IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:
The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Uday Kumar

FA 140 of 2015

Mira Maity & Anr.
Vs.
State of West Bengal
With

COT 31 of 2023
The State of West Bengal & Anr.
Vs.
Sarala Maity & Ors.
With

COT 32 of 2023
The State of West Bengal & Anr.
Vs.
Lakshmi Kanta Maity & Ors.
With

COT 33 of 2023
The State of West Bengal & Anr.
Vs.
Sarala Maity & Ors.
With

COT 34 of 2023
The State of West Bengal & Anr.
Vs.
Mira Maity & Ors.
With

FA 141 of 2015
Smt. Radha Rani Maity & Ors.
Vs.
State of West Bengal
With

FA 142 of 2015
Sarala Maity & Anr.
Vs.
State of West Bengal
With

FA 143 of 2015
Sarala Maity & Anr.
Vs.
State of West Bengal.

For the Appellants in FA 140 of 2015 FA 141 of 2015 FA 142 of 2015, FA 143 of 2015 And for the respondents in COT 31 of 2023, COT 32 of 2023 COT 33 of 2023, COT 34 of 2023	: Mr.Nilanjan Bhattacharjee, Adv. Mr. Sourav Kumar Mukherjee, Adv., Mr. Kaushik Chowdhury, Adv., Mr., Soumoyadipa Kanu Adv., Ms., Sahana Pal Adv., Ms. Ishan Bhattacharya, Adv.
For the Appellants in COT 31 of 2023, COT 32 of 2023 COT 33 of 2023, COT 34 of 2023 And for the respondents in FA 140 of 2015, FA 141 of 2015 FA 142 of 2015, FA 143 of 2015	: Mr. Soumitra Bandyopadhyay, Adv. Mr. Priyabrata Batabyal, Adv.
Hearing concluded on	: 14th July, 2023
Judgment on	: 19th July, 2023

Soumen Sen, J. - The appeal and the cross-appeal are arising out of a judgment passed in a batch of matters arising out of land acquisition proceedings initiated in respect of 1.78 acres of land of Mouza Gopal Nagar under P.S. Panskura.

2. In a reference under Section 18 of the Land Acquisition Act 1894, the learned Additional District and Session Judge, 2nd Court, Tamluk, district

Purba Medinipur enhanced the compensation from Rs.2009/- per decimal as determined by the LA Collector to Rs. 5000/- per decimal. There are 17 land loosers. They have challenged the award of the Land Acquisition Collector.

3. The appellants are the award holders in the said reference.

4. They have prayed for enhancement of compensation based on three title deeds out of which two are situated in Mouza Ryne and one in Gopal Nagar.

5. The learned Trial Judge in deciding the compensation amount had taken into consideration three title deeds namely, deed no. 2619 dated 25th November, 2003 of plot no.939, deed no.2620 dated 25th November, 2003 of plot no.1461 and deed no.3639 dated 1st December, 2003 regarding plot no.939 giving an approximate valuation of Rs.6000/- per decimal.

6. The learned trial Judge disregarded the claim of fixing the compensation @ Rs.35,000/- per decimal as claimed by the land owners on the ground that Exbt. 4 and 5 are in respect of properties situated in Ryan Mauza and the sale transaction disclosed in respect of Mouza Gopalnagar, that is, Exbt.6 is not contiguous to plots covered in Exbt. 4 and 5. Moreover the land details relief upon as an exemplar i.e. Exbt.6, although situated in Gopalnagar Mouza is small and the transaction in relation to the said land had taken place at a point of time when the acquisition proceeding by the Government had already commenced.

7. The land owners are not satisfied with the said enhancement and hence these appeals.

8. The State has filed cross objection in all the appeals. In the cross objections the State has challenged the enhancement, grant of soletium and determination of the compensation relying upon the provisions of the Right to Fare Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).

9. In view of commonality of the issues involved all the appeals and cross appeals are heard together.

10. In assailing the judgement Mr. Nilanjan Bhattacharjee learned Advocate appearing on behalf of the appellant has submitted that the learned L.A Judge has failed to take into consideration three registered deed of conveyances marked as Exbt. 4, 5 and 6 which are identical, same and/or similar to the lands acquired and could be the best exemplar for the purpose of determination of the compensation amount. It is submitted that the lands sold under those instruments were situated besides the main road and almost in the vicinity and in contiguous area absolutely alike to that of the subject land under acquisition.

11. It is submitted that the reason for disregarding the sale deeds was due to small quantities of land involved and it relates to transaction of smaller plots. It is submitted that smallness of the plot is not a relevant consideration and it is not an absolute proposition that the market value of sale of small

plots cannot be considered at all in view of the decision of the Hon'ble Supreme Court in ***Karnataka Urban Water Supply and Drainage board & Ors. Vs. K.S. Gangadharappa & Ors***., reported in **2009(11) SCC 164.**

12. It is submitted that the reliance on the instruments by the government cannot be considered to be exemplar having regard to the fact that all those plots are situated far away and at an interior location of the Gopal Nagar Mouza, land locked and not on the road side.

13. It is submitted that the sale transactions disclosed in support of enhancement are all proximate to the date of notification and could be the best guide to decide the sale value of such lands. The locational advantage could not have been disregarded. It is submitted that the sale transactions in respect of land mentioned in registered deeds being Exbt.4 and 5 are situated just opposite to the subject land and sale had taken place proximate to the date when present land was acquired.

14. It is submitted that the subject land could not be considered to be large area of land since there are number of persons who owned the subject land namely, 1.73 acres. A single plot of land is owned by 17 owners. They are in joint possession and enjoyment. Considering the number of owners who have lost their land due to acquisition, the size and area of the land in question could not be said to be large. The learned trial court has failed to appreciate this aspect of the matter and treated the land in question as small.

15. The learned Counsel relying upon the decision of the Hon'ble Supreme court in ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Ors.,*** reported in **1988(3) SCC 751** submitted that plus factors mentioned in paragraph 4 (XIV) was disregarded in the instant case. The plus factors are: smallness of size, proximate to a road, frontage of a road and regular shape. Moreover, Exbt.4, 5 and 6 should have been considered as examplars for determination of the valuation.

16. It is submitted that both from the view point of proximity of time angle and proximity from situation angle the valuation could not have been less than Rs.35,000/-.

17. Per contra Mr. Soumitra Bandyopadhyay the learned Counsel appearing on behalf of the State respondents have submitted that plot no.1562 of Gopal Nagar Mouza although situated on the road side is far away from acquired plot numbers 941 and 1460 of Gopal Nagar Mouza. It is approximately 800 metres away from the acquired land. The plot no.98 covered by a deed nos.2711 of 2003 and 2712 of 2003 is in Ryne Mouza and is far away from the acquired plot no.941 and 1460 of Gopal Nagar Mouza. It is approximately 1400 metre away from the acquired land.

18. The registered deeds in respect of land situated in Ryne Mouza is situated far away from the main road and not opposite to the main road. The market value was determined on the basis of the sale deeds and data collected from the concerned sub-registry office. In determining the valuation eight

number of sale deeds were considered above 10 decimals of land along with plot no.1461 and some other plots adjacent to the suit plots of Gopal Nagar Mouza.

19. It is strenuously argued that Exbt. 4,5 and 6 are not comparable units and could not have been treated as examplar. The land comprised in Exbt.6 is only 4.6 decimal and the agreement for sale was executed on 20th June, 2003 and registered on 22nd January, 2004. This transaction is nearer to the date of the notification dated 22nd January, 2004 issued under Section 4 of the LA Act, 1894 and it could not be considered to be the exemplar both having regard to the small quantity of land involved and nearness to the time of acquisition. The rate of compensation was fixed in term of West Bengal Land Acquisition Manual. The instrument relied upon by the LA Collector were of adjacent area and situated in the same Mouza.

20. However, in all fairness it is submitted that the market value determined by the LA Judge at Rs.5,000/- per decimal can be accepted.

21. We are presently concerned with the enhancement of the compensation amount as determined by the learned LA judge. The learned L.A Judge has enhanced the compensation from Rs.2009/- per decimal to Rs.5000/- per decimal.

22. The learned Counsel for the appellant has submitted that in enhancing the compensation the leaned trial judge has merely complied with the requirement of Section 25 of the Act, in a mechanical manner without

considering Section 24 read with Section 23(1-A) of the Land Acquisition Act, 1894.

23. For proper appreciation of the argument made on behalf of the parties with regard to the compensation and its enhancement it is relevant to consider Section 23(1) of LA Act, 1894. The said Section reads:

> **Section 23(1) in The Land Acquisition Act, 1894**
>
> (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—
>
> first, the market value of the land at the date of the publication of the [notification under section 4, sub-section (1)];
>
> secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;
>
> thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
>
> fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
>
> fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and
>
> sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

The said subsections have been amended in the state of West Bengal in the manner following:

In section 23, in sub-section (1),

(1) (i) in clause fifthly, the word "and" at the end shall be omitted and deemed always to have been omitted;

(ii) in clause sixthly, for the words "possession of the land", words "possession the land, and shall be deemed always to have been substituted;

(iii) after clause sixthly, following clause shall be deemed always to have been inserted. namely:-

"seventhly, the loss of earning, if any, caused to the person interested, in consequence of the acquisition of the land, where earning was derived directly from such land."

[Vide West Bengal Act 30 of 1963, sec. 4 as amended by Land Acquisition (West Bengal Amendment, Act, 1981, sec. 4)].

In sub-section (1A), the following proviso was substituted, namely:-

Provided that-

(a) in respect of the acquisition of the land referred to in sub-section (3A) of section 9, in addition to the market-value of the land, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on the value of the land for the period commencing on and from the date of taking possession of the land to the date immediately before the date of issue of the notice under sub-section (3A) of section 9 plus interest at the rate of twelve per centum per annum on the market-value of the land from the date of issue of the notice under sub-section (3A) of section 9 to the date of award of the Collector, and

(b) in respect of the acquisition of the land referred to in sub-section (3B) of section 9, in addition to the market-value of the land, the Court shall in every case award a amount calculated at the rate of twelve per centum per annum on the value of land for the period commencing on and from the date of taking possession of the land to the date immediately before the date of publication of the notice under sub section (la) of section of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to in this proviso as the said Act), as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, plus interest at the rate of twelve per centum per annum on the market-value of the land for the period commencing on and from the date of publication of the notice under sub-section (la) of section 4 of the said Act to the date of award of the Collector.

Explanation-For the purposes of this proviso, the expression "value of the land" shall mean the market value of the land determined with reference to the date of taking possession of the land.'

[vide West Bengal Act, 19 of 1999, sec.3]."

24. In the instant case land was acquired for construction of 33/11 K.V. Electric power at Kolaghat, Purba Medinipur. It was notified on 16th January, 2004 under Section 4 of LA Act, (1) of 1894. Seventeen plot holders were affected by the said acquisition.

25. The land admittedly is an agricultural land. The land owners have strenuously contended that there only means of livelihood by cultivation of lands acquired have been taken away by reason of such acquisition. In fact P.W.1 has deposed that the acquired land is cultivated twice in every year yielding crops twice in a year. There is no contrary evidence to that effect. The respondent denied highest compensation on the ground that the exemplars are all in respect of small quantities of land. In fact 17 persons jointly are the owners of the land acquired by the collector. The land is undemarcated and unpartitioned.

26. Even, if we accept that plots of land situated in Ryne Mouza could not be considered to be best exemplars not being situated in the same Mouza and absence of any transaction proximate to the date of notification, Exbt. 6 is undoubtedly proximate to the date of notification and is in respect of 4.5 decimal of land situated in the Gopal Nagar Mouza. The sale consideration appears to be Rs.1,06,000/- for 4.60 decimal.

27. The State has two objections to rely on the said document. Firstly, it is situated approximately 800 metres away from the acquired land and secondly, smallness of the plot.

28. The three exhibits relied upon by the appellants relate to transactions that are proximate to the date of acquisition and possessing same characters and nature. In a situation where there may not be uniformity of the sale transactions the highest exemplar would be the useful guide for

determining the compensation. The preference to highest exemplar in a situation of this nature is highlighted by the Hon'ble Supreme Court in ***Mehrawal Khewaji Trust, Faridkot & Ors., v. State of Punjab & Ors.,*** reported in **AIR 2012 SC 2721 : 2012 (5) SCC 432** in which it is stated:

> *"12. As pointed out above, the Reference Court failed to take note of the highest exemplar, namely, the sale transaction under Ext. A-61 dated 22.07.1977. In this regard, it is useful to refer the decision of this Court in* ***Sri Rani M. Vijayalakshmamma Rao Bahadur, Ranee of Vuyyur v. Collector of Madras (1969) 1 MLJ 45 (SC****). In this case, this Court has held thus:*
>
> > *... 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.*
>
> *13. In S****tate of Punjab and Anr. v. Hansraj (Dead) by L.Rs. Sohan Singh and Ors****. (1994) 5 SCC 734, this Court has held that method of working out the 'average price' paid under different sale transactions is not proper and that one should not have, ordinarily recourse to such method. This Court further held that the bona fide sale transactions proximate to the point of acquisition of the lands situated in the*

<u>neighbourhood of the acquired lands are the real basis to determine the market value.</u>

14. This Court in ***Anjani Molu Dessai v. State of Goa and Anr. (2010) 13 SCC 710,*** *after relying upon the earlier decisions of this Court in* ***M. Vijayalakshmamma Rao Bahadur*** *(supra) and* ***Hansraj*** *(supra) held in paragraph 20 as under:*

> *20. The legal position is that even <u>where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered.</u>*
>
> *Again, in para 23, it was held that "<u>the averaging of the prices under the two sale deeds was not justified."</u>*

15. It is clear that when <u>there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. 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 a willing seller near about the time of the acquisition</u>. 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."* (emphasis supplied)

29. In the aforesaid case the reference court relied upon 3 exhibits like the present one having different sale transactions including other sale transactions.

30. In the instant matter the compensation was enhanced by applying the rule of average but in applying the said principle Exbt.6 was ignored. However there is no cross appeal. The principle of law that the highest exemplar is required to be accepted, is fortified by the aforesaid decision. In fact, the 3 sale deeds relied upon by the land owners for higher compensation are instances of sale proximate to the date of acquisition possessing same nature and character similar to the situation in ***Vittal Rao & Anr. v. Special Land Acquisition Officer*** reported at **2017(8) SCC 558** where the appellants urged that out of 11 sale the highest value should have been made the basis for determination of the market value of the acquired land.

31. In the said decision reference was made to ***Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona & Ors.,*** reported in **1988 (3) SCC 751** and ***Union of India v. Raj Kumar Baghal Singh*** reported in **2014 (10) SCC 422**. In ***Chimanlal*** (supra) in paragraph 15 the Hon'ble Supreme Court has observed that there cannot be any hard and fast or rigid rule in determining the compensation. Common sense is the best and

most reliable guide. One of the distinguishing features would be smallness and the largeness of the plot as a large block of land would have to be development by "preparing a lay out, carving out roads, leaving open spaces, plotting out similar plots, waiting for purchaser (meanwhile the invested money will be blocked) and the hazards to the entrepreneur. The factors can be discounted by making a token by way of allowance at an appropriate rate range approximately 20% to 50% to account for land required to set apart for carving out lands and plotting of small plots. It would also depend upon whether it is a rural area or urban area. It laid down the principle that every case must be dealt with on its "own fact pattern bearing in mind all these factors as a prudent purchaser of land in which possession the judge must place himself".

32. Upon consideration of the relevant judgments in ***Vithal Rao*** (supra) the law is summarized thus:

> "27....... *These principles are invariably kept in mind by the Courts while determining the market value of the acquired lands (see also Union of India v. Raj Kumar Baghal Singh (Dead) Through Legal Representatives and Ors. (2014) 10 SCC 422).*
>
> *28. In addition to these principles, this Court in several cases have also laid down that <u>while determining the true market value of the acquired land and especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land</u>. It has*

also been consistently held that at what percentage the deduction should be made vary from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. <u>It has also been held that while determining the market value of the large chunk of land, the value of smaller piece of land can be taken into consideration after making proper deduction in the value of lands and when sale deeds of larger parcel of land are not available.</u> This Court has also laid down that the Court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognized that the Courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified Under Section 23 of the Act. (See Trishala Jain and Anr. v. State of Uttaranchal and Anr., (2011) 6 SCC 47).

30. Keeping the aforementioned principles in mind when we take note of the facts of the case at hand, we find that firstly, the land acquired in question is a large chunk of land (30 acres approx.); Secondly, the purpose of acquisition is "Establishment of Rehabilitation Centre"; Thirdly, it is situated within the municipal limits; Fourthly, its one side is abutting the main district road (MDR); Fifthly, it is not fully developed; Sixthly, some buildings have come up in its near proximity;

Seventhly, the Appellants (land owners) have not filed any exemplar's sale deeds relating to large piece of land sold in acres to prove the market value of the acquired land; Eighthly, all sale deeds relied on by the Appellants pertain to very small piece of land such as, 25x55 ft., 40x20 ft., 40x40 ft, 12x45 ft, 30x40 ft., 12x45 ft, 60x60 ft, 10x65 ft, 50x65 ft., 40x65 ft. and 29x49 ft. whereas the land acquired, as mentioned above, is quite large (30 acres) and, the price at which these small plots were sold is Rs. 85/- per sq. ft., Rs. 70/- per sq. ft., Rs. 80/- per sq. ft., Rs. 69/- per sq. ft., Rs. 55/- per sq. ft., Rs. 64/- per sq. ft., Rs. 65 per sq. ft., Rs. 100/- per sq. ft., and Rs. 218/- per sq. ft.,; Ninthly, these eleven plots were sold prior to the date of acquisition (2000, 2001 and 2002) whereas the acquisition was in the year 2003; Tenthly, the small parcel of lands sold under these sale deeds are situated in near proximity of the acquired land and some were part of the acquired land; Eleventhly, all the eleven sale deeds are held bona fide and proper and lastly, these sale deeds, therefore, can be relied on for determining the proper market value of the acquired land." (emphasis supplied)

33. In the aforesaid decision the purpose of acquisition was considered to be one of the relevant factors and the Apex court determined the compensation amount by applying the rule of average and made deductions of 40% of the amount towards development charges out of the average price worked out.

34. In ***Mohammad Yusuf & Ors. v. State of Haryana & Ors***., reported in **2018 (16) SCC 105** it was reiterated that when there are several exemplars with reference to similar land usually highest exemplars which is bona fide transaction is to be considered.

35. The term 'compensation' under Section 23 of the LA Act, 1894 would mean "a just equivalent of what owner has been deprived of" and hence acquisition must pass the test of compensation being reasonable, just and fair. [See***. Mohammad Yusuf & Ors***., (supra)].

36. The aforesaid title deed namely, Exhibit.6 undoubtedly is proximate from time angle and situation angle. It cannot be disputed that the said transaction is contemporaneous and disclose the same character of the land forming the subject matter of the land acquired for the purpose of the thermal power station.

37. Considering the nature of the evidence the purpose of acquisition and the expenses required towards development cost applying the principles laid down in several judgments alluded to above we are of the opinion that the market price of the land for the purpose of determining the compensation would be assessed at Rs.22.000/- per decimal. It would be just proper and reasonable to allow deduction at 33.33 per cent on Rs.22,000/- considering the largeness of the property, thereby the market value of the land acquired for the purpose of compensation would be Rs.14,650**/-** instead of Rs.5000/- per decimal.

38. In view of the fact that acquisition proceeding had commenced under the LA Act of 1894 and the acquisition under the 1894 Act is held to be valid the appellant is not entitled to compensation payable in terms of the 2013 Act as it was not applicable to the acquisition.

39. Mr. Nilanjan Bhattacharjee learned Advocate, for the appellants has also accepted that the compensation has to be calculated with reference to 1894 Act. In fact award although had referred to the 2013 Act did not apply the provisions of the said Act in determining the compensation. In any event, we have applied the provisions of 1894 Act for the purpose of determination of compensation.

40. The appellants are entitled to solatium @ 30% in terms of Section 23(2) and an additional amount @ 12% per annum from February 4, 2004 to August 4, 2004 in terms of Section 23(1)(A).

41. The collector shall pay interest on the excess amount @ 9% per annum from the date on which he took possession of the land till actual payment.

42. The judgment of the learned LA Judge is modified to the aforesaid extent.

43. We have been informed that the respondent authorities have deposited the amount determined by the Collector in the Land Acquisition

Reference and the said amount has been invested in a fixed deposit account by the L.A. Court.

44. The State respondents shall deposit the balance amount in terms of the modified award with the learned L.A. Judge within four weeks from date.

45. We direct the learned L.A. Court to disburse the said amount with accrued interest to the appellants upon proper verification of their identity according to the share within two weeks thereafter.

46. The department is directed to send down the LCR forthwith.

47. The appeals and the cross-appeals are disposed of with the above directions.

I agree **(Soumen Sen, J.)**

(Uday Kumar, J.)