

26.07.2022
Court No.12
S/L. No.2
Suvayan/
Sourav

FA 244 of 2004
With
IA No. CAN 2 of 2005 (Old No. CAN 8104 of 2005)

Pradip Kumar Banerjee & Ors.

Vs.

The State of West Bengal

Mr. Bhudeb Bhattacharyya
Ms. Sohini Bhattacharyya

...for the appellants.

Mr. Ayan Banerjee
Ms. Debasree Dhamali
Mr. Suman Banerjee

...for the State.

1) Heard Mr. Bhudeb Bhattacharyya, learned Counsel appearing for the appellant and Mr. Ayan Banerjee, learned Counsel appearing for the State. This is the second round of litigation in the same appeal.

2) This First Appeal at the instance of the referring claimant was directed against an award dated January 30, 2002 passed by the learned Land Acquisition Tribunal, Howrah in L.A. Miscellaneous Case No. 15 of 1991 thereby enhancing the amount of compensation payable to the appellants from Rs. 9,000/- and odd per cottah to Rs. 20,000/- per cottah as regards the portion of land is concerned. Other consequential order regarding solatium and interest had also been passed.

3) When the appeal was heard on November 1, 2008, two questions were raised by the learned

Counsel for the appellant. First, In the same vicinity in respect of similarly situated land decided in L.A. Misc. Case No. 3 of 1996 award has been passed on June 6, 2003 giving higher compensation to the claimant therein. Secondly, It was further submitted that the valuation report submitted by the valuer appointed by the appellant had not been adduced as evidence before the Tribunal by intervention of the death of predecessor-in-interest of the substituted appellants and for that purpose a petition was filed in the appeal under Order 41 Rule 27 of the Code of Civil Procedure for adducing additional evidence. Two different awards passed by the learned Tribunal below in respect of acquisition of different lands in the adjoining area indicating that the valuation of the land in the adjoining area was much more than Rs. 20,000/- per cottah awarded by the learned Tribunal were placed before this court. Apart from the aforesaid two judgments, the appellants also prayed for admission of additional evidence on the question of valuation of structure, which is also part of acquisition, pointing out that the original referring claimant had appointed a valuer for the purpose of assessing the valuation of such structure and the report was also ready but due to the death of the original referring claimant, the said valuation report could not be obtained from the valuer.

4) Taking into consideration, the rival contention of the parties, this Court remanded the matter by passing the following orders:

“ Since the Reference application is pending for the last 18 years, we propose to pass a limited order of remand in exercise of our power conferred under Order 41 Rule 25 of the Code of Civil Procedure by directing the learned tribunal below to take evidence for the purpose of formally proving Annexures P-2 and P-3 and to permit the appellants to examine the author of Annexure P-3 and also to lead further evidence for the purpose of showing that the land involved in Annexure P-2 is of the similar quality and in the same locality. It is needless to mention that the learned tribunal below will also permit the state respondent to adduce further evidence in rebuttal only on the question of valuation of the structure and valuation of the land. The Learned trial Judge, after recording such evidence, will also record its finding whether the land involved in Annexure P-2 is of the similar nature and in the similar locality and will make further assessment as regards valuation of the structure after taking into consideration the additional evidence that will be adduced by the parties. Such finding with the deposition be returned to this court within three months from the date of receipt of this order.”

5) After the remand, learned L.A. Tribunal took up the matter and disposed of the same on June 8, 2010 on the basis of the direction by this Court “Supra”. Both the parties were given opportunity to adduce evidence and on the basis of the evidence adduced, following issues were framed by the learned L.A. Tribunal:

“1) Whether the land involved in Annexure ‘P/2’ is of the similar nature and in the similar locality? And

2) Whether further assessment regarding the valuation of the structure is necessary on the face of additional evidence being led in this case.”

6) So far as the issue no. 1 is concerned, learned L.A. Tribunal took into consideration the claim of similarity between holding No. 526/2, Sarat Chatterjee Road, Howrah (appellant’s land) and holding no. 10/3, Hiralal Banerjee Lane, Howrah. The judgment in respect of which was proved vide Exhibit – 2. On consideration of the materials on record and discussion of such materials on record, learned L. A. Tribunal came to hold that the distance between holding No. 526/2, Sarat Chatterjee Road, Howrah and holding no. 10/3, Hiralal Banerjee Lane, Howrah is 70/80’ ft. and they are situated in the same vicinity. Though no evidence was adduced regarding the soil test, etc. in respect of holding No. 526/2, Sarat Chatterjee Road, Howrah. The learned L.A. Tribunal

fairly held that in view of the distance between the two lands and the nature of topography there both the aforesaid lands can be held to be in the same vicinity and must be held to be similar. So far as the holding no. 10/3, Hiralal Banerjee Lane, Howrah which was the subject matter of L.A. Misc. Case No.3 of 1996 is concerned, the award passed in L.A. Misc. Case No.3 of 1996 was challenged before this Court in FA 286 of 2005. This Court affirmed the land value of the aforesaid land as decided by the learned L.A. Tribunal regarding enhancement to the tune of Rs.25, 000/- per cottah instead of Rs.6,410 per cottah as decided by the L.A. Collector, Howrah.

7) Taking into consideration, such finding of this Court in FA 286 of 2005 and the finding to the effect that the appellant's land, i.e., holding No. 526/2, Sarat Chatterjee Road, Howrah and holding no. 10/3, Hiralal Banerjee Lane, Howrah are in the same vicinity learned L.A. Tribunal limited the amount of compensation for land to Rs.25,000/- per cottah so far as the land of the appellants' is concerned.

8) We are of the considered view that this Court having decided the value of the similarly situated land in respect of holding no. 10/3, Hiralal Banerjee Lane, Howrah at Rs.25,000/- per cottah, learned L.A. Tribunal could not have taken a view otherwise. We also being a co-ordinate Bench can not take a different view and we confirm the order of learned L.A. Tribunal

so far as the valuation of land in respect of holding No. 526/2, Sarat Chatterjee Road, Howrah is concerned.

9) Coming to the compensation in respect of structure in question there was two storied pakka house in 1 cottah of land in holding no. 10/3, Hiralal Banerjee Lane, Howrah but so far as the land of the appellant, i.e., holding No. 526/2, Sarat Chatterjee Road, Howrah is concerned it is a single storied building with three room and half constructed shop rooms without roof bounded by brick boundary wall.

10) Learned Counsel for the appellant heavily leans on the evidence of PW-2 (the valuer) to submit that the valuation of the structure would be much more than the valuation made by the learned L.A. Tribunal.

11) We find that the valuation report is dated 29.07.1990 though the land acquisition notification was published on 21.05.1982 and admittedly the structure on holding No. 526/2, Sarat Chatterjee Road, Howrah had already been razed by that time.

12) The learned L.A. Tribunal has rightly observed that there could not have been proper valuation after the building was razed, there being no specific report by PW-2 to the effect that by which material building was constructed, when it was constructed, etc. Admittedly, the building by the appellants on their land was constructed during their grandfather's time and the valuation of the structure

was fixed on the basis of the norms of PWD's rules applicable for 1980.

13) Taking into consideration all these facts, learned L.A. Tribunal negated the claim of the appellant for higher compensation at par with the structure standing on holding no. 10/3, Hiralal Banerjee Lane, Howrah. Taking into consideration all other facts and circumstances, the learned L.A. Tribunal enhanced the claim in respect of structure to Rs.1,00,000/- holding that such compensation is far enough for the structure.

14) While disposing of the appeal, we are of the view that while assessing the value of structure, the learned L.A. Tribunal should also have taken into consideration the prospect of development around the appellants' land in future. We, therefore, are of the view that the just compensation for the structure on the land of the appellant should be enhanced to Rs.1,25,000/-. With the aforesaid modification only in the impugned award, we confirm the order passed by the learned L.A. Tribunal, Howrah as we do not find any infirmity in the same.

15) The State is directed to pay the enhanced compensation along with other consequential amount pending, to the appellants within a period of three months from today.

16) It is made clear that so far as the claim of solatium etc. is concerned, the order of Land Acquisition Tribunal shall be complied with.

17) The appeal being **FA 244 of 2004** is allowed in part and accordingly disposed of.

18) In view of the above order interim application being **CAN 2 of 2005 (Old No. CAN 8104 of 2005)** stands disposed of.

(Chitta Ranjan Dash, J.)

(Aniruddha Roy, J.)