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31&32. 19-01-2023

sg Ct. 8

FA 121 of 2012

Bibhabai Paul & Ors.
Versus
The State of West Bengal,
Represented by the Collector, Nadia & Ors.

With

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Mr. Swapan Kumar Nandi, Adv.
Mr. Debjyoti Ghosh, Adv.

...for the appellants

In spite of notice to the learned Government Pleader dated 6th December, 2022, the State respondents are not represented.

The appeal is arising out of a judgment dated 19th October, 2006 and decree dated 30th October, 2006 a reference under Section 18 of the Land Acquisition Act.

The learned Additional District Judge heard two matters analogously in respect of acquisition of 72 decimals of land on 10th December, 1990 and 33.33 decimals of land on 31st December, 1992. The matter was heard on remand with direction for fresh consideration.

The learned Trial Judge has narrated in the impugned judgment the circumstances under which both the matters were required to be heard and, accordingly, we are not narrating the circumstances resulting from a fresh consideration.

The grievance of the appellants was that the learned Trial Judge did not consider the evidence adduced by the valuer being

Exhibits 1 and 2. It has been argued that the learned Trial Judge has misconstrued Exhibits 5, 6 and 19 series in denying the relief. It has also been submitted that the findings of the learned Trial Judge that the deeds namely the eight deeds relied upon by the appellant are not nearer to the acquired facts, are factually incorrect. Moreover, the acquisitions of the lands have not been properly considered by the learned Trial Judge.

We have heard the learned Counsel appearing on behalf the appellants. We have carefully read the judgment of the learned Trial Court. The appellants have placed reliance upon the evidence of the valuer. In the cross-examination, the valuer has admitted that he had a business relationship with the father of the claimants. Curiously, for a land acquired in Nadia, a valuer from Birnagar at Port Blare was appointed to give an expert evidence with regard to the nature of the lands. The purpose of identifying 71 years old retired valuer of Port Blare to prepare a favourable report is quite discernable. He is undoubtedly an interested witness. The valuer has not said anything about the aforesaid exhibits on which reliance has been placed by the appellants to upset the award nor his valued opinion on the 29 deeds produced by the State. Evidently and eminently the plots, on which reliance has been placed by the appellants, are tiny and too small and cannot form an yardstick and basis for deciding the compensation as claimed by the appellants.

We have considered the said deeds along with the documents relied upon by the State which are 29 in number to establish the distinguishing feature of the plots relied upon by the claimants. On consideration, we are of the opinion that the land for which the compensation is claimed, is not similar to the land on

which reliance has been placed by the referring claimants for compensation.

Even if we assume, for the sake of argument, that the aforesaid exhibits, namely Exhibits 5, 6 and 19 series are in close proximate or adjacent to the plots in question, then there are various other factors which are required to be taken into consideration in determining the compensation, namely the access to the land, if the land acquired was landlocked and the size and classification of the plot to refer a few. We may not be required to refer any decision for the aforesaid proposition as it is well-settled by a catena of decisions passed by the Hon'ble Supreme Court that the aforesaid factors should form the basis of deciding the compensation.

In view thereof, both the appeals fail. However, there shall be no order as to costs.

The notice dated 6th December, 2022 is taken on record.

(Uday Kumar, J.)

(Soumen Sen, J.)