

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Hon'ble Justice Chitta Ranjan Dash

AND

Hon'ble Justice Partha Sarathi Sen

FA 101 of 2005

Bharat Petroleum

vs.

Md. Sayeedul Islam Mir and Anr.

With

FA 102 of 2005

Bharat Petroleum

vs.

Gopinath Das and Anr.

With

FA 103 of 2005

Bharat Petroleum

vs.

Masirhur Rahaman and Anr.

With

FA 104 of 2005

Bharat Petroleum

vs.

Md. Sayeedul Islam Mir and Anr.

With

FA 105 of 2005

Bharat Petroleum

vs.

Gopinath Das and Anr.

With
FA 128 of 2005
Bharat Petroleum
vs.
Nasira Khatoon and Anr.

For the Appellant : Mr. Puspendu Chakraborty, Adv.
Mr. Amadipta Sengupta, Adv.
For the Private Respondent : Mr. Indra Nath Mukherjee , Adv.
For added Respondent Mr. Surajit Roy, Adv.
in FA 104 of 2005:

Heard on: : 27.04.2023

Judgment on. : 13.06.2023

PARTHA SARATHI SEN, J. : –

1. In the instant six appeals the judgement and decree dated 28.08.2002 as passed by Learned LA Tribunal, Howrah in LA Misc. Case no.28/2001 (Md. Sayeedul Islam Mir vs. The State of West Bengal); the judgement and decree dated 24.06.2002 as passed in LA Misc. Case no.34/2001 (Md. Sayeedul Islam Mir vs. The State of West Bengal); the judgement and decree dated 23.08.2002 as passed in LA Misc. Case no. 27/2001 (Gopi Nath Das vs. The State of West Bengal); the judgement and decree dated 22.08.2002 as passed in LA Misc. Case no.26/2001 (Sk. Masihur Rahaman vs. The State of West Bengal); the judgement and decreed dated 29.08.2002 as passed in LA Misc. Case no.32/2001(Gopi Nath Das vs. The State of West Bengal); the judgement and decree dated

28.08.2002 as passed in LA Misc. Case no.33/2001 (Nasira Khatoon vs. State of West Bengal) as passed by learned Judge, LA Tribunal, Howrah have been assailed at the instance of the Bharat Petroleum Corporation Ltd. (hereinafter referred to as the 'Oil Company') who is the requiring body of the said land acquisition cases for establishment of their bottling plant on the lands acquired.

- 2.** Though in the aforementioned Misc. Cases as filed under Section 8 of the West Bengal Land (Requisition and Acquisition) Act 1948 the petitioners are different and though separate judgements have been passed in all the aforementioned LA Misc. Cases but as per request made at the Bar, all the present appeals have been taken up for hearing analogously since common question of law and facts are involved in the aforementioned six impugned judgements as mentioned in the preceding paragraphs.
- 3.** Mr. Puspendu Chakraborty, learned advocate for the appellants in support of the instant appeals at the very outset draws attention of this Court to the Exhibits nos.1 and 2 of the aforementioned LA Misc. Cases . It is contended by Mr. Chakraborty that in all the aforementioned Misc. Cases, the Land Acquisition Tribunal wrongly placed its reliance upon the said Exhibits nos. 1 and 2 and thus increased the value of the acquired lands in reference cases under Section 8 of the West Bengal Land (Requisition and Acquisition) Act 1948 (hereinafter referred to as the 'LA Act of 1948'). It is contended by Mr. Chakraborty that on account of unreasonable increase of the value of the lands, the exchequer of the

present appellant being the Oil Company has been unnecessarily burdened and the same is required to be diminished by allowing the instant appeal. Drawing attention to Section 8 of the LA Act of 1948 it has been contended by Mr. Chakraborty that learned LA Tribunal while passing the judgements of the aforementioned six nos. of LA Misc. Cases did not at all consider Section 8(2) of the LA Act of 1948 wherein it has been specifically mentioned that Section 18(2) of the Land Acquisition Act of 1894 shall, so far as they may be applicable, apply in respect of a reference made to the Court under Section 8(1) of the LA Act of 1948. It is further submitted by Mr. Chakraborty, learned advocate for the appellant that since the present appellant was served with no notice either from the Land Acquisition Collector in course of fixation of compensation of the acquired lands for the appellant or from the LA Tribunal while disposing the aforementioned Misc. Cases under Section 8 of the LA Act of 1948, the present appeals may be allowed by remanding all the aforementioned LA Misc. Cases to the learned LA Tribunal for hearing afresh after giving an opportunity to the present appellant being the requiring body to file its objections in the said Misc. Cases under Section 8 of the LA Act of 1948.

4. Mr. Chakraborty, learned advocate for the Oil Company / appellants further submits before this court that though no formal leave was /were obtained before preferring the instant appeals but considering the facts that the instant appeals having been admitted long back, heard on merit

and direction for filing informal paper books having been passed with an order of stay of the operation of the impugned order, it ought to have been presumed that the leave is/are impliedly granted by the Hon'ble Court to the Oil Company/ appellant to proceed with the instant appeal.

5. Mr. Chakraborty, learned advocate for the appellant/Oil Company in course of his submission places his reliance upon the following decisions namely:-

- a. ***Delhi Development Authority vs. Bholanath Sharma And Anr. (Dead) by L.Rs*** reported in ***(2011) 2 SCC 54;***
- b. ***BSNL vs. State of West Bengal*** reported in ***(2011) 4 WBLR 283; (2012) 5 CHN 680;*** and
- c. ***Calcutta Metropolitan Development Authority vs. State of West Bengal*** reported in ***(2005) 2 CLT 141 (High Court).***

6. Per contra, Mr. Indra Nath Mukherjee, learned advocate for the respondents in the instant appeals submits before this Court that the learned LA Tribunal while passing the impugned judgements committed no error of fact or of law in placing its reliance upon the Exhibit no.1 and Exhibit no.2 of the aforementioned Misc. Cases in order to come to a logical conclusion with regard to the valuation of the acquired land in comparison to the previously acquired land in the vicinity. It is submitted by Mr. Mukherjee, that the amount of compensation as awarded by the Land Acquisition Tribunal is paltry and therefore there cannot be any justification to deprive the land losers from the usufructs of the

judgements and decrees as passed by the LA Tribunal. Mr. Mukherjee, further submits that the impugned orders are very much reasoned one and therefore there cannot be any justification on the part of this Court to interfere with the finding of the learned LA Tribunal. Drawing attention to the reported decisions of **Calcutta Metropolitan Development Authority vs. State of West Bengal** reported in **(2005) 2 CLT 14 (High Court)** it is contended by Mr. Mukherjee that at the conclusion of the said reported decision of the Hon'ble High Court it has been observed thus:-

“13.....
 (6) in such a case CMDA has two remedies open to i.e. (a) to prefer appeal under Section 9 of the 1948 Act with leave of the Court or (b) to involve Article 226 on the principles on which it can be resorted to.”

7. It is thus argued by Mr. Mukherjee that since the Oil Company being the appellants are not parties in Section 8 proceedings of the LA Act of 1948 before the LA Tribunal, the present appellant/Oil Company is supposed to obtain leave to file appeal(s) from this Hon'ble Court prior to filing of these appeals and on account of non-obtaining such leave(s), the instant appeals have become defective and the same cannot be cured at this stage and on this score alone, the present appeals may be dismissed.
8. We have meticulously perused the entire materials as placed before us including the impugned judgements as passed by the learned LA Tribunal in the aforementioned six nos. of LA Misc. Cases.

9. We have also considered the rival submissions as made by the learned advocates for the contending parties. We have also perused the different provisions of law relating to LA Act of 1948 and LA Act of 1894. We have also meticulously gone through the reported decision as cited from the Bar. For effective adjudication of the instant appeals some of the relevant provisions of LA Act of 1948 are required to be looked into and those are as under:-

“2. Definitions.-.....

(b2) the expression “person interested” includes all persons claiming an interest in compensation to be paid on account of the requisition or acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

4. Acquisition of land. :- *(1) Where any land has been requisitioned under section 3, the State Government may use or deal with such land or any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient.*

1(a) The State Government may acquire any land requisitioned under section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of section 3,

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end.

5. Notice to persons interested. :- *(1) After the publication of a notice under sub-section 1(a) of section 4, the Collector shall cause*

public notice to be given at convenient places on or near the land acquired, stating that the State Government has acquired the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such public notice shall state the particulars of the land so acquired, 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. 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 in the manner prescribed 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 authorized 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 registered post in a letter addressed to him at his last known residence, address or place of business.

7. Compensation :- *(1) Wherever any land is acquired under section 4 there shall be paid to every person interested compensation the amount of which shall be determined by the Collector in the manner and in accordance with the principles set out in sub-sections (1), (1A) and (2) of section 23 of the Land Acquisition Act, 1894, so far as they may be applicable:*

Provided that the market value referred to in clause first of subsection (1) of section 23 of the said Act shall, in respect of any

land acquired under this Act, be deemed to be the market value of such land on the (date of publication of the notice referred to in subsection (1a) of section 4.

(2) (a) When the compensation has been determined under subsection (1) the Collector shall make an award in accordance with the principles set out in section 11 of the Land Acquisition Act, 1894, and the amount referred to in sub-sections (1), (1A) and (2) of section 23 of that Act shall also be included in the award:

Provided that interest at rate of nine per centum per annum on the amount of compensation under the award from the date of the publication of the notice under sub-section 1(a) of section 4 until payment shall be included in the amount payable under the award.

Provided further that if such compensation or any part thereof is not paid or deposited within a period of one year from the date of publication of the notice under sub-section 1(a) of section 4, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

(aa) (i) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested in the land, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested;

(ii) the Collector shall give in the prescribed manner immediate notice of his award to such of the persons interested in the land as are not present personally or by their representatives when the award is made.

(b) Upon an award being made under clause (a), the Collector shall proceed to make payment in accordance with the provisions of

sections 31 to 33 of the Land Acquisition Act, 1894. so far as they may be applicable.

(3) Where any land is requisitioned under section 3, there shall be paid to every person interested compensation, in respect of-

(a) the requisition of such land; and

(b) any damage done during the period of requisition to such land other than what may have been sustained by natural causes.

(4) The principle to be followed in determining compensation under sub-section (3) shall be as follows, namely:-

(i) where the Collector and the person interested agree as to the compensation, the Collector shall make an award ordering payment of the agreed compensation;

(ii) where the person interested cannot be traced or does not appear before the Collector when called upon to be present for the purpose of the determination of the compensation, such amount shall be determined as compensation as appears reasonable to the

(iii) where there is any disagreement between the Collector and the person interested, the compensation payable shall be the amount determined by the Court on reference made by the Collector under clause (b) of sub-section (1) of section 8.

8. Reference to Court. :- (1) The Collector shall in every case

(a) where any person interested being aggrieved by an award made under sub-section (2) of section 7 or clause (ii) of sub-section (4) of that section] makes an application requiring the matter to be referred to the Court; or

(b) where there is any disagreement with regard to the compensation payable under sub-section (3) of section 7 between the Collector 2[and any person interested in compensation, refer the matter to the decision of the Court.

(2) The provisions of sub-section (2) of section 18 and of sections 19 to 22 and of sections 25 to 28A of the Land Acquisition

Act, 1894, and the principles set out in sub-section (1) and in clause (a) of sub-section (2) of Section 7 of this Act, shall, so far as they may be applicable , apply in respect of any reference made to the Court under sun-section (1).

Explanation.- The notice given under sub-clause (ii) of clause (aa) o f sub-section (2) of section 7 shall be deemed to be the notice under subsection (2) of section 12 of the Land Acquisition Act, 1894 for the purposes of the proviso to section. 18 thereof.

10. On perusal of Section 2 (b2) of the LA Act of 1948 it reveals to us that admittedly the present appellant/Oil Company comes under the purview of person interested since they being the requiring body shall have to pay the compensation on account of acquisition of land of the land losers being the respondents herein since those lands were acquired by the State as per their requisition. Section 5 of the LA Act of 1948 requires notice to person interested and Section 5 of the said Act of 1948 clearly deals with as to how and where public notice is to be caused. Before us it has not been contended by the Oil Company/appellant that no notice under Section 5 was issued by the LA Collector and thus it can be safely presumed that inspite of causing public notice the present appellant/Oil Company has failed and neglected to raise its objection before the LA Collector prior to the assessment of the compensation in course of determination of compensation Section 7 of the said Act of 1948.

11. Since in Section 8(2) of the LA Act of 1948 it has been mandated that the provisions of Section 18(2) and provisions of Section 19 to Section 22 of the LA Act of 1894 shall so far as they may be applicable, apply in respect of any

reference made under Section 8(1) of the LA Act of 1948, Sections 18 and 20 of the LA Act of 1894 is required to be looked into.

12. *Section 18 of the LA Act of 1894 reads thus:-*

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

13. *Section 20 of the LA Act of 1894 reads thus :*

20 Service of notice. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) in the objection is in regard to the area of the land or to the amount of compensation, the Collector. ”

14. On perusal of Sections 18 and 20 of the LA Act of 1894 it reveals to us that if the objection is with regard to the area of the land or to the amount of the compensation as assessed by the Collector (as involved in the aforementioned Misc. Cases) the Tribunal shall cause notice upon the Collector only. Since in the aforementioned LA Misc. Cases the objection was raised by the respondents with regard to the amount of the compensation, Section 8 of the 1948 Act read with Sections 18 and 20 of the LA Act of 1894 clearly bar service of notice upon any other persons except the Collector and thus the present appellant/Oil Company being the requiring body are not entitled to any notice of the aforementioned LA Misc. Cases as disposed of by the learned LA Tribunal.

15. In considered view of this Court the cited decisions from the appellants are quite distinguishable from the facts and circumstances as involved in the instant appeals since those reported decisions are the outcome of the proceedings of the LA Act of 1894.

16. On perusal of the impugned judgements as passed in the aforementioned LA Misc. Cases it appears to this Court that the learned tribunal in the aforesaid impugned judgements has rightly placed his reliance upon the Exhibit nos. 1 and 2 for assessing the compensation of the acquired land since exhibit nos. 1 and 2 of the aforesaid LA Misc. Cases are the certified copy of the registered deeds of conveyance pertaining to the lands either in the vicinity or in the nearby area of the acquired land wherefrom the learned LA Tribunal got

a clear picture with regard to the valuation of the land as prevailing on the day of acquisition.

17. As rightly pointed out by Mr. Mukherjee that in all the aforementioned appeals the stamp reporter of this High Court has clearly mentioned that the names of the present appellants in the memos of appeal do not find place as a party in the certified copy of the order appealed against and thus the learned Advocate was requested to take steps. In spite of such report no endeavour was taken by the present appellant/Oil Company to take leave of this Court to file the instant appeals prior to proceeding with the instant appeals which the present appellant is bound to take in view of the reported decision of ***Calcutta Metropolitan Development Authority (supra)***.

18. In view of the discussion made hereinabove, we thus find no merit in the instant appeals and accordingly the instant appeals are hereby dismissed.

19. Consequently the judgement and decree dated 28.08.2002 as passed by Learned LA Tribunal, Howrah in LA Misc. Case no.28/2001 (Md. Sayeedul Islam Mir vs. The State of West Bengal); the judgement and decree dated 24.06.2002 as passed in LA Misc. Case no.34/2001 (Md. Sayeedul Islam Mir vs. The State of West Bengal); the judgement and decree dated 23.08.2002 as passed in LA Misc. Case no. 27/2001 (Gopi Nath Das vs. The State of West Bengal); the judgement and decree dated 22.08.2002 as passed in LA Misc. Case no.26/2001 (Sk. Masihur Rahaman vs. The State of West Bengal); the judgement and decreed dated 29.08.2002 as passed in LA Misc. Case no.32/2001(Gopi Nath Das vs. The State of West Bengal); the judgement and

decree dated 28.08.2002 as passed in LA Misc. Case no.33/2001 (Nasira Khatoon vs. State of West Bengal) as passed by learned Judge, LA Tribunal, Howrah are hereby affirmed.

20. In view of the dismissal of the instant appeals, liberty is given to the appellants of the instant appeals to withdraw the balance deposited amount together with interest from the office of the Learned Registrar General, High Court at Calcutta which was directed to be deposited by the present appellants vide order dated 15.09.2005 as passed in this appeal.

21. Department is directed to forward a copy of this judgment to the Learned Registrar General forthwith.

22. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)