

Item 7. 09-06-2022

FAT 104 of 2013

sg Ct. 8

State of West Bengal
Versus
Indrajit Ghosh & Ors.

Mr. Ayan Banerjee, Adv.
Ms. Debasree Dhamali, Adv.
Mr. Soumo Chaughudy, Adv.
...for the appellant/State

Mr. Satyajit Talukdar, Adv.
Mr. Abhishek Sarkar, Adv.
...for the KMDA

Mr. Arun Kumar Raha, Adv.
Md. Salamuddin, Adv.
...for the respondents

The appeal is at the instance of the State of West Bengal represented by the Land Acquisition Collector, South 24 Parganas. The appeal is arising out of a judgement and decree dated 17th April, 2012 passed by the learned Land Acquisition, Special Judge, 1st Court at Alipore, South 24 Parganas in LA Case No. 449 of 2004(V) in an application filed under Section 18 of the Land Acquisition Act of 1894 arising out of LA No. 4/4 of 2001-2002.

The award-holder challenged the compensation amount determined by the LA Collector on the ground that the property is capable of fetching much higher compensation and the said award was passed disregarding the comparable units in the vicinity. It was contended that the value of the land acquired measuring 60.75 satak in terms of the Notice dated 31st March, 2003 is grossly inadequate as the value of the property should be Rs.2 lakhs per cottah and the valuation of the building should be calculated on

the basis of the available market value. The said proceeding was contested by acquiring body.

The point raised for consideration in this appeal is whether the learned Trial Judge was justified in determining the valuation on the basis of the market value of the land as it was prevailing in 2003, when admittedly, the Notification under Section 4 sub-section (1) of the Act was published on 8th August, 2001. The claimant produced a duly qualified Surveyor and Valuer to prove its claim for higher compensation based on sale deeds executed in or around 2003 as the claimant was of the opinion that since admittedly, the land was taken possession on 4th April, 2003, the relevant date for determination of the market value should be April, 2003 and not August, 2001.

Mr. Ayan Banerjee, learned Counsel representing the appellant submits that, in view of clear language of Section 23(1) of the Act, in determining the amount of compensation to be awarded for the land acquired under the Act, the Court is required to take into consideration the market value on the date of the publication of the Notification under Section 4(1) of the Land Acquisition Act, 1894. He further submits that the learned Trial Judge erred in law in partly accepting the valuation made by the Valuer of the claimant and disregarding the valuation as determined by the Collector during the acquisition proceeding.

The learned Counsel for the KMDA also supports the submission of the appellant by relying upon two decisions of the Hon'ble Supreme Court namely, (i) ***Kolkata Metropolitan Development Authority vs. Gobinda Chandra Makal & Anr.*** reported in ***(2011) 9 SCC 207*** and (ii) ***Maya Devi (Dead) through***

Legal Representative and Ors. vs. State of Haryana & Anr. reported in *(2018) 2 SCC 474*. It is submitted that both the aforesaid decisions have clearly spelt out that in determining the market value under Section 23(1) of the Act, the rise in the market value after the publication of the Notification under Section 4(1) of the Act should not be taken into account for the purpose of determining the market value. It is the date of the publication of the Notification under Section 4 which would be relevant for the purpose of determining the compensation. The learned Counsel for the claimant, however, submits that since the KMDA had taken wrongful possession of the land earlier and thereafter on 4th April, 2003 for the purpose of determination of the compensation, the relevant date would be 4th April, 2003. It is submitted that the learned Judge did not fully accept the valuation report submitted on behalf of the claimant and had modified a compensation amount to Rs.1,20,000/- per decimals and on that basis the compensation amount was revised.

We have considered the valuation report exhibited on behalf of the claimant (Exhibit-6). It appears from the report prepared by Sri Prabit Kumar Chowdhury, a Chartered Engineer and Valuer (PW-2), that the Chartered Engineer has proceeded on the basis that the material date of an acquisition proceeding would be 3rd April, 2003. It further appears that PW-2 was asked by the claimant to ascertain comparable rate of the land in relation to the sale transactions of 2003. The Chartered Valuer has also opined that the valuation of 2002 would be less than the valuation of 2003. However, it has been clearly stated that the acquired land is about 1 KM to 1.5 KM away from the comparable unit of land of

plot no. 961. Plot 961 was taken as to the comparable plot for the purpose of determining the market value of the land of the claimant. DW-1, however, was the Land Officer of KMDA. He has stated that the possession of the land was taken on 4th April, 2003. The land was acquired for Sonarpur Over Bridge. He could not independently throw any light on the correctness of the valuation arrived at by the Collector as he is very candidly stated that he is not a Valuer and he is not determining the valuation of the land. He merely identified the plots of land that are required to be acquired for the purpose of construction of the Sonarpur Over Bridge.

The fact remains that due to wrong appreciation of law, the report of the chartered valuer based on sale transaction of 2003 on behalf of the claimant could not have been accepted. The respondent also did not adduce any evidence for justification of the valuation arrived at by the Collector in determining the compensation for acquisition of the said land. In view of the fact that no evidence was adduced on behalf of the Collector in support of the compensation amount determined, based on certain sale deeds alleged to be of comparable nature and character, the claimant could not cross-examine the Collector or any witness produced to prove or justify the report filed by the Collector. The Collector would be the fit person to adduce evidence in support of the award prepared by him in determining the compensation. The learned Trial Court has committed a mistake in determining the compensation at the rate of Rs.1,20,000/- per decimal without disclosing the basis for such determination. Mr. Banerjee is correct in his contention that there is no reason furnished in the

impugned judgment for fixing the compensation at the rate of Rs.1,20,000/-.

On such consideration, we set aside the judgment under appeal. The matter is remanded to the learned Trial Court for a fresh consideration. The claimant shall be entitled to adduce evidence to contradict the basis of the determination of compensation made by the Collector.

We make it clear that in terms of the decisions of the Hon'ble Supreme Court in *Kolkata Metropolitan Development Authority* (supra) and *Maya Devi* (supra) as relied upon on behalf of the KMDA, the relevant date for the purpose of determining the compensation would be the date of the publication of the Notification in the official gazette under Section 4(1) of the Land Acquisition Act, 1894.

The claimant has withdrawn a sum of Rs.50 lakhs from the amount deposited by the appellant on the date of the admission of the appeal.

The learned Registrar General is directed to encash the fixed deposit created in terms of the order dated 9th September, 2015 and hand over the proceeds thereof to the appellant by a demand draft to be drawn in the name of "THE LAND ACQUISITION COLLECTOR, SOUTH 24 PARGANAS" or may remit the same directly to the designated bank account as may be provided by the appellant while communicating this order to the learned Registrar General.

With regard to the amount already withdrawn by the claimant, the learned Land Acquisition, Special Judge, 1st Court, Alipore, South 24 Parganas shall pass suitable orders in respect of

the said amount while disposing of the LA case no. 449/04(V) finally.

It is needless to mention that in the event the compensation amount is enhanced, the amount already received may be adjusted towards such enhanced compensation. However, in the event of affirmation of the award of the collector, the claimant would be directed to refund the said amount.

In view of the remand, all the parties shall be entitled to adduce fresh evidence and on the basis of such fresh evidence, the learned Trial Court shall rewrite the judgment.

The appeal is, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)