme Court 3118**.

22. We have heard learned advocates appearing for the respective parties. We have considered the lower Court record, exhibits, pleadings of the parties and other available materials on record. We find that notwithstanding issuance of two several requisition notices under Section 3(1) of Act II 1948 and despite taking over possession of property on 5th December, 1979, no steps had been taken by the Land Acquisition Collector to acquire such property during the tenure of the aforesaid Act II 1948. It was only at the intervention of the Hon'ble Court in W.P. No. 7332 (W) of 2004, that a fresh proceeding for acquisition of the land belonging to the respondent, was initiated, which had already been utilized by the requiring body. It would appear from the aforesaid order dated 10th September, 2004, that the respondent up to that stage, had been deprived of its property without any recourse to law. Consequent upon the order passed on 10th September 2004 in W.P. No. 7332 (W) of 2004 as aforesaid, a notification under Section 4 of the Act I 1894 was published and L.A. Case 3 of 2007 was initiated. We have been able to ascertain from the Lower Court record that the LA Collector, Paschim Midnapore had identified 2.60 acres of land in Mouza Bila and Durlabhgunge covered under L.A. Case No. 3 of 2004-05 to be a Rice Mill while .25 acres of land in Mouza Durlabhgunge to be partly Rice Mill and partly (Orchard). The computation of market value appears to have been made based on the classification declared therein. We find that the respondent had accepted the awarded compensation issued by the Collector on 3rd July 2007, under protest and since thereafter had made

a reference under Section 18 of the Act I, 1894. Originally, by a judgment and decree dated 30th August, 2011 the learned Court below had determined the excess compensation payable to the respondent to be Rs.23,95,965/-(Rupees Twenty-Three Lakhs Ninety-Five Thousand Nine Hundred and Sixty-Five) only. A review application appears to have been filed, which was allowed by a judgment and decree dated 6th February, 2012, thereby directing that the respondent shall be entitled to interest payable under Section 28 of Act I 1894. The learned Judge, by the aforesaid judgment directed that the interest shall be computed at the rate of 9% from 5th December 1979, when possession had been taken, for a period of one year and subsequently @ 15% from the expiry of such period of one year, till payment of excess amount of compensation in Court.

23. Being aggrieved, the appellant had preferred an appeal, which was, however, remanded back to the learned Court below to ascertain the classification of land by keeping the other points open. Since then, the respondent, as claimant, had led evidence. Ultimately by detailed judgment and decree dated 15th September, 2016, the learned Court below had *inter alia*, concluded by placing reliance upon the exhibit nos. 5 and 6 being the relevant record of rights, that 36 decimals in plot no. 81/555 is a rice mill and plot no. 81 measuring 159 acres is Sali/patit i.e. partly agricultural land and partly fallow land and the classification and nature of plot no.213/466 measuring 52 decimals is orchard and the land measuring 3.24 acres is mill. Since the parties did not challenge

the record of rights, the learned Judge concluded that the classifications of some portion of the plots are Sali and some are patit (fallow), while some are rice mill/bastu while certain other portions are orchard/Mill. The learned Judge had also taken into consideration the evidence led by Sandip Kumar Bose, Ramsundar Molla, Subrata Chattopadhyay and Swarup Ranjan Ghosh and the documentary evidence in the form of sale deeds which were exhibited. The appellant, however, did not lead any oral evidence. While taking note of both documentary as well as oral evidence in respect of transfer of land, which were close to the date of notification published under section 4 of Act I 1894, the learned Judge concluded, that the claimant had been able to prove market value of the land ranging between Rs.53000/- to Rs.80000/- per decimal. While ascertaining the market value of the land as aforesaid, the learned Judge had also taken note of the fact, that rates at which small plots are sold cannot be a safe criterion for ascertaining the market value of the land and for such reason, did not take into consideration the land purchased by PW5. The learned Judge ultimately while keeping in mind the classification of land, valuation of the land, transfer in the locality, possession and documents relating to the land filed by both sides determined and assessed Rs.75,000/- per decimal to be the market value of the land acquired. The learned Judge further awarded 12% on such market value from the date of taking over possession of land to the date of Award of the Collector as per section 23(1A) of Act I 1894 (West Bengal Amendment) Act, 1997. The learned Judge further awarded the

additional compensation @ 30% on the market value as per sub-section 2 of section 23 of Act I, 1894 as solatium and further provided that in default of payment within two months by the LA Collector the respondent shall be entitled to the interest @ 10% per annum over and above the balance amount from the date of judgment till payment of full awarded amount.

24. We find that the learned Judge had not segregated the market value as per classification of land, however, the same does not vitiate the determination of excess compensation for the following reasons. We find that out of the two plots acquired, plot no 81/555, 36 decimals are recorded as rice mill while the rest are recorded as sali land. In so far as plot no 213/466 only 52 decimals are recorded as orchard while 3.24 acres are recorded as rice mill. The respondent only has interest, to the extent of 11.17 decimals out of 2.60 acres of land acquired. The record of rights reveals that the land forming subject matter of acquisition was previously held by a rice mill (Bangalaxmi rice mill). It is thus obvious that the land that was acquired, formed part of a developed land and was more likely, that there was less chance of variation in value of the land so acquired. As such it was not necessary for the learned Judge to provide for individual market value as per classification of land. We find from the judgment impugned that the learned Judge has not awarded Rs.80,000 per decimal, although the respondent had been able to prove market value of land up to Rs.80,000/- per decimal. We are of the view that the learned Judge obviously factored in the minor variations on

account of the classification of land, while determining market value. It is well settled that the Court may make some guess work before it could arrive at a final determination, which is in consonance with statutory law as well as principal stated in judicial pronouncements. The principal is only intended to bridge the gap between calculated compensation and the actual compensation, that the claimant may be entitled to receive as per the facts of their case, to meet ends of justice.

25. More often, than not, it is not possible to fix the compensation with exactitude or with arithmetic accuracy. It is in such circumstances an estimate is made based on mixture of calculations. We find that sufficient evidence has been led in the instant case on behalf of the respondent to prove market value of the land. On the other hand, the appellant has not led any oral evidence. We also find from evidence adduced by the parties, that in the year 1979 construction of milk chilling plant was started at the site where Bangalakhmi Rice Mill, was situated, as such we do not find any irregularity on the part of the learned Judge in not determining market value of land for the individual classification of land.

26. Propositions of law as laid down in the judgments cited by the appellant are well settled. The judgment reported in the case of **Shaji Kuriakose & Anr. (Supra)** and **Siddappa Vasappa Kuri & Anr. (Supra)** are otherwise distinguishable from the facts of this case. A little variation in facts may alter the very basis of a judgment. The judgment delivered

in the case of **R. L Jain (Supra)**, however, takes into consideration the peculiar circumstance of a case, where a landowner is dispossessed prior to issuance of notification under section 4(1) of the Act I 1894. The Hon'ble Supreme Court has categorically provided, that in cases where the possession is taken over prior to issuance of notification under section 4(1) of Act I, 1894, it would be just and equitable for the Collector to determine rent or damages for use of the property for the period the government retains possession of the same, to which the landowner is otherwise entitled to. It is also well settled that Order 41 Rule 33 enables the appellate Court to pass any decree or order which ought to have been made in the circumstances even if such decree would be in favour of the parties who have not filed any appeal [See the judgment delivered in the case of **K. Muthuswami Gounder (Supra)**].

27. We find that the judgment delivered in the case of **R.L. Jain (Supra)** had been considered by the Hon'ble Supreme Court in the case of **Balwan Singh & Ors. (Supra)** and it had been held that payment of interest for the period from the date of dispossession to the date of notification under section 4(1) of Act I 1894, is no longer *res-integra*. Similar such view has been taken in the case of **Madishetti Bala Ramul (Dead)1 LRS (Supra)** and in all such cases additional interest @ 15% per annum on the amount awarded by the Collector, had been directed to be paid for the period between date of dispossession and the date of notification under section 4(1) of Act I 1894. There has thus been a consistent view taken by the benches after **R.L. Jain (Supra)** that the

claimant can be compensated @ 15% from the date of dispossession till the date of notification under section 4(1) of Act I 1894 on the basis of the market value so ascertained.

28. Applying such proposition of law to the facts of the case, we are of the opinion that it would be appropriate to direct the Collector to make payment of compensation by awarding an additional interest @ 15% per annum instead of 12% as directed, on the market value of land on and from the date possession of the land was taken over till the date of issuance of notification under section 4 of Act I 1894. The impugned judgment and decree are accordingly modified. The other directions contained in the said judgment and decree shall remain unaltered.

29. The appellant is directed to make payment of the balance amount along with interest to the respondent in terms of the judgment and decree of the learned Court below, as modified hereinabove.

30. We further direct that the Registrar General shall cause the sum lying with him/her to the credit of the aforesaid appeal be immediately released in favour of the respondent along with accrued interest thereon after deducting commission payable, if any. The respondent shall be entitled to recover the aforesaid commission amount from the appellant.

31. With the aforesaid direction and observations, the appeal is disposed of.

32. The department is directed to draw up the decree, accordingly.

33. Urgent Photostat copy of this judgment, if applied for, be made over to this parties, as expeditiously as possible, upon compliance of formalities in that regard.

(Raja Basu Chowdhury, J.)

(Tapabrata Chakraborty, J.)