

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Siddhartha Roy Chowdhury

F.A.T. 178 of 2015

The State of West Bengal

Vs,

Ranjit Pramanik

For the Appellant : Mr. Aniruddha Sen, Adv.

For the Respondent : Mr. Debayan Bera, Adv.

Order dated : 22nd June, 2022

Siddhartha Roy Chowdhury, J (Oral):- This appeal preferred by the State of West Bengal assails the judgment and decree dated 12th March, 2014, passed by learned Land Acquisition Judge, 3rd Court, Barasat, North 24 Parganas (hereinafter referred to as Reference Court) in LRA Case No.22 of 2006 (V) wherein the learned Reference Court fixed compensation at Rs. 54,45,000/- and thereby enhanced the compensation fixed by the Land Acquisition Collector, 24 Parganas (North).

Fact of the case in short is that Land Acquisition Collector, 24 Parganas (North) acquired 0.81 acre out of 3.93 acres of 'Sali' land comprised with in R.S. Plot No. 3650 of Mouza Krishnapur, J.L. No. 17 under P.S. Rajarhat in connection with land Acquisition Case No. L.A.-11/33 of 1988-89 for the purpose of regularization of Siddhartha Post 50 Squatters Colony under R.R. & R. Department (RS). The Land Acquisition Collector passed an award fixing the compensation at Rs.27,64,200/-per acre. Being dissatisfied with such order Sri Ranjit Pramanik, the respondent herein filed Reference.

The Reference Court by its judgment dated 12th March, 2014, enhanced the compensation amount at Rs. 54,45,000/- per acre and also awarded interest @ 9% per annum on the depreciated valuation fixed at Rs. 46,82,700/- per acre from the date of possession till the date of notification. In addition thereto solatium @ 30% of the aforesaid market value Rs. 54,45,000/- per acre was given together with additional compensation @ 12% per annum on the aforesaid market value, with effect from the date of publication of notification till 16th July, 2002. Reference Court was pleased to award interest @ 9% per annum on the entire compensation for one year from the date of notification i.e. from 17th April, 2002 to 16th April, 2003 and, thereafter, 15% per annum from 17th April, 2003 till the date of actual payment made by the LA Collector, less than the amount if already paid to the referring claimant.

Being aggrieved by and dissatisfied with such judgment and order, the State of West Bengal has preferred this appeal.

Learned Counsel appearing for the State assailing the impugned judgment adverted that learned Reference Court erred in law in allowing only 10% depreciation for sale of small quantum of land ignoring the settled principle of law that such depreciation should be 33.33% to the value for transfer of small quantum of land i.e. less than 10 decimal of the land.

Learned Counsel for the State strenuously argued that the learned Reference Court committed mistake by not considering the depreciation @ 33.33% which is mandatory.

It is further adverted that learned Trial Court computed the quantum of award whimsically by picking up only one deed as exemplar with reference to similar land while 10 title deeds were made available by the State Government through LA Collector and 3 from the end of the Claimant. So it is palpably clear that learned Trial Court did not take the average value of the land, taking into consideration several exemplars and thereby failed to arrive at a fair compensation.

It is argued that the learned Trial Court allowed 1% depreciation per annum from the value of land as on 17th April, 2002 which does not reflect the real value as on 30th December, 1988. It is contended further that imposition of interest @ 9% on the value of land as on 30th December, 1988, sans reason is arbitrary.

Learned L.A. Judge, it is argued, took a piece of land 'Sali' in nature which is situated at a developed area within Krishnapur Mouza and for obvious reason the price of such land was much higher than that of 'Sali' land which is used for the purpose of cultivation. The comparable unit or

exemplar chosen by learned Trial Court does not reflect the real value of the land acquired by the State.

It is submitted further by the learned Counsel for the State that the impugned judgment and decree suffer from infirmity and should be set aside.

Per contra, learned Advocate for the respondent/claimant submits that the impugned judgment and decree do not suffer from any infirmity. It is otherwise based on settled principle of law barring the fact that the learned Reference Court overlooked the provision appended as proviso to Section 23 of Act 1 of 1894, as amended under the Land Acquisition (West Bengal Amendment) Act 1999.

It is submitted by learned Senior Counsel for the claimant/respondent that learned Trial Court ought to have granted additional compensation instead of interest from 17th April, 2002 to 16th July, 2002 and 12% interest from 30th December, 1988 to 16th April, 2002 as awarded by the LA Collector quite correctly.

We have perused the impugned judgment, from the attending facts it stands admitted that the possession of the land in question was taken by State on 30th December, 1988 and relevant notification for acquisition was published on 17th April, 2002.

While adducing evidence, the respondent/claimant as PW1 tendered 3 title deeds, admitted as Exhibit 1, 2 and 3. Out of these 3 deeds, one was a deed of gift and 10 title deeds were made available by the State.

Reference Court instead of assessing the averaged price of all sale instances, picked up, out of those 10 title deeds, the deed no. 07939 dated 17th April, 2001 as exemplar, submitted from the side of the State.

Though learned Counsel for the State called in question this very method adopted by the Reference Court, but averaging of price for the purpose of determination of valuation of land is no more an effective method. The Hon'ble Supreme Court in **Sri Rani M. Vijayalakshamma Rao Bahadur, Ranee of Vuyyur v. Collector of Madras**, reported at **(1969) 1 MLJ 45 (SC)** held:

“Where sale-deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest, unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale-deeds should have been taken in this case.”

Apex Court again in **Anjani Molu Dessai v. State of Goa & Anr.**, reported at **(2010) 13 SCC 710**, held in para 20 as under:

“20. The legal position is that even where there are several exemplars with reference to the similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered.”

In **Mehrawal Khewaji Trust (Regd.) Faridkot & Ors. Vs. State of Punjab & Ors.**, reported at **AIR 2012 SC 2721** it is held by the Apex Court that:

“When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale-deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale-deeds placed before the authority/court for fixing fair compensation.”

Thus we do not find any reason to hold that Reference Court committed error in relying upon deed no. 07939 dated 17th April, 2001 to arrive at fair compensation particularly when there is nothing to show that the said transaction is not bona fide.

We fail to inspire ourselves to be in agreement with the submission of learned Counsel for the State that the learned Reference Court erred in arriving at the value of the acquired land, by giving 1% depreciation per year over the value of land; no proper methodology appears to have been followed by the Reference Court.

We should not be unmindful to the fact that the scheme for fixation of compensation under the Land Acquisition is framed in, such a manner, that there bound to be some amount of arbitrariness. It is one kind of sell under compulsion and the claimant should get maximum compensation following the procedure prescribed by law. Therefore we do not find any

serious lapses on the part of Reference Court that warrants our interference.

It goes without saying that for determining the market value of a large property on the basis of a sale transaction for a smaller property, a deduction should be given. Learned Reference Court, we find was alive to this issue and allowed deduction @ 10%. There is no such straight jacket formula to deduct 33.33% in every case. No such law has been laid down by Hon'ble Supreme Court in **H.P. Housing Board v. Bharat S. Negi & Ors., [(2004) AIR SCW 979]**.

In **Trishala Jain & Anr. V. State of Uttaranchal & Anr.**, reported at **2011 (6) SCC 47 : (AIR 2011 SC 2458 : 2011 AIR SCW 3582)**, Hon'ble Supreme Court held:

“The value of sale of small pieces of land can be taken into consideration for determining the value of large tract of land but with a rider that the Court while taking such instances into consideration has to make a reasonable deduction keeping in view of other attendant circumstances.”

*“Similar view has been expressed in **State of Madhya Pradesh & Ors. V. Kashiram (dead) by L.Rs. & Ors., 2010 (14) SCC 506 and Prabhakar Raghunath Patil & Ors. v. State of Maharashtra, 2010 (13) SCC 107 : (AIR 2011 SC (Civ) 143 : 2010 AIR SCW 7016.**”*

Amendment of Section 23 of Act 1 of 1984- For the proviso to sub-section (1A) of Section 23 of the principal Act, the following proviso shall be submitted:-

Provided that -

- (a) in respect of the acquisition of the land referred to in sub-section (3A) of Section 9, in addition to the market-value of the land, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on the value of the land for the period commencing on and from the date of taking possession of the land to the date immediately before the date of issue of the notice under sub-section (3A) of Section 9 plus interest at the rate of twelve per centum per annum on the market-value of the land from the date of issue of the notice under sub-section (3A) of Section 9 to the date of award of the Collector.
- (b) in respect of the acquisition of the land referred to in sub-section (3B) of Section 9, in addition to the market-value of the land, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on the value of the land for the period commencing on and from the date of taking possession of the land to the date immediately before the date of publication of the notice under sub-section (1a) of Section 4 of the West Bengal Land (Requisition and Acquisition)

Act, 1948 (hereinafter referred in the this proviso as the said Act), as re-enacted by the West Bengal Land (Requisition and Acquisition) re-enacting Act, 1977, plus interest at the rate of twelve per centum per annum on the market-value of the land from the period commencing on and from the date of publication of the notice under sub-section (1a) of Section 4 of the said Act to the date of award of the Collector.

It is trite law to say when a mandate flows from statute, we need to follow the same in letter and spirit.

Learned L.A. Judge being the Reference Court appears to have overlooked the amended provision as set out hereinabove while passing the impugned judgment which warrants our interference.

The judgment and decree passed by the learned Reference Court is modified to the effect that the Referring Claimant, is entitled to get, in addition to the market value of the land, an additional award @ 12% per annum on the value of the land for the period commencing on and from the date of taking possession of the land 30.12.1988 to the date immediately before the date of publication of notice under Section 4 (1a) of the Act i.e. 16.04.2002 and in addition thereto he is entitled to interest @ 12% per annum on the market value of the land for the period commencing on and from the date of publication of the notice to the date of award of the Collector instead of interest @ 9% per annum on the depreciation valuation

of land @ Rs. 46,82,700/- per acre from the date of possession i.e. 30th December, 1988 to the date of notification i.e. 17th April, 2002 and additional compensation @ 12% per annum on the aforesaid market value of the acquired land from the date of notification to the date of award i.e. from 17th April, 2002 to 16th July, 2002.

Rest of the order of the learned LA Judge stands affirmed. Land Acquisition Collector, 24 Parganas (North) is directed to pay the amount awarded, within 3 months from this day, deducting the amount already paid to or withdrawn by the Referral Claimant, failing which the claimant/respondent shall be at liberty to put the decree into execution.

Consequently the appeal fails.

Department is directed to send down the Lower Court Records immediately.

I agree

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)