

06 09.02.2023
to
17
Ct-08

FA 283 of 2009

State of West Bengal represented through the
L.A. Collector, North 24 Parganas
Vs.
Sushama Mondal

with

ar

FA 284 of 2009
with
FA 285 of 2009
with
FA 286 of 2009
with
FA 287 of 2009
with
FA 288 of 2009
with
FA 289 of 2009
with
FA 290 of 2009
with
FA 291 of 2009
with
FA 292 of 2009
with
FA 293 of 2009
with
FA 294 of 2009

Mr. Chandi Charan Dey
Mr. Himangshu Chakraborty
Mr. Abdus Salam
... For the Appellant/State

Mr. Sourav Sen
Ms. Adrisnata Chakraborty
... For the Award-holders

Soumen Sen, J.(oral): All the appeals are taken up together by consent of the parties for consideration as these appeals involve a common judgment and award passed by Land Acquisition Judge at Barasat arising out of reference cases under Section 8 of Act-II of 1948 read with

Section 18 of Act-I of 1894 of Land Acquisition Act in connection with L.A II/83/1 of 1991-1992 preferred by the referring claimants. The Land Acquisition Judge set aside the award passed by the L.A Collector, North 24 Parganas.

The market value of the land under acquisition was assessed at Rs.39,809/- per cottah by the L.A Judge in respect of Sali land and consequential orders were passed with regard to the interest and solatium. There are altogether 15 claimants, although State of West Bengal had preferred 15 separate appeals and we have been informed that in respect of three appeals that were dismissed for default and not yet restored.

Although, we directed the parties on the last occasion to file notes of arguments, the appellant has not filed any law notes. The respondents, however, filed their law notes.

Learned counsel for the appellant/State has submitted that the Collector had assessed the market value of the land in question at Rs.5,64,128/- per acre i.e. Rs.9,000/- per cottah for *bagan*, *bastu* and *sali* class of land on the basis of average and various sale deeds registered at that relevant point of time.

It is submitted that the learned Judge has

failed to appreciate that the said land was acquired for construction of a Housing Complex i.e. for public purpose. In view of largeness of the plots the criteria applied by the learned L.A Judge in determining the market value of the property acquired was wrong and contrary to law. It is also submitted that the valuation made by the learned trial court is four times the valuation made by the Collector without disclosing any reason for such revised valuation.

It is submitted that the Collector assessed the market value after taking into consideration the nature of the land and upon such consideration the valuation of the land was determined at the rate of Rs.9,000/- per cottah for *danga, bastu and sali* class of land. It was based on the rate card for the relevant period.

The award-holders have failed to show that the Collector's award is erroneous and sale transactions relied upon by the Collector is without any basis. The character of the land and sale transactions relied upon by the referring claimants are not of same or similar character, moreover, the learned Trial Judge has failed to take into consideration the development cost incurred by the appellant as the land was not suitable for construction.

Per contra, Mr. Sourav Sen, learned counsel representing the award-holders, has submitted that the State has failed to justify the award of the Collector. It is submitted that the learned Trial Judge has categorically observed that in spite of giving repeated opportunities to the State to disclose the basis of valuation the appellant/State has failed to disclose the relevant materials nor the state could and the learned Judge substantiate their claim of expenditure being incurred for development of the property in question.

It is submitted that for the purpose of determining the market value of the land the relevant date is the date of notification. The notification under Section 4(1a) of the West Bengal Land (Requisition and Acquisition) Act, 1948 was published in the Calcutta Gazette on 25th July 1996. The date of notification would be the relevant date of determining the market value of the land. The sale transactions relied upon by the referring claimants are of that period only. The land in question is not large. The learned Trial Judge has assessed the market value considering the small quantity of land involved and the sale transactions disclosed and relied

upon in relation to land having same and similar character as that of the acquired land. The state had acquired land measuring at 22 acres which is less than 1/4th of an acre and there are 15 (fifteen) claimants.

Mr. Sen submits that out of 15 claimants appeal prepared against three claimants were dismissed for default and not restored as yet.

Mr. Sen has further submitted that in determining the market value proximity as to time and proximity of the comparable land are required to be taken into consideration. A reference under the Land Acquisition Act is not an appeal against the award and court cannot take into account the material relied upon by the L.A Collector in his award unless the same material is produced and proved before the Court. The assessment of the market value is merely an offer and once it is challenged, it is for the Land Acquisition Collector to disclose the basis of such valuation and produce all the relevant materials in justification of the award. In the event, any such material is not produced, the court shall draw an adverse inference against the award and may re-determine the issue on the basis of the evidence that may be produced before the learned Trial Judge in a reference

under Section 18 of the Land Acquisition Act.

It is further submitted that the court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

Mr. Sen has argued that the Collector had relied upon three sale transactions of the year 1993 as opposed to three sale transactions of 1996 produced by the referring claimants. It is submitted that there is no impediment in taking into consideration of a post notification instances if they are proximate, genuine and the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. The most comparable instances, out of the genuine instances, have to be identified on the consideration of proximity from time angle and proximity from situation angle as has been applied by the learned trial judge in determining the market value of acquired land.

Mr. Sen has submitted that the plus factors are smallness of size, proximity to a road, frontage on a road, nearness to developed area, regular shape, level vis-à-vis land under acquisition and special value for an owner of an adjoining property to whom it may have some

very special advantage and minus factors are largeness of area, situation in the interior far away from the main road, narrow strip of land with very small frontage compared to depth, lower level requiring the depressed portion to be filled up, remoteness from developed locality and some special disadvantageous facts which would deter a purchaser.

Mr. Sen submits that the aforesaid factors for the purpose of determining the market value of land has been elaborately discussed in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer Poona and Anr.*, reported in (1988)3 SCC 751 inasmuch as the said principle has been reiterated by the Apex Court in the case of *Bharat Sanchar Nigam Limited vs. Nemichand Damodardas and Ors.*, reported in AIR 2022 SC 3458.

Mr. Sen further submits that the State before the learned LA Judge has supported the valuation on the premise that: 1) due to lack of sale data the sales for the year 1993 were considered and after determination of land value for the year 1993 value was determined by enhancing the rate to the same was appreciated by 5% to reach reasonable rate per acre for the year 1994, 2) due to lack of data for Doba land

the value of Sali land was given for Doba land as per existing norms and sale deeds being Exhibit-A to Exhibit A(3) are all of 1993.

The sale deeds although were produced by the State of West Bengal but none had come forward to give evidence on behalf of the State.

It is submitted that the learned trial judge has taken into consideration that the Collector did not send any statement to the reference court demonstrating the basis on which the Land Acquisition Collector, North 24 Parganas, had arrived at the market value of the land in question inasmuch as no adequate evidence was produced by the State. Mr. Sen submits that due to lack of evidence and any attempt by the State even to justify the valuation made by the Collector in the reference proceeding the learned trial judge was justified in relying upon the sale transaction produced by the award-holders for assessing the market value of the land in question.

We have carefully read the judgment of the learned trial court. It is quite clear from the judgment of L.A Judge that the State did not make any attempt to justify the valuation made by the Collector. The right to property although is no more a fundamental right. The State cannot

acquire the land except in accordance with law. The land acquired for public purpose or any other purpose by the State are on the basis of land legislations which clearly indicate that the land-looser should be adequately compensated in accordance with the provisions of the Act. The assessment made by the Collector is not sacrosanct as it is amenable for fresh consideration in a proceeding under Section 18 of the L.A Act.

It appears from the impugned order that the Collector did not send any statement to the L.A Court showing the basis on which the L.A Collector, North 24 Parganas, arrived at the market value of the land under acquisition. It is also recorded that no adequate evidence has been adduced to substantiate the award passed by the L.A Collector even during hearing of the aforesaid reference. The State was found to have abstained from adducing evidence-showing justification of the award made by the L.A Collector. The learned Trial Judge observed that the sale transaction involved in Exhibit-A to Exhibit-A(3) as submitted by the State are all of 1993 and those cannot be treated to be considered on the material date that is the date of Section 4 notification i.e. 25th July 1996. The

learned L.A Judge in calculating the market value at the time of notification considered three deeds produced by the claimants being Exhibit no. 1 deed no. 635 dated 14.02.1996 value Rs.50,000/- per cottah, Exhibit no. 1a deed no. 2972 dated 08.02.1996 value Rs.50286/- per cottah and Exhibit no. 1c deed no. 2055 dated 20.05.1996 value of Rs.39,328/- per cottah and considering those three deeds the learned LA Judge had come to a conclusion that the market value of the acquired land at the relevant time would be Rs.39,809/- per cottah.

The appellant before the reference court as well as before us tried to argue that the determination of the market value assessed on the basis of Exhibit-A to Exhibit-A(3), which the basis of valuation of the L.A Collector, should have been accepted on the ground that due to development of the locality after the land was acquired in 1993 at the instance of the state the price of the land might have increased. Moreover state had incurred expenditure for development. However, the State has failed to adduce any evidence to show that any expenditure was incurred towards development of the aforesaid period.

On the contrary, the aforesaid three deeds

are proximate from time angle and proximate from situation angle. It cannot be disputed that the sale transactions are contemporaneous and disclosed the character of the land forming the subject matter of sale transaction of 1996 as same and similar to the land acquired by the appellant in the year 1993.

Although, it was open to the learned trial judge to accept the highest value and determine the compensation on the basis of highest value of sale transaction, the learned LA judge, however, applied the test of average of three sale transactions and determined the market value on the basis of such average.

It is well settled that a reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the court. In the instant case, admittedly the material before the Land Acquisition Collector was not produced and the date of three deeds were never proved. As observed in *Chimanlal Hargovinddas (supra)*, the award of the L.A Collector is not to be treated as a judgment of the trial court open or exposed to challenge before

the court hearing the reference. It is merely an offer made by the L.A Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as it were an appellate court. The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

In the instant case, the referring claimants were able to establish that the highest offer for their land in the award is identical on the basis of three sale transactions of most comparable units and on the basis of such materials L.A court has assessed the market value.

Under such circumstances, we do not find any reason to interfere with the well reasoned judgment and order of the reference court.

All appeals accordingly stand dismissed.

In view of dismissal of appeals, we direct the learned Registrar General to encash the fixed deposit and disburse the amount to the claimants in proportion to their share within four

weeks from the date of communication of this order.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)

