

21.06.2023
Sl. No.4(DL)
srm

C.O. No. 1743 of 2021
Dy. Chief Engineer/HQ
The General Manager, Metro Railway, Kolkata
Versus
Joy Bhattacharya

Mr. Kumaresh Dalal

...for the Petitioner.

Despite service, none appears on behalf of the opposite party. Affidavit of service is taken on record.

The petitioner is aggrieved by the order passed by the learned Appellate Authority, Metro Railway, Kolkata dated November 12, 2018 in Claim Appeal No.19 of 2017. By the said order dated November 12, 2018, the Claim Appeal No.19 of 2017 was dismissed.

According to the petitioner, the compete authority passed a wrong order, *inter alia*, directing payment of compensation for 40 decimals of land, when the actual land of the claimant which was acquired measured about 26 decimals. Such fact was subsequently available from the record of rights. Such discovery was allegedly made by the Metro Railway only after the order was passed by the compete authority. Hence, on this ground alone, the appeal was preferred. The Metro Railway authorities prayed that the amount of compensation

awarded by the competent authority should be reduced substantially, upon taking the quantum of land acquired by the authorities as 26 decimals.

The learned Appellate Authority held that there was nothing on record to show that the RS record of rights had been relied upon before the competent authority. The same did not find any mention in the written statement. Such point had never been raised at the relevant point of time during the hearing of the claim case.

Next, it was opined that when the preliminary notification of the government and the subsequent notification of the Metro Railway indicated the quantum of RS plot No.36 to be 40 decimals, any order that the appellate authority may pass, *inter alia*, accepting the contention of the Metro Railway authorities that the land acquired should be taken as 26 decimals instead 40 decimals as indicated in the notifications, would amount to correcting the notifications which were issued by the government and the Metro Railway, at the time of acquisition.

In my view, the learned Appellate Authority was required to adjudicate whether the order of the competent authority was passed on the basis of the records, evidence, notifications and the case and counter-case of the parties. At

that relevant point of time, the plea with regard to the record of rights was never taken. On a review filed by the authorities, the quantum of land, was taken as 40 decimals. It was not a point in review that 26 decimals had been acquired. Instead, the review was sought to correct the quantum of land from 78.475 decimals to 40 decimals. If the said plea is allowed subsequently, then the entire notification indicating the quantum of land would require an amendment and would also raise a question as to whether the acquisition proceeding based on such incorrect notification with regard to the quantum of land, could survive at all. The notification is the first step towards acquisition. If a notification is found to be defective, the entire process of acquisition is vitiated. Thus, at this stage of the appeal, such issue should not be reopened.

Under such circumstances, the learned Appellate Authority was not required to go beyond the order of the competent authority and beyond the records and hold that the issue should be revisited in order to measure the quantum of land once again after the entire process was over. Before the preliminary notification was issued by the Government of India, physical inspection by the authorities, other government officials including the State Government officials, was required to be undertaken. At that relevant point of time, it was found

that the land pertaining to RS Dag No.36 was 40 decimals and the notification was issued on such finding. The Metro Railway authorities issued further notification with the same quantum of land. This Court cannot go beyond the facts which are on record and which were found by the competent authority as also the Appellate Authority, to be correct. The power of revision is restricted to detection of perversity in an order.

An order is treated to be perverse in the event of the following situations:-

- (a) The order has been passed without considering the materials on record.
- (b) The order has been passed contrary to law, and
- (c) The order has been passed based on extraneous materials.
- (d) The order is wholly without jurisdiction.

Neither the competent authority nor the appellate authority could go beyond the quantum of land mentioned in the notification by the Central Government and by Metro Railways, Kolkata.

The petitioner has not been able to substantiate that the orders of both the fora are perverse and hence the revisional application is dismissed.

There will be, however, no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)