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**03.10.
2023**

Ct. No. 04

Ab

**FA 201 of 2022
IA No. CAN 4 of 2022**

**Sri Arijit Mallick
Vs.
State of West Bengal and others.**

With

FA 249 of 2011

**Metro Railway rep. By General Manager,
Ministry of Railways
Vs.
Arijit Mallick and another.**

**Mr. Rwitendra Banerjee,
Mr. Monotosh Ghosh,
Mr. Anujit Mookherji.**

**... for the appellant in FA 201
of 2022 and for the
respondent no. 1 of FA 249
of 2011.**

Ms. Aparna Banerjee.

**... for the respondent no. 2 in
FA 201 of 2022 and the
Appellant in FA 249 of 2011**

Mr. Supratim Dhar.

... for the State.

It is a second round of litigation assailing an order of the Land Acquisition Court is filed at the behest of the rival parties.

Admittedly, the premises nos. 128/51A to 128/55A, Bidhan Sarani including 128/55A, Bidhan Sarani, 128/13A to 128/23A, Bidhan Sarani, 128/51B, Bidhan Sarani, 128/51A, Bidhan Sarani, 128/40A to 128/50A, Bidhan Sarani, 1/4A and 1/5A, Krishnaram Bose Street were acquired for construction of Mass Rapid Transit System and other connected works relating to the Metro Railways running between Dum Dum to Tollygunge.

A notification under Section 4 of the Act I of 1894 was published on 5th October 1972 and the declaration under Section 6 was published on 3rd August 1979. Since

it was for a public purpose and there was no dissent in this regard, the Land Acquisition Collector assessed the compensation in respect of the aforesaid premises. The appellant did not accept the valuation arrived by the Land Acquisition Collector and filed an application for reference under Section 18 of the said Act and the matter was ultimately sent to the Land Acquisition Court for determination of the market value of the property and the other statutory entitlement under the aforesaid Act.

The reference case, which was registered as LA 59 of 1992, was allowed to be proceeded with by the Land Acquisition Court and invited the appellant to adduce evidence in support of the claim. As a matter of record, it is important to note that the proceeding was allowed to continue in absence of a Requiring Body i.e. Metro Railways.

The appellant examined Mr. D. G. Chakraborty, the Chartered Engineer and Valuer, as first witness to corroborate and prove the report submitted by him touching not only on the market value but also on the topography of the land being the subject matter of the aforesaid case. Ultimately, the said report was marked as Exhibit-1 without objection from the State. The said case ultimately came up for final disposal on 29th September 2001 wherein the Land Acquisition Court observed that the land, which is the subject matter of the said acquisition proceeding, has more advantages because of the three road frontages, some of which is nearly 100 ft. wide and are situated more closure of five point crossing of Shyambazar, which is one of the prime locality of the city of Kolkata, not only in relation to the commercial activities but also prime residential locality.

It further revealed from the record that another property being 129, Bidhan Sarani, belonging to the present claimant was also the subject matter of acquisition for the said purposes and market value was determined at Rs. 1,27,700/- per cottah and the said

order of the Land Acquisition Court was affirmed up to this High Court.

Naturally, it was sought to be contended that the subject property, which has more advantages than the aforesaid property, wherein the market value was assessed at Rs. 1,27,700/- should be assessed more. The Land Acquisition Court on the basis of the report submitted by the Engineer-cum-Valuer held that the claimant is entitled to more amount than what was assessed for the other property of the claimant.

Interestingly, the learned Government pleader suggested that an appreciation by fifteen percent on the value of Rs. 1,27,700/- may be awarded but the report of the Engineer-cum-Valuer indicates that there should be an escalation to the extent of twenty percent. However, the Court took an average of fifteen percent to twenty percent and arrived at the conclusion that the value of the acquired land at the relevant point of time is 1,50,000/- per cottah.

The said judgment was assailed before the Division Bench of this Court in FA 249 of 2011 by the Metro Railways (Requiring Body) solely on the ground that in a reference case originating under Section 18 of the said Act and any determination made therein is bad in law having decided in absence of the Requiring Body.

Solely on the ground that the Requiring Body ought to have been added as a party in the said proceeding and should be given an opportunity to defend the said reference case, the judgment of the Land Acquisition Court was set aside and the matter was remitted back to the Land Acquisition Court to take a fresh decision on the escalation part only. The Division Bench categorically observed that the valuation at Rs. 1,27,700/- per cottah remained affirmed and the Land Acquisition Court shall not revisit its decision thereupon but restricted the consideration on the escalation part with a rider that in the event the Requiring Body chose to contest, it may

cross-examine the witness of the claimant and in the event chose to adduce evidence, an opportunity to cross-examine the witness by the claimant was also provided.

Importantly, the Requiring body after being impleaded as party in the said proceeding filed the objection but did not adduce any evidence nor made any prayer to cross-examine the witness examined by the claimant in the said case.

Astonishingly, the Land Acquisition Court rejected the claim of the appellant restricted to the escalation part on the ground that the claimant has miserably failed to prove by cogent evidence that the acquired land being the subject matter of dispute therein is situated near to five point crossing at Shyambazar or has three road frontages.

The aforesaid finding cannot be sustained for the simple reason that the Engineer-cum-Valuer was cited as first witness to prove the report submitted by him in respect of the subject properties. The said report was marked as Exhibit-1 in presence of the State, but obviously in absence of the Requiring Body as it was not impleaded as party at the said relevant point of time.

The observation of the Division Bench was categorical being alive of the fact that the witnesses have been examined by the claimant to provide an opportunity to cross-examine such witnesses. The moment the report is marked as 'Exhibit' without any objection and despite the opportunity having given to cross-examine the said witnesses, the same having not availed of, the report goes uncontroverted and the moment it is marked Exhibit without any objection, the contents have to be understood and considered to have been proved.

It is expressly indicated in the said report that the plots being the subject matter of the instant proceeding enjoy three road side i.e. Bhupen Bose Avenue, Bidhan Sarani and Krishnaram Bose Street. The Valuer adopted the belting method separately because of the aforesaid advantages, which the said plots enjoyed and ultimately

arrived at the conclusion that the base price, which was fixed for premises no. 129, Bidhan Sarani being the subject matter of the of the other acquisition proceeding cannot be similar and identical to the plots being the subject matter of the instant acquisition proceeding.

Since the deposition of the first witness of the claimant goes uncontroverted as no cross-examination was done nor an opportunity given by the Division Bench was availed of, we do not find any justification in the stand of the Land Acquisition Court that the claimant has failed to prove that the subject plot had more advantages than the advantages enjoyed by premises no. 129, Bidhan Sarani, Kolkata.

So far as the escalation part is concerned, the Valuer has suggested twenty percent escalation over and above the rate per cottah determined in respect of premises no. 129, Bidhan Sarani, but at the time of argument, the learned Advocate appearing for the appellant submits that his client is ready to forego the above and may squeeze his claim at fifteen percent escalation.

In view of the above and the fact that the subject plots have an additional advantage not only having three road frontages but nearer to five point crossing at Shyambazar, we, therefore, award fifteen percent escalation over and above Rs. 1,27,700/- per cottah. The claimant is entitled to get an award of Rs. 1,46,855/- per cottah for the quantum of the land acquired. Over and above, the claimant is also to get a solecium at the rate of thirty percent in respect of the entire value of the land. The claimant is also entitled to an additional statutory compensation at the rate of twelve percent per annum on the entire land value and the value of the structure from the date of publication of the notification till the date of the award. The claimant is further entitled to an interest on the entire compensation at the rate of nine percent per annum for the first year from the date of possession and thereafter at the rate of fifteen percent per annum till the

entire amount is paid.

It is, however, made clear that upon arriving at the calculation in terms of the above order, the amount, which has already been paid to the appellant, shall be deducted therefrom.

It further appears that a considerable amount has been deposited by the respondent before the Registrar General of this Court while the earlier appeal was filed before this Court. The said amount is still lying with the Registrar General and, therefore, a submission is made that despite an application for withdrawal of the amount, the same has not been released as on date.

We, therefore, direct the Registrar General to expedite the said application filed by the respondent no. 2, the Metro Railways, on 7th September 2022 and shall see that the same is disbursed to the said respondent within two weeks from date.

With these observations, both the appeals and the connected application being CAN 4 of 2022 are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

