

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FA 54 of 2023
FAT 395 of 2018
State of West Bengal
– Versus –
Bimal Kumar Mallick @ Mondal (deceased)
represented by Goutam Kumar Mallick & Others
With
COT 15 of 2019
Bimal Kumar Mallick @ Mondal (deceased)
represented by Goutam Kumar Mallick & Others
– Versus –
State of West Bengal

*For the Appellant in FA 54
of 2023 & for the Respondent
/State in COT 15 of 2019*

:
*Mr. Chandi Charan De,
Mr. Rabindra Narayan Dutta,
Mr. Hare Krishna Halder.*

*For the Respondent in FA 54
of 2023 & for the cross-
objectors in COT 15 of 2019*

:
*Mr. Debayan Bera,
Mr. Sakti Prasad Chakrabarti.*

Hearing is concluded on

:
31st March, 2023.

Judgment On

:
17th May, 2023.

Partha Sarathi Chatterjee, J.

1. The present appeal at the instance of State of West Bengal is directed against the judgment dated 31st August, 2017 passed by the learned Land Acquisition Judge –cum- learned Additional District Judge, 3rd Court, Barasat, 24 Parganas (North) in L.R.A. case no. 62 of 2001 and L.R.A. case no. 63 of 2001 and in connection with the appeal, referring claimants have also filed cross-objection claiming inadequacy of compensation, which has been registered as C.O.T. no. 15 of 2019.

2. Under the project of '*Regularisation of Sulangari Post 50 Squatters Colony*', a chunk of Sali and Doba land measuring an area of 11.42 acres out of total 71.53 acres of land comprising in R.S. Plot nos. 663, 678, 686, 687, 688, 690, 691, 679, 680 and 681 which belonged to referring claimants were acquired in connection with the land acquisition case *vide*. No. LA.II/22 of 1988-89.

3. Lands under the aforementioned project were acquired under The West Bengal Land (Requisition and Acquisition) Act, 1948 (in short, Act- II of 1948) and Notification under Section 4(1a) of Act –II of 1948 was published on 27.12.1996 and possession of the acquired lands were taken on 19.12.1988 and award was made and published on 3.6.1997 under the serial nos. 35, 78, 129, 135, 136, 152, 159, 85, 79, 86 and 128.

4. In the award, LA Collector determined the market value of Sali and Doba Land @ Rs.5,60,076/- per acres and Rs.2,80,038/- per acres respectively. Respondent being the referring claimants having his objection

as to the amount of compensation, particularly, as to the determination of market value of lands sought for reference under Section 8 of Act-II of 1948. Consequently, the matter was referred to the learned LA Judge.

5. While answering to the reference, learned LA Judge assessed the market values of Sali land @ Rs.17,600/- per cottah and Doba @ Rs.11,733/- per cottah respectively. Aggrieved thereby, the State of West Bengal (in short, appellant) has preferred this appeal contending, *inter alia*, that the learned LA Judge fell in error in enhancing the value of the land basing upon the deeds produced by referring claimants without applying depreciation on transactions of small pieces of land and learned Judge below committed mistake in allowing rental compensation and in awarding interest in contravention of Section 23 of Land Acquisition Act –I of 1984 (in short, Act-I of 1894) and learned Judge below has applied wrong method to determine the market value on the basis of average of consideration monies shown in one deed referred by Collector and one deed produced by the referring claimants.

6. In the cross-objection, referring claimants alleged that in assessing market value, LA Judge has placed reliance upon the deeds taken into account by the Collector in awarding the compensation but those deeds have not been produced in Court and have not been admitted in evidence.

7. Mr. Dutta, learned counsel representing the appellant submits that it is trite law that plaintiff (here, the referring claimants) is to prove his own case and for this proposition, he referred two judgments delivered in cases of *Union of India & Ors. vs. Vasavi Cooperative Housing Society Ltd. & Ors.*

reported in (2014) 2 SCC 269 and *Jagdish Prasad Patel (dead) thr. Lrs. & Anr. Vs. Shivnath & Ors.* reported in (2019) 6 SCC 82. He argues that in the given case, only one Mihir Mallick testified on behalf of referring claimants and his testimony has been totally destroyed in cross-examination and hence, referring claimants has failed to substantiate his claim. He argues that although deeds produced by referring claimants were admitted in evidence but contents thereof have not been proved by bringing vendors or vendees thereof and hence, learned Judge below has committed mistake in assessing the market value basing upon such deeds and to fortify his such claim, he placed reliance upon a judgment delivered in case of *LICI & Anr. Vs. Ram Pal Singh Bisen* reported in (2010) 4 SCC 491 and he argues that learned Judge below did not consider the aspect of 'Largeness of Land' of referring claimants and did not make necessary deduction and hence, according to Mr. Dutta, learned Judge committed mistake and for this proposition, he relied upon two judgments delivered in cases of *H.P. Housing Board vs. Bharat S. Negi & Ors.* reported in 2004 AIR SCW 797 and *The Land Acquisition Officer & Sub-Collector, Gadwal vs. Smt. Sreelatha Bhoopal & Anr.* reported in (1997) 3 ICC 376.

8. He further contends that the learned Court below took into account the deeds of small quantum of land and did not consider whether the lands situated in developed area or the lands acquired were having proximity with bazar and other facilities or not and to bolster his argument, he also placed reliance upon the judgments delivered in the cases of *Ranvir Singh & Anr.*

Vs. Union of India reported in (2006)1 ICC 293 and *B.V. Nagesh & Anr. Vs. H.V. Sreenivasa Murthy* reported in (2011) 1 SBR 22.

9. In response, Mr. Bera, learned advocate for the respondent/referring claimants (in short, respondent) rebuffed the claims of Mr. Dutta contending that while making reference under Section 8 of Act –II read with Section 18 of Act –I, Collector was required to furnish information under Section 19(1)(d) of Act- I and if no such information is furnished, then onus of referring claimants is bare minimum and to buttress his such argument, he placed reliance upon a judgment, reported in (2004) 8 SCC 270.

10. Taking us to paragraph -6 of the judgment impugned, he submitted that referring claimants produced seven deeds and mouza map and oral testimony of one Mihir Mallick, who was subjected to cross-examination also but State did not adduce any evidence. According to Mr. Bera, the Court shall confine itself to the documents and/or evidence filed and/or adduced by the parties in Court and Court of reference cannot travel beyond the documents produced in Court and for this proposition, he relied upon a judgment delivered in the case of *Ramanlal Deochand Shah vs. State of Maharashtra & Anr. Kantilal Manikchand* reported in AIR 2013 SC 3452.

11. He contends that to determine market value, learned Court below has made average of one deed relied upon by the Government and one deed produced by the claimants which is wrong approach. Court cannot look into the deed which has not been admitted as evidence in court.

12. He argues that project under which the lands were acquired is '*Regularisation of Sulangari Post 50 Squatters Colony*'. Possession of lands were taken in 1988 whereas notification was published in 1996. So, lands were converted to bastu lands since long back and acquired lands are all residential plots and were located in developed area and hence, the claimants is entitled to get the price of bastu land.

13. On the issue of largeness of land, he argues that for preparation of lay out plan etc. 10% of market value is deducted but government could not produce any evidence to justify such deduction. To fortify his submission, he placed reliance upon the judgments delivered in the cases of *Bhagwathula Samanna & Ors. v. Spl. Tahsildar & LAO*, reported in AIR 1992 SC 2298, *Visakhapatnam Municipality, State of Kerala vs. Padmanabha Iyer* reported in 2001 (1) ICC 364, *State of W.B. V. Ganesh Chandra Mitra & Ors.* reported in AIR 1972 Cal 333, *State of W.B. vs. Secretary, Union Club, Purulia* reported in AIR 1972 Cal 225 and *Ashok Kumar & Anr. Vs. State of Haryana* reported in (2016) 4 SCC 544.

14. Main dispute centred around the appeal and cross-objection is the determination of market value of Sali land and Doba. Collector determined that market values of Sali land and Doba @ Rs.9,257/- per cottah and Rs.4760/- per cottah respectively whereas the learned LA Judge enhanced the market value to the tune of Rs.17,600/- per cottah and Rs.11,733/- per cottah respectively.

15. Indisputably, in determination of market value, learned LA Judge has taken into consideration the 15 sale instances of Sali lands, which the

Collector considered to assess the value, although those 15 deeds of sale have not been produced in Court and ultimately, by taking average of two sale instances reflected from deed of sale *vide*. No. 1333 and deed no. 2339 of 1996, market value of Sali land was assessed at Rs.17,600/- per cottah (Rs.10,000/- + Rs.25,200/- divided by 2 = Rs.17,600/-) and market value of Doba was assessed @ $\frac{2}{3}$ rd of value of Sali land i.e. Rs.11,733/- per cottah and the Court below did not allow any deduction on the premise that lands acquired were already developed.

16. It is axiomatic that the reference under Section 8 of Act -II or under Section 18 of Act-I is not an appeal against the award and award of the Collector is not to be treated as the judgment of the trial court. Award is merely an offer made by the Collector. Object of an enquiry in a reference is to ascertain the price which the land or lands under acquisition is capable of fetching in the open market on the date of notification and object of assessment of market value of the lands under acquisition is to arrive at reasonable and adequate market value of lands. In that process, some guess work may be involved but feats of imagination may be eschewed and mechanical assessment of evidence should be avoided.

17. The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of material produced before it and it is well settled that material utilised by the Collector in assessment of market value cannot be utilised by the Court unless those material are produced and proved before the Court. Market value cannot be determined with mathematical precision but must be based on sound

discretion exercised by the reference Court in arriving at just and reasonable price. The reference Court should be circumspect, pragmatic and careful in analysing the evidence placed before it and in arriving at a just and fair market value of the lands under acquisition. To ascertain the market value, Court is to place itself in the arm-chair of hypothetical willing purchaser who can be expected to pay for the lands to the willing vendor in the existing use as well as relatable potentialities.

18. The referring claimants shall be placed at the position of plaintiff in a suit requiring him to discharge the initial burden of proving that the amount of compensation determined by the Collector was inadequate.

19. Section 8(2) of Act- II of 1948 lays down that the provisions of sub-section (2) of Section 18 and of section 19 to 22 and of section 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 sub-section (1).

20. Section 19(1)(d) of Act- I of 1894 provides that in making the reference, the Collector shall state, for the information of the Court, in writing under his hand, ----- if the objection be to the amount of compensation, the grounds on which the amount of compensation was determined.

21. Both Mr. Dutta and Mr. Bera made claim and rival claim regarding compliance of Section 19(1)(d) of Act –I but no document has been

produced to show that requirement of Section 19(1)(d) of Act –I was complied with. In case of *State of W.B. v. Secretary, Union Club, Purulia (supra)*, it was ruled that if the Collector omits to state the grounds on which the amount of compensation was determined, the onus of the referring claimants is negligible.

22. In many cases, it is seen that there is apathy in adducing evidence by the Collector and there is blatant lapse on the part of counsel for the State to cross-examine the witnesses on material point and on the other hand, some sale instances i.e. deeds of sale are produced in Court but neither the vendor nor the vendee of any deed is or are examined despite of having knowledge that Section 51A of Act-I of 1894 merely dispenses with the production of original sale deed and it does not dispense with the requirement of examination of vendor and vendee to prove that the transaction was genuine. Now, question is what the reference Court, which is enjoined to answer the reference, will do in such circumstances.

23. If no evidence is adduced by the Collector, the Court shall carefully scrutinise the evidence adduced by the claimants and determine the just compensation [See the case of *Hookiyar Singh v. Spl. LAO* reported in (1996) 3 SCC 766] and in absence of oral evidence adduced by either of the parties, Courts are to draw inference from their experience the normal human conduct of the parties and *bona fide* and genuine sale transactions are guiding star in evaluating the evidence. [See the case of *Spl. Dy Collector v. K.P. Sambasiva Rao* reported in AIR 1997 SC 2625].

24. So, from the discussions made hereinabove, we have no qualm to hold that the learned Court below erred in taking into account the sale instances relied upon by the Collector and the Court was required to base upon the evidence produced before it. In such circumstances, Court is to consider the effect of entire evidence placed before it and in such situation, Court shall have no other alternative but to base upon the deeds being the only documentary evidence, produced by the referring claimants.

25. However, in the case at hand, admittedly, no evidence has been adduced on behalf of the Collector and referring claimants produced seven deeds and mouza map which have been admitted in evidence as Ext.1 to 8 and in cross-examination, he could not detail the date of acquisition, date of award, date of possession and exact location of lands under acquisition in mouza map and no vendor or vendee in respect of any sale instance has been produced on dock.

26. Referring claimants produced seven deeds, marked as Ext.-1 to 7. Deeds, marked as Ext. 1 to 6 were executed and registered in between June, 1996 to November, 1996 and Ext.-7, deed no. 5080 was executed on 29.9.1995. Nature of lands were Sali and those lands situated in the same Mouza, namely, Sulangari. When any deed or deeds are produced as comparable sale instance or instances, Court shall check the proximity from time angle and proximity from situation angle. In the given case, lands under acquisition were located in Sulangari Mouza appertaining to plot nos. 542 to 679 and hence, it can be argued that transactions based by the

referring claimants have proximity in respect of time angle and situation angle also.

27. Referring claimants produced deeds regarding plot nos. 621, 701, 724, 288, 269, 328 & 105 of same mouza and Ext.-1 shows that plot no. 621 was sold at Rs.25,200/- per cottah whereas deeds being Ext.2 to 6 show that plots of lands pertaining to these were sold at Rs.20,000/- per cottah whereas plot no. 105 was sold at Rs.23,151/- per cottah and from Ext.-1 to 7, it would be reflected that from 2 cottahs to 4 cottahs of land in the same mouza were transferred.

28. So, average of all those consideration monies reflected from Ext.1 to 7 would be Rs.21,193/- per cottah. In such sequence of facts, we are of the view that it would suffice if market value of Sali land under acquisition is assessed at Rs.22,000/- per cottah. Learned Court below has assessed the value of Doba @ $\frac{2}{3}$ rd of Sali land. As per *Parks' Principle and Practice of Valuation*, Courts adopted a method of valuing tanks at one-half the value of solid land but in case of *State of W.B. v. Ganesh Chandra Mitra & Ors. (supra)*, in absence of proper materials enabling the Court to determine the value of the tank in a logical and scientific manner, the Court refused to accept such method. In the given case, Collector himself assessed the value of Doba @ $\frac{1}{2}$ of the value of Sali land. Upon consideration of such assessment made by the Collector himself, we are inclined to assess the market value of Doba @ $\frac{1}{2}$ of Sali land i.e. Rs.11,000/- per cottah.

29. Section 7 of Act- II of 1948 lays down that the amount of compensation shall be determined in the manner and in accordance with

the principles set out in sub-section (1), (1A) and (2) of Section 23 of Act-I of 1894. As per Section 23(1A) of Act -I of 1894 Court has awarded interest @ 12% p.a. on the market value from the date of notification till the date of award. Court has awarded solatium as per Section 23(2) of Act -I of 1894. Reference Court has taken recourse of Section 28 of Act-I of 1894 and awarded interest. Collector awarded rental compensation @ 6 % p.a. from the date of possession till the date of notification.

30. Section 28 of Act -I of 1894 has empowered the reference Court to award interest on excess amount @ 9% p.a. from the date of possession to the date of payment of such excess amount and proviso of Section 28 speaks that if such excess amount is paid after expiry of one year, then reference Court may award interest on excess amount @ 15 % p.a. from the date of expiry of one year to the date of payment.

31. Section 34 of Act -I of 1894 lays down that when amount of compensation has not been paid on or before taking possession of the land, the Collector shall pay the amount awarded with interest @ 9% p.a. from the date of taking possession till the date of payment and if such compensation is not paid or deposited within a period of one year from the date of taking possession, then interest @ 15% p.a. shall be awarded on amount of compensation from the date of expiry of one year till the date of payment and/or deposition.

32. In repetitive judgments, it was ruled that where a large block of land is required to be valued, appropriate deduction is to be made for curving out roads, for leaving open spaces and for marking out smaller plots

suitable for construction of buildings. The extent of area required to be set apart in this connection has to be assessed by the Court having regard to the shape, size and situation of the concerned block of land. However, there cannot be any hard and fast rule. It is essentially a question of fact depending on the facts and circumstances of each case.

33. Record reveals that 11.42 acres of Sali land and Doba appertaining to ten numbers of plots belonging to referring claimants were acquired and the Collector deducted 10% of market value. Possession of the lands were taken in 1988 and those lands were developed and then notification was issued in December, 1996. Learned Court below did not deduct any amount on the premise that where the lands situated in developed area suitable for construction of building and having all amenities such as roads, drainage, electricity, communication etc., then deduction only for the reason that it is part of the large chunk of land would not be justified moreso when possession of the land was taken in 1988 and notification was published in 1996. We do not find any error in such approach of the learned Court below. Admittedly, judgments relied upon on behalf of the State have unquestionable value of the proposition laid down therein but those judgments shall not come in aid of the appellant.

34. In such conspectus, we direct as follows:

- i) the market values of Sali land and Doba are assessed at Rs.22,000/- per cottah and Rs.11,000/- per cottah respectively;

- ii) Claimants shall get interest @ 12 % p.a. on such market value from the date of notification to the date of award;
- iii) Claimants shall get Solatium @ 30% on such market value as per Section 23(2) of Act –I of 1894;
- iv) Claimants shall get interest as per Section 28 of Act-I of 1894 i.e. the claimants shall get interest @ 9% p.a. on excess amount from the date of possession till the date of payment of award in the Court and claimants shall get interest @ 15% p.a. on excess amount from the date of expiry of one year till the date of payment of award;
- v) Claimants shall also get amount awarded with interest @ 9% p.a. from the date of taking possession till the date of payment award and interest @ 15% p.a. shall be awarded on amount of compensation from the date of expiry of one year till the date of payment as per Section 34 of Act –I of 1894.

35. In conclusion, the appeal preferred by the State being FA 54 of 2023 is dismissed. The cross-objection being C.O.T. no. 15 of 2019 preferred by the referring claimants is allowed in part. The impugned judgment and decree are, accordingly, modified. Parties to bear their own costs.

36. The appellant is directed to calculate the compensation in terms of this judgment and to make payment of such compensation to the referring claimants within three months from date after adjusting the amounts

already received by the referring claimants from the learned Registrar General, High Court, Calcutta.

37. Let a decree be drawn up, accordingly.

38. Let a copy of this judgment along with LCR be sent down to the learned Court below forthwith.

39. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)