

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

FA 380 of 2009

State of West Bengal

vs.

Dilip Kumar Jaiswal

with

COT 3975 of 2006

State of West Bengal

vs.

Dilip Kumar Jaiswal

with

FAT 651 of 2018

Heavy Engineering Corporation Limited

vs.

Dilip Kumar Jaiswal & Ors.

For the appellant in FAT 651 of 2018

& for the respondent no. 9 in

FA 380 of 2018

: Mr. Sabyasachi Chowdhury, Adv.

Ms. Urmila Chakraborty, Adv.

Mr. Amit Meharia, Adv.

Ms. Paramita Banerjee, Adv.

Ms. Subika Paul, Adv.

Ms. Amrita Das, Adv.

For the respondent nos.2-8 in

FAT 651 of 2018 & for the

respondent nos.1-8 in

FA 380 of 2018 & appellant in

COT 3975 of 2006

: Mr. Jaydip Kar, Sr. Adv.

Mr. Aditya Kanodia, Adv.

For the State of West Bengal

: Mr. Tapan Kumar Mukherjee, Ld. Addl.
GP.

Mr. Supratim Dhar, Adv.

Hearing Concluded On : 14th July, 2023

Judgement On : 3rd August, 2023

Siddhartha Roy Chowdhury, J.: By a common judgement we propose to dispose of two appeals and a cross-objection filed by State of West Bengal, Dilip Kumar Jaiswal and Heavy Engineering Corporation Limited respectively impeaching the order of learned Special L.A. Judge, 6th Court of Additional District Judge, Alipore in L.A. Case No. 13/2000 while adjudicating a reference under Section 18 of the L.A. Act, 1894.

Briefly stated, the first L.A. Collector, Kolkata acquired the homestead land with a structure at premises no. 77, Park Street, Kolkata measuring about 10 cottahs 5 chittacks 24 square feet with commercial establishments on the ground floor as per notification No. 8-L.A. (II) dated 6th November, 1989 published in part I of the Calcutta Gazette vide no. 7550 L.A. (II) dated 21st July, 1990. The purpose of acquisition of such property was to house the office of M/s Heavy Engineering Corporation Limited (Government of India Enterprise) and an award was made under Section 23 (1a) of the Land Acquisition Act, 1894. The learned Land Acquisition Collector assessed the value of land @ of Rs. 1,41,629/- per cottahs and the structure was valued at Rs. 20,40,826/-, 30% on the market value of the land was awarded as solatium and additional compensation of 12% was awarded for the period commencing from 21st July, 1990 when the declaration was made under Section 6 of the Land Acquisition Act, 1894, to 4th January, 1991 immediately before the date

of taking possession. The said award of L.A. Collector was challenged by Dilip Kumar Jaiswal and others, the land owners in a proceeding under Section 18 of the Land Acquisition Act, 1894.

Learned L.A. Judge considering the evidence adduced by the parties was pleased to allow the L.A. Case No. 13 of 2000 but in part. The market price of the acquired homestead land was assessed at Rs. 3,04,137/- per cottahs and value of the structure was assessed at Rs. 71,38,377.60/- as on the date of notification. In addition thereto learned L.A. Judge awarded solatium @ 30% on the value of the land and structure less the amount paid by L.A. Collector. Referring claimants are held to be entitled to compensation @ 12% per annum on the entire market value of the land and structure w.e.f. 6th November, 1989 to 11th August, 1998, less the amount paid by Land Acquisition Collector. That apart referring claimants have been awarded further compensation @ 9% for the first year on and from the date of award or possession and, thereafter, @ 15% per annum till the amount is paid in full.

Challenging the said judgement State of West Bengal filed the appeal. The referring claimants or the owners of the property Dilip Kumar Jaiswal and others preferred cross-objection and Heavy Engineering Corporation Limited, though was not impleaded as party to the proceeding before the learned L.A. Judge, also challenged the award by preferring a separate appeal.

Mr. Tapan Kumar Mukherjee, learned Senior Counsel representing the State of West Bengal, the appellant in F.A. 380 of 2009 with COT 3975 of 2006 submits that requiring body Heavy Engineering Corporation Limited was not before the learned L.A. Judge to represent the case. The requiring body, Heavy

Engineering Corporation Limited is considered to be person interested within the meaning of Sub-Section 1 of Section 18 of the Land Acquisition Act, 1894, who is ultimately liable to make payment. Therefore, the impugned judgement cannot be allowed to remain in force only on that score alone and the case may be sent back on remand. It is further adverted by Mr. Mukherjee that the learned Trial Judge while assessing the land value took the average of the market value and also relied upon the evidence of Mr. Arun Chatterjee, who assisted the Court in fixing the market value, however, without visiting the property in question.

Mr. Mukherjee further submits that Section 16 of the Land Acquisition Act, 1894 enunciates that when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from encumbrances. The possession was taken by the Collector on 6th November, 1989 after publication of notice under Section 4 of the Act. Compensation was determined based on the data indicating the best price, the property in question would have fetched. Learned L.A. Judge made a huge hike in the compensation but without just cause.

Challenging the judgement passed by learned L.A. Judge, Alipore Heavy Engineering Corporation Limited (hereinafter referred to as HECL) impeaching the said judgement of learned L.A. Court, Alipore, filed FAT 561 of 2018.

Mr. Sabyasachi Choudhury, learned Senior Counsel representing the H.E.C.L. impeaches the impugned judgement on the ground that learned L.A. Judge disposed of the reference petition without any notice to the appellant Heavy Engineering Corporation Limited, the requiring body, at whose instance

acquisition had taken place. H.E.C.L. is therefore, a 'person interested' in the land acquisition proceeding, as laid down under Sub-Section 1 of Section 18 of the Land Acquisition Act, 1894. It is further contended that learned L.A. Judge passed the order, relying upon the valuation report but the valuer neither visited the site nor took any measurement of the building. He was unaware of the condition of building as well as the occupants and the manner they have been occupying the same.

H.E.C.L. appointed the valuer and the said valuer assessed the valuation, following the International Valuation standards and also had taken into consideration the available factors like amenity, facilities available in the building, age of the building, life of the building, depreciation value and thus assessed the market value of the building on the date of acquisition to the tune of Rs. 29,89,016/- and determined the market rate of land to the tune of Rs. 33,46,184/-. According to Mr. Choudhury the judgement passed by learned L.A. Judge in L.A. proceeding 13 of 2000, therefore, suffers from infirmity and may be set aside with an order of remand or in the alternative valuation of Sandip Kumar De may be accepted. The equivalent amount so assessed by the valuer may be paid to the land losers out of the amount to the tune of Rs. 1,00,47,874.70/- deposited by H.E.C.L. and balance amount may be returned to Heavy Engineering Corporation Limited.

The said valuation report has been admitted as Exhibit-X, and has been taken on record as additional evidence under Order 41 Rule 27 of the Code of Civil Procedure at the behest of H.E.C.L.

Mr. Kar, on behalf of the respondents/land losers, in course of hearing submitted, without prejudice to the rights of the erstwhile owners of the property, that the land losers/respondents, considering the age of the litigation are agreeable to accept the valuation so determined by the chartered valuer, but without any deduction. H.E.C.L. was requested to consider such proposal and after due consideration H.E.C.L. refused to concede.

True it is H.E.C.L. was not notified by the learned Trial Court to attend the reference proceeding. The definition 'a person interested' is inclusive in nature and H.E.C.L. undoubtedly comes within the ambit of 'person interested' as referred to in Section 18 (1) of the Land Acquisition Act. However, the H.E.C.L. has been added as respondent in the appeal filed by the State, appeal preferred by H.E.C.L. has been admitted and the valuation report, Exhibit X, prepared on behalf of H.E.C.L. also has been admitted as additional evidence, under Order 41 Rule 27 of the Civil Procedure Code. Therefore, we do not find any reason to invoke the provision of Order 41 Rule 23 or 23A of the Code of Civil Procedure. Rather we intend to dispose of the appeals and cross-objection on merit.

The valuer determined the market value of the land by market approach method to the tune of Rs. 33,06,033/- and value of the land by adopting income approach to the tune of Rs. 33,86,334/- and the average of the two was considered as estimated market value of the land being a sum of Rs. 33,46,184/- and the valuation of the building was assessed at Rs. 29,87,016/-. In his report the valuer observed:- "The method chosen should not be for finding out the highest or the lowest value but for arriving at the most

reasonable value.” The valuer relied upon the judgement of this Hon’ble Court pronounced in the case of **Debi Prosad Poddar vs. C.W.T.** reported in **(1977) 109 ITR 760 (Cal)** wherein it is held:-

“Which one of the various methods would be suitable for a particular case must depend upon the nature of the property, the purpose for which the property is used and several other objective factors, viz, the time when the valuation is made, the prospect of buying and selling in respect of the property at the relevant time and also special feature in respect of the property if any. Taking all these factors into the consideration it is, therefore necessary to determine which one of the various methods will be most suitable to reach as accurate as possible guess as to the valuation on the valuation date. Another factor that has to be borne in mind is that such a method should be preferred which have more objective reliable data to rely upon than more subjective opinions. For instance, if there are more objective data to work out respect of one method more reliable than another, then that method for a particular land should be preferred. If, however there is any objective reliable evidence of any transaction of sale of land or the property similar in question or of the same time and in approximately same time then they would, however, provide more reliable method to follow.”

In his endeavour to determine the market value adopting the market approach the valuer took three exemplars. The first comparable was the deed pertaining to premises no.75C Park Street, second comparable was the deed pertaining to premises no. 71 Park Street and third comparable was the deed pertaining premises no. 5 Wood Street. The valuer, however, did not consider the market rate found in respect of premises no. 5 Wood Street as comparable unit. The valuation of the land with reference to premises no. 71 Park Street

was assessed Rs. 5,10,618/- per cottah and the valuation of land in respect of 75C Park Street was arrived at Rs. 4,48,023/-. The valuer made an average of the two comparable rates and determined the valuation of land $(5,10,618 + 4,48,023 / 2 =)$ Rs. 4,79,320 per cottah and taking into consideration that the property is encumbered with old tenants and a very paltry amount is being received as monthly rent, the valuer imbibed himself with the approach of Valuation Officer of the Income Tax Department and gave deduction @ of 1/3 of the market value land and thus determined a sum of Rs. 3,19,547/-towards valuation of the land per cottah and the total valuation of the land, according to valuer comes to Rs. 33,06,033/-.

Supporting the report of the valuer Mr. Choudhury, learned Counsel for H.E.C.L. submits that the professional valuer in absence of any statutory guideline under the Land Acquisition Act, by adopting or following the well settled principle of determination of value of the property, being followed in the light of Section 269 F of the IT Act, 1961 by the Competent Authority, made just and proper valuation, which may be accepted.

In support of his contention Mr. Choudhury, relied upon the decision of Hon'ble Division Bench of this Court in the case of (1) ***Prodyut Kumar Dutta & amp; Ors. vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range-I, Calcutta, & amp; Ors.*** reported in 1981 SCC OnLine Cal 272 : (1982) 134 ITR 42, (2) ***Subhkaran Chowdhury & amp; Ors. vs. Inspecting Assistant Commissioner of Income Tax, Acquisition Range-1 & amp; Ors.*** reported in 1979 SCC OnLine Cal 290 : (1979) 118 ITR 777, (3) ***Appropriate Authority & amp; Ors. vs. Lytton***

Hotel Private Limited & Ors. reported in **2003 SCC OnLine Cal 769 : (2003) 263 ITR 498** and (4) ***Lytton Hotel Private Limited vs. Appropriate Authority & Ors.*** reported in **2008 SCC OnLine Cal 696 : (2001) 248 ITR 541**.

It is adverted by Mr. Choudhury that the property in question is not free from encumbrances. It is occupied by tenants. Therefore, the erstwhile owners of the property cannot reasonably expect, the value, the property would have fetched, had the same been free from encumbrances. Therefore deduction, suggested by the chartered valuer, in his report, Exhibit-X is based not only on sound logic but also supported by judicial wisdom on the issue of determination of valuation and the said report may be accepted and acted upon.

Tearing asunder the submission of Mr. Choudhury, Mr. Jaydeep Kar, learned Counsel for the respondents submits that Land Acquisition Act, 1894 is a complete Code in itself and a statutory provision is available under Section 23 of the said Act to determine the compensation to be awarded to the land losers. It is the statutory mandate laid down under Section 23 of the L.A. Act, 1894 that in determining the amount of compensation, the market value of the land, is to be considered and the word 'market value' would postulate the price of the land prevailing on the date of publication of notification. The acid test for determining the market value of the land in question is the price which a willing vendor might be reasonably expect to obtain from a willing purchaser, would form the basis to fix the market value. To determine the market value,

Mr. Kar submits, Court may consider the definition as laid down under Section 2 (16B) of the Indian Stamp Act.

According to Mr. Kar, the valuation so determined by the chartered valuer of H.E.C.L, admitted into evidence Exhibit-X, may be accepted sans deduction.

It is further contended that Section 23 of the Act does not postulate that there would be deduction to the extent of 1/3 of the market value to determine the just and proper compensation. According to Mr. Kar, deduction to the extent of 1/3 may be made available but not as a matter of course. Deduction is always based upon the situation of the land and the need for the development, the deduction shall have to be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 1/3 would not be justified.

It is vehemently argued that concept of any deduction is alien to the scheme of Land Acquisition Act, 1894. There is provision as laid down under Section 9 of the Act to register the claim by a person having any interest in the property before the Collector. Collector has been conferred with the power to make apportionment of compensation under Section 11 of the Act.

Heavy Engineering Corporation Limited could have invoked the provision of Section 9 of the Act but consciously it was not done. Therefore the deduction on the ground that the property is not free from encumbrances is unqualified and unwarranted.

It is adverted by Mr. Kar, learned Senior Counsel that such finding of the valuer in this regard also factually incorrect. Our attention is drawn to the

avermment of H.E.C.L. made in CAN 7078 of 2006, filed on behalf of the H.E.C.L. in FA 380 of 2009, precisely in paragraph 2 of the said affidavit, wherein it was adverted that at the request of West Bengal Industrial Development Corporation Limited and at the instance of Commerce and Industries Development, the Government of West Bengal, Department of Land and Land Reforms inter alia acquired 0.171 acres of land under the provision of Land Acquisition Act, 1894 and the said land vested absolutely in the State Government in the Land Reforms Department free from encumbrances, charges and claim.

Even in the recital of deed of lease executed on 2nd May, 2005 by and between the Governor of West Bengal on one part and H.E.C.L. (Government of India Enterprise), 77 Park Street, Calcutta on the other part it was recorded inter alia "Whereas at the request of West Bengal Industrial Development Corporation and at the instance of the Commerce and Industries Department, Government of West Bengal, Department of Land and Land Reforms, Government of West Bengal, inter alia acquired 0.171 acres of land comprising within premises no. 77 Park Street, Kolkata-16, under the publication of Land Requisition Act, 1894 is described fully in the schedules hereunder written and the said land premises vested absolutely in the State Government in the Land Reforms Department free from all encumbrances, charges and claim." Therefore, according to Mr. Kar, finding of the valuer that the property was encumbered to justify deduction to the extent of 1/3 of the value is without any foundational fact and contrary to the provision of Section 16 of the Land Acquisition Act. It is further adverted that the document would suggest that

the property was not only free from encumbrances, the lease deed, dated 2nd May, 2005 further indicates that HECL was never the requiring body rather it was post acquisition allottee.

The property admittedly is situated in the heart of the city of Calcutta. Therefore, there is no reason to make any deduction in respect of the valuation of the property so determined by the chartered valuer duly appointed by Heavy Engineering Corporation Limited.

We have carefully perused the judgements relied upon by Mr. Choudhury, learned Counsel for H.E.C.L. Both *Lytton Hotel Private Limited (supra)* and *Appropriate Authority & Ors. (supra)* decided the issue involved in the proceedings in the light of Section 269 UD of the Income Tax Act, 1961. *Prodyut Kumar Dutta (supra)* was decided by the Division Bench of this Hon'ble Court in the light of Section 269 J of the Income Tax Act, 1961 while in *Subhkaran Chowdhury (supra)* the proceeding decided in the light of Section 269 D (1) of the I.T. Act, 1961 which empowers a competent authority to initiate the proceeding for acquisition of immovable property. Section 269 UC envisages restriction of transfer of immovable properties in certain manner. While Section 269 C of the I.T. Act, 1961 envisages where competent authority opines that the transaction of immovable property has taken place at a consideration which is less than fair market value, the competent authority can act in the light of Section 269 C of the Income Tax Act, 1961. Therefore, issue involved in all these cases, relied upon by Mr. Choudhury, is absolutely different from the issue relevant in determination of the fair and just compensation to land losers in a proceeding under Land Acquisition Act, 1894.

Under the Income Tax Act the competent authority is authorized to assess the value of the property to see that the fiscal interest of the State is not jeopardized or compromised with by way of evasion of duty or tax prescribed under the law. While under the Land Acquisition Act the object is to extend protection to the constitutional right of the citizens to have property.

Acquisition of land is an act, falling in the purview of eminent domain of the State. It essentially relates to the concept of compulsory acquisition as opposed voluntary sale. It is trite to say that no person can be deprived of his property save by the authority of law as laid down under Article 300A of the Constitution. The provision of the Land Acquisition Act is a complete mechanism to assess such compensation according to law. Once the land is acquired, the person interested therein is entitled to compensation as per provision of the Act. The compensation payable is to be computed in terms of Section 23 and 24 of the Land Acquisition Act, 1894. The market value has to be determined as on the date of publication of notification under Section 4 (1) of the Land Acquisition Act, after taking into consideration what is stated under Section 23(1), 23(1A) and 23 (2) and excluding the considerations as stated under Section 24 of the Act. It may not always be possible to determine such compensation with exactitude or with arithmetic accuracy. Court may have to take recourse to similar guess work.

Therefore, in our humble opinion, the judgements relied upon by Mr. Choudhury, learned Counsel representing the H.E.C.L is not applicable in determining the just and fair compensation to be awarded to the land losers. The chartered valuer also committed error in assessing the valuation after

deducting 33.33% or 1/3 of the market value relying upon the judgement pronounced in the case of *Debi Prosad Poddar (supra)*.

Though on behalf of the erstwhile land owners, Mr. Kar has challenged the status of Heavy Engineering Corporation as Requiring Body and has questioned the locus-standi of H.E.C.L. to challenge the judgement in L.A. 13 of 2000, we do not consider it relevant to dilate on that issue. H.E.C.L. has been impleaded as respondent by the State, the appeal filed by H.E.C.L. is also admitted and the valuation report submitted by H.E.C.L. is admitted as Exhibit-X under Order 41 Rule 27 of the Code of Civil Procedure.

This fact, however, does not disturb the settled principle of law that when land is acquired, what is acquired is the title of the landlord together with right of lessee. Thus the property has been acquired free from encumbrances, as envisages under Section 16 of the Act, which reads as follows:-

“16. Power to take possession. —

When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon 2 [vest absolutely in the 3 [Government]], free from all encumbrances.”

It is rightly argued by Mr. Kar that ‘concept of deduction’ from the compensation awarded to erstwhile landlords is alien to the scheme of the act. Section 9 of the Act enunciates:-

“9. Notice to persons interested: —

(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and 37 [registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)].

The State amendment inserted by State of West Bengal reads as follows: “

(3A) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to in this section as the said Act), as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, and, in every such case, the provisions of sub-section (1) of section 4, section 5, section 5A, section 6, section 7 and section 8 of this Act shall be deemed to have been complied with: Provided

that the date of notice under this sub-section shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that when the Collector has made an award under section 11 in respect of any such land, such land shall, upon such award, vest absolutely in the Government, free from all encumbrances.

(3B) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under section 3 of the said Act, and notice for acquisition of such land has also been published under sub-section (1-a) of section 4 of the said Act, and, in every such case, the provisions of section 4, section 5, section 5A, section 6, section 7, section 8 and section 16 of this Act shall be deemed to have been complied with: Provided that the date of publication of notice under sub-section (1-a) of section 4 of the said Act shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that in every such case, the Collector shall make an award under section 11 in respect of such land only for the purpose of payment of due compensation to the persons interested in such land has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances.”

As person interested HECL could have claimed compensation and Collector in such circumstances could have passed an award for compensation under Sub-Section 3B of Section 9 of the Land Acquisition Act, 1894 (W.B. amendment). No such step was taken by HECL. Having waived such right,

HECL cannot claim any deduction on the ground that the property was encumbered. By the operation of law, when Collector makes an award, the property vests absolutely in the Government, free from all encumbrances, in view of Sub-Section 3A and 3B of Section 9 of the Land Acquisition Act.

This fact stands admitted even from the averment made by HECL in its application being CAN 7078 of 2006 filed in FAT No. 1439 of 2005, for addition of party. Property was transferred to HECL by deed of lease executed on 2nd May, 2005, post acquisition of property.

Upon compliance of Section 9 the Collector in an appropriate case after considering the respective interest of the persons claiming the compensation shall make an award under his hand of (i) True area of the land (ii) Compensation that should be allowed and (iii) The apportionment of the said compensation among all the persons known or believed to be interested in the land. The provisions as laid down under Section 9 and 11 of the Act are sufficient to demonstrate that there is no scope for making any deduction in the quantum of compensation on the ground of its being encumbered by any person under whatever interest as has been done by the valuer. Such persons having interest are entitled to compensation as laid down under Section 11 of the Act. The Land Acquisition Act, 1894 is a complete Code and Section 23 Sub-Section 1 enunciates that market value of the land on the date of publication of notification shall be taken into consideration for determining the amount of compensation to be awarded.

The word 'land' has been defined under Section 3 of the Act as follows:-

“3 Definitions: —In this Act, unless there is something repugnant in the subject or context,—

(a) the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

the expression land includes benefits arising out of the land and things attached to the earth or permanently fastened to anything attached to earth. The word land thus should be understood in the light of the elongated definition , as given in the land acquisition ACT 1894.”

Since the market value has not been defined under the Land Acquisition Act, Mr. Kar, learned Counsel submitted that the Court can comprehend the concept of market value taking lumen from the definition of market value as defined under Section 2 (16B) of the Indian Stamp Act, 1899.

“(16B) Market value.—“market value”, in relation to an instrument through which—

(a) any security is traded in a stock exchange, means the price at which it is so traded;

(b) any security which is transferred through a depository but not traded in the stock exchange, means the price or the consideration mentioned in such instrument;

(c) any security is dealt otherwise than in the stock exchange or depository, means the price or consideration mentioned in such instrument;]”

Since Land Acquisition Act, 1894 is a complete Code in itself, there is no need to look upto the amended provision of Stamp Act (West Bengal Amendment) came into force with effect from 31st January, 1994, post acquisition of the property.

In ***Administrator General of W.B. vs. Collector*** reported in **(1988) 2 SCC 150 at page 156** Hon'ble Apex Court held:-

“8. The determination of market value of a piece of land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market value, as one author put it, is the prediction of an economic event viz. the price outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bonafide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available.”

In order to ascertain the market value Court can rely upon documents which would offer reasonable basis to fix the price paid in sale or purchase of land, within the reasonable time from the date of acquisition of land in question, would be the best piece of evidence provided the transaction is bonafide. In its absence the price paid for land possessing similar advantages to the land in the neighbourhood of the land acquired in or about the time of notification would supply the data to assess the market value.

Contemporaneous sale instances considered by the valuer Mr. Deb, while preparing the valuation report, Exhibit-X, is sufficient to determine the market value. Had there been no such sale instances the Court could have insisted for previous judgements as relevant bench mark to determine the market value. In

this regard we can rely upon the decision of Hon'ble Apex Court in Bhag Singh etc. vs. Union of India & Anr. reported in 2022 SCC OnLine SC 553 wherein it is held :-

“The Reference Court as well as the High Court has given a finding of fact that no sale instance produced by the parties are relevant for determining the market value. Therefore, the only relevant basis is the previous judgments.”

As a matter of principle when several exemplars with reference to the similar land are available, the highest of the exemplars, if it is a bonafide transaction, has to be considered and accepted. After all when the land is compulsorily taken away from the possession, the owner of the land is entitled to the highest value which similar land in the locality, is shown to have fetched in a bonafide transaction entered into between the willing purchaser and willing seller near about the time of acquisition.

The valuer fixed the valuation on averaging the two exemplars, though not permissible, in view of the judgements of Hon'ble Apex Court pronounced in **Sri Rani M. VijayalakshammaRaoBahadur, Ranee of Vuyyur v. Collector of Madras**, reported at **(1969) 1 MLJ 45 (SC)** wherein it is 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.”

Hon'ble 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.”

According to valuer the highest exemplar is Rs. 5,10,618/- per cottah which should have been accepted. Yet we approve and accept the valuation of land @ **Rs. 4,79,320/- per cottah as determined by the valuer, we are inclined to accept the same as just and proper, ignoring the assessment of learned L.A. Judge, only because fatigued erstwhile owners of the land and awardees are ready to accept the same,** considering the age of the litigation.

The property in the heart of Calcutta city, at Park Street, and not encumbered, therefore, does not deserve any discount on its valuation.

Hon'ble Apex Court in the **Special Tehsildar Land Acquisition, Vishakapatnam vs. A. MangalaGowriSmt** reported in **(1991) 4 SCC 218** held:-

“It is to be noted that in building Regulations, setting apart the lands for development of roads, drainage and other amenities like electricity etc. are condition precedent to approve lay out for building colonies. Therefore, based upon the situation of the land and the need for development the deduction shall be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 1/3 would not be justified.”

The definition of land as quoted herein before, is inclusive in nature and while determining the valuation we need to consider the value of land and building standing thereupon as on the date of notification published. Hon'ble Apex Court **in Administrator General of W.B. v. Collector** reported in **(1988) 2 SCC 150 at page 159** held:-

“17. Land is one kind of property; land and building together constitute an altogether different kind of property. They must be valued as one unit. But where, however, the property comprises extensive land and the structures thereon do not indicate a realisation of the full developmental potential of the land, it might not be impermissible to value the property estimating separately the market value of the land with reference to the date of the preliminary notification and to add to it the value of the structures as at that time. In this method, building value is estimated on the basis of the prime cost or replacement cost less depreciation. The rate of depreciation is, generally, arrived at by dividing the cost of construction (less the salvage value at the end of the period of utility) by the number of years of utility of the building. The factors that

prolong the life and utility of the building, such as good maintenance, necessarily influence and bring down the rate of depreciation.”

Here in this case the building is situated over a portion of land measuring about more than 10 cottahs. Therefore, we feel no difficulty to accept the method of determining the valuation of the land and building separately, as done by the Valuer.

Upon perusal of the valuation report, Exhibit-X we find that valuation of the structure has been assessed at Rs. 46,76,212/- and the valuer considered depreciation @ 35% as on 2015, when he assessed the valuation of the building, which is contrary to the statutory mandate as laid down under Section 4 of the Act. The valuation of the building assessed as on 1989 should be taken into consideration and not the valuation as on 2015 as done by the Valuer.

The property was free from encumbrances, in view of Section 16 of the Act and as admitted by the appellant State and H.E.C.L in their pleading and in the recital of deed of lease. Therefore, deduction of 1/3rd of the valuation as given by the valuer on the ground that the property is encumbered, is not only factually incorrect, but also the law does not permit such deduction as well.

A table showing the valuation assessed by the LA Collector, learned LA Judge and the Valuer of H.E.C.L. as given below would show that the Valuation assessed by the Valuer of H.E.C.L., Exhibit X appears to be reasonable and may be accepted but with modification.

	Collector / State Government in the Present Appeal	As per the impugned Decree passed by the Ld. District Judge	Claim as per Heavy Engineering Corporation Limited in additional evidence produced in Appeal
Total Value of Land	Rs. 14,65,218/-	Rs. 31,46,551/-	Rs 49,59,044/- (Rs. 33,46,184/- after deduction of 1/3 rd on account occupation of Heavy Engineering which impermissible in law)
Total Value of Structures	Rs. 20,40,826/-	Rs. 71,38,377/-	Rs. 46,67,212/- [Rs. 29,87,016/-claimed which is not permissible since such value is in 2015 after applying depreciation] (no deduction claimed by Heavy Engineering on account of its own occupation of structures)

As we have pointed out, the chartered valuer was not justified in determining the age of the building as 34 years as on 2015 when he assessed the valuation of the land and building, instead of 1989, for the purpose of assessing the depreciation value of the building. Learned LA Judge determined the valuation of the building @ Rs. 71,38,377/- relying upon the valuation report of the building prepared by Mr. Arun Chatterjee, who even did not visit the premises. No case has been made out that the building has lost its utility

and deserves salvage value. Therefore, we accept the valuation of the structure as assessed by the valuer @ Rs. 46,67,212/-.

Thus the erstwhile landowners are entitled to get a sum of Rs. 96,26,256/- as compensation instead and place of Rs. 1,02,84,928/-. In addition thereto they are entitled to statutory benefits permissible under the law in view of Section 23 (1A), 23(2) and 28 of the Land Acquisition Act, 1894.

With the aforesaid observation we are inclined to allow the appeals and cross-objection. The judgement passed by learned L.A. Judge in proceeding no. 13 of 2000 is modified as aforesaid. The appeals as well as cross-objection being FA 380 of 2009, COT 3975 of 2006 and FAT 651 of 2018 along with pending applications are thus disposed of, however, without any order as to cost.

Learned Registrar General is directed to release the amount out of Rs. 1,00,47,874.70/- deposited by the H.E.C.L., in favour of the respondents/erstwhile landowners Dilip Kumar Jaiswal and others within four weeks from date of communication of the judgement and release the excess amount if any, in favour of H.E.C.L. In the event compensation including, statutory benefits like solatium, interest etc. exceeds the deposited amount, H.E.C.L. shall deposit the balance amount with the learned Registrar General, High Court within four weeks, from the date of intimation in this regard by the learned Registrar General.

Department is directed to draw up the decree as expeditiously as possible. Department is directed to send copy of the judgement to the learned Registrar

General, High Court for information and compliance. Lower court record be sent down along with copy of judgement.

Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

I agree

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)

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