

13.04.2023
SL No.35
Court No.8
(gc)

FA 47 of 2005

**State of West Bengal
Vs.
Anjan Kumar Majumder & Ors.**

Mr. Rabindra Narayan Dutta,
Mr. Hare Krishna Halder,
....for the Appellant.
Mr. Debayan Bera,
Mr. Sakti Prasad Chakrabarti,
...for the State Respondents.

The law notes filed by the parties are kept with the record.

We have heard the learned Counsel for the parties. While agreeing with the submission made on behalf of the landowners that by reason of Section 51A of the Act, a presumptive value is attached to the registered instruments relied upon by the landowners of comparable sale deeds and no further oral evidence may be required, however, it cannot be denied that the State would have the right to cross-examine the landowners on the nature and character of the comparable sale deeds. It appears that the documents relied upon by both the parties were marked as exhibits upon dispensing formal proof thereof. The parties did not adduce any evidence. The argument raised on behalf of the State, in our view, ought to have been raised before the learned Trial Judge as it appears that no prayer was made before the learned Trial Judge giving an opportunity to the State to cross-examine the

witness of the landowners. It was a duty of the State to make such a prayer. From the relevant order, it appears that both the parties have agreed, impliedly, that the hearing may continue on the basis of the documents produced and that could be the possible reason for the Court not insisting for a cross-examination.

However having regard to the fact, we feel that the matter is required to be heard on evidence. We set aside the order impugned and direct the learned Trial Judge to hear the matter afresh.

The parties shall be at liberty to adduce evidence both the oral and documentary in the form of an affidavit of evidence by both the parties shall be filed within four weeks from date. The said direction is peremptory.

We request the learned Land Acquisition Judge to dispose of the reference preferably within six months from the date of filing of the affidavit to be filed by the parties without granting any unnecessary adjournment to either of the parties.

With the aforesaid observation, the appeal being FA 47 of 2005 stands disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)