

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-
Hon'ble Justice Chitta Ranjan Dash
And
Hon'ble Justice Partha Sarathi Sen

FA 168 of 2004
With
IA No: CAN 1 of 2004 (Old No. CAN 578 of 2004)
With
IA No: CAN 2 of 2005 (Old No. CAN 9846 of 2005)
With
IA No: CAN 3 of 2005 (Old No. CAN 15764 of 2005)

Rabindra Nath Coondoo
Vs.
The Land Acquisition Collector Hooghly

For the Petitioner :Mr. Rabindra Nath Bag, Adv.
:Mr. Rohan Raj Adv.

For the State :Mr. Chandi Charan De, Adv.
:Mr. Rabindra Narayan Dutta, Adv.
:Mr. Hare Krishna Halder, Adv.
:Mr. Anirban Sarkar , Adv.

Last Heard on: :08.12.2022

Judgment on. :19.12.2022

PARTHA SARATHI SEN, J. : -

1. The present appeal arises out of the judgement and order dated 30.05.2003, as passed in L.A. Misc. Case No.40 of 1995 by the Learned Additional District and Sessions Judge-cum-Judge, Fast Track Court, Hooghly,

in a reference case under Section 18 of the Land Acquisition Act, 1894, (hereinafter referred to as the 'said Act'). By the impugned judgement, the said Court while allowing the said reference, reassessed the quantum of loss of the land looser to the extent of Rs.5000/- per cottah for "Bhiti" land and Rs.6000/- per cottah for "Bagan" land and at the same time awarded interest at the rate of 9% p.a. on the excess amount as assessed by the said Court together with further interest at the rate of 12% p.a. on the excess market value with a further sum of 30% as solatium. The land looser felt aggrieved with the assessment and, thus, preferred the instant appeal.

2. In the reference case before the said Court it is the case of the appellant herein that for the purpose of construction of sub-station of West Bengal State Electricity Board in Uttar Chandannagar, two plots of the present appellant were acquired by the State and since the awarded amount was low and inadequate, the present appellant accepted the said award on protest and, thus, required the matter to be referred by the Collector for the determination of the Court under Section 18 of the said Act.

3. Before the said Court the L.A. Collector however took stand that the award is very much justified and adequate.

4. At the time of hearing of the instant appeal, learned advocate for the appellants draws attention of this Court to the Lower Court Record. It is contended by him that while passing the impugned judgement the said Court has miserably failed to adhere to the established principles for ascertaining compensation. It is further contended that the said Court erred in law and in facts in not relying upon the certified copies of the judgements as passed in

different cases in respect of the other parts of the land in question. It is, thus, contended that the instant appeal be allowed by setting aside the impugned judgement with a further request to enhance the rate of land as acquired by the State/respondent herein.

5. While opposing the contention of the learned advocate for the appellant, learned advocate for the respondent/State submits before this Court that since before the said court the present appellant being the land looser has miserably failed to prove any documents to substantiate that the value of the land as acquired is much than assessed, the Learned Court is very much justified in passing the impugned judgement. It is further submitted that the said impugned judgement is very much well reasoned. It is, thus, contended that the instant appeal may be dismissed.

In course of his argument learned advocate for the appellant placed his reliance upon the following reported decisions namely :-

- i) **Trishala Jain & Anr. Vs. State of Uttaranchal reported in 2011 (3) ICC 283;**
- ii) **Nadirsha Shapurji Patel (D) By LRs. & Ors. Vs. Deputy Collector & LA & Anr. Reported in 2011(3) ICC 786;**
- iii) **Union of India And Others. Vs. Vasavi Cooperative Housing Society Ltd. And Others reported in (2014) 2 SCC 269.**

6. This Court has perused the entire materials as available in the case record of L.A. Misc. Case No. 40/1995 including the impugned judgment. This Court has also perused the written notes of argument as submitted by the learned advocate for the contesting parties. This Court has also given its

anxious consideration over the submissions made by the learned advocate for the appellant as well as learned advocate for the respondent.

7. In considered view of this Court for effective disposal of the instant appeal the principle for awarding compensation as enunciated by the Supreme Court of India as well as by the different High Courts are required to be looked into. In the reported decision of **Trishala Jain (supra)** the Hon'ble Apex Court discussed the principle laid down in the reported decision of *Bhagwathula Samanna & Ors. V. Special Tahsildar & Land Acquisiton Officer, [(1991) 4 SCC 506]* and expressed the following:-

“8. In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant Notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. A fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. By comparing the price shown in the transaction all variables have to be taken into consideration. The transaction in regard to smaller property cannot, therefore, be taken as real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. This principle has been stated by this Court in Tribeni Devi's case (supra).”

8. Keeping in mind the aforesaid provision of law we thus propose to examine as to whether the learned trial court is at all justified in determining the market value of the land which has been acquired by the State. On perusal of the impugned judgement it appears to us that in the acquisition process, two classes namely; 'Bagan' and 'Suna' were acquired. In the impugned judgement the said Court assessed the valuation of the 'Bagan' to the tune of

Rs.6000/- per cottah after making an aggregate of value of two similar land out of which one land was valued at Rs.8,000/- and another is at Rs.4,000/- and odd per cottah. In considered view of us, learned trial court while assessing the value of the 'Bagan' of the land looser ought to have assessed the value of the 'Bagan' at its higher side i.e. at the rate Rs.8,000/- per cottah instead of Rs.6,000/- per cottah.

So far as the "Bhiti" land of the land looser is concerned it reveals to us that before the learned trial court the present appellant could not produce any document to substantiate its actual value and on the contrary the State has exhibited some documents from where it reveals that at the material time one cottah of 'Bhitti' land was sold at the rate of Rs.4,900/-. Such being the position it appears to us that the learned trial court made no mistake in assessing the value of the "Bhiti" land at the rate of Rs.5,000/- per cottah on the date of publication of the notification. It also appears to us that the learned trial court is preferably justified in not relying upon the certified copies of the judgements as passed in different cases as those cannot be treated as precedents. So far as, the rate of interest as awarded by the learned trial court and the solatium is concerned it appears to us that those are perfectly in order and requires no interference from this Court.

9. In view of the discussion made hereinabove the instant appeal being F.A. 168/2004 is allowed in part. The market value of 'Bhiti' land is assessed to the tune of Rs.8,000/- per cottah instead of Rs.5,000/- per cottah as assessed by the learned trial court.

10. However, the other assessments as made by the learned trial court with regard to the valuation of the 'Bagan' land, interest and solatium in the impugned judgement shall remain intact.

11. With the aforementioned observation F.A. 168/2004 is disposed of.

12. With the disposal of the instant appeal all connected applications are also disposed of.

13. Department is directed to send down LCR along with copy of this judgement at the earliest.

14. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)