
State of West Bengal Vs Jogendra Nath Chatterjee

None

Court: Calcutta High Court

Date of Decision: March 15, 1982

Acts Referred:

Land Acquisition Act, 1894 " Section 11, 18, 19, 23, 4

Citation: 86 CWN 685

Hon'ble Judges: Sharma, J; Chittatosh Mookerjee, J

Bench: Division Bench

Advocate: N. G. Das, for the Appellant; S. P. Ropchowdhury and Sudhir Kumar Dutta, for the Respondent

Final Decision: Allowed

Judgement

1. The State of West Bengal has preferred this appeal against the judgment and decree of the learned Additional district judge, 5th Court,

Burdwan allowing in part a Land Acquisition Reference Case and awarding in favour of the Respondent compensation at the rate of Rs. 180000/-

per acre for acquisition of his Plot No.1336 mouza Birhanpore, district Burdwan. The learned Additional District Judge also directed payment of

interest at the rate of 6% per annum from the date of the award till payment.

2. The State of West Bengal had issued the relevant notification dated 14th June., 1961 u/s 4 of the Land Acquisition Act stating inter-alia that the

said Plot No. 1336 measuring 53 decimals out of which 19 1/2 decimals was owned by the present Respondent was likely to be needed for

improvement of the railway station and for construction of staff quarters. On 11th November,1964 the declaration dated 13th June, 1964 for

acquisition of the said plot was published. On 12th December, 1964 a Land Acquisition Collector made his award determining Rs. 13683.08 P.

as compensation for the said acquired land of the appellant and also for trees, houses etc. The Respondent made a petition u/s 18 of the Land

acquisition Act for referring the case to the learned District Judge for determination the question of valuation. The learned Additional District Judge

as already stated has enhanced the compensation by assessing the price of the acquired plot at Rs.180000/- per acre.

3. Mr. Das, learned advocate for the appellant, had initially submitted that the referring claimant Respondent did not deliver to the Collector any

statement of claim u/s 9 of the Land Acquisition Act, and therefore, he was not entitled to pray for enhancement of the compensation awarded by

the Collector. But Mr. Roychowdhury, learned advocate for the respondent, has rightly drawn our attention to the finding recorded by the learned

Additional district Judge that it was conceded before him by the learned Government Pleader that the statement had no claim petition had been

filed in Form 16 was not correct and in fact the petitioner had filed the requisite claim petition. In the first place, it is settled principle that when a

statement appears in the judgment of a court that a particular thing happened or did not happen before it, it ought not ordinarily be permitted to be

challenged by party unless both the parties to the litigation agree that the statement was wrong or the court itself admitted that he statement was

erroneous. The remedy by a party aggrieved would be by way of review (vide Bank of Bihar Ltd. Vs. Mahabir Lal and Others,). In the instant

case, the learned Additional District judge had recorded a concession made by the learned Government Pleader recording the factum of filing of a

statement of claim by the referring claimant and not recording any point of law. Therefore in this appeal the State would be bound by the said

concession on a question.

4. The learned Additional District judge has enhanced the compensation by relying upon the certified copy of a sale deed 27th July, 1959 by which

.031/2 acres out of the acquired Plot No. 1336 had been sold for Rs. 6000/-. The rate per acre according to the sale deed dated 27th July, 1959

(Ext.1) was Rs. 180000/-. The learned Additional District Judge has held that the compensation for acquisition of 191/3 acres of land of Plot No.

1336 should be also assessed at the same rate of Rs. 180000/-. The learned Additional District Judge also added 15% statutory allowance to the

said price and awarded a total sum of Rs. 40710/- with interest at the rate of 6% per annum.

5. We have perused the records and also have heard the learned advocated for the parties. In our view, the learned Additional District Judge was

not very wrong in rejecting the sale deed (Ext.A) dated 9th June, 1959 which showed that .05 acre of Plot No. 1337 of the same mouza had been

sold at the rate of Rs. 60000/- per acre. The said plot was at some distance from the acquired plot and also for other reasons given by the learned

Additional District Judge could not be considered as a comparable one. Although we agree with the learned Additional District Judge that the

kobala (Ext.1) showing sale of .03 1/2 acre of land of Plot No. 1336 was a relevant piece of evidence to be taken into consideration for

determining the market value of the acquired land at the date of the publication of the relevant notification u/s 4 of the Land Acquisition Act, some

allowance ought to be made for the fact that the Ext.1 was in respect of a much smaller area of land. The area of the acquired plot was .19 1/3

acres i.e. nearly 10 times larger than the area of the land sold by the deed (Ext.1). It is common knowledge that smaller plots of land normally fetch

higher price. Therefore, we propose to scale down the price of Rs. 180000/- per acre to make allowance for the said fact of the acquired plot

being of larger size. It would be reasonable to fix the price of the acquired lands at the rate of Rs.160000/- per acre.

6. The referring claimant Respondent made an application in this court for receiving as additional evidence two judgment respectively 10th

September, 1974 and 5th August, 1975 in L. A. Case Nos. 79 of 1972 and 30/77 of 1974/1972. We do not require the additional evidence for

pronouncing our judgment in this appeal. We have decided to uphold the finding of the learned Additional District Judge that subject to a small

deduction on account of difference in sizes of the two plots, the sale ought to be accepted as the basis for assessing compensation for the acquired

plot. The learned District Judge, Burdwan by his judgment dated 30th September, 1974 in L. A. Case No. 79 of 1972 purported to determine Rs.

8500/- as the market value of the structures standing on the acquired Plot No. 1337. It appears that there was a separate award under sec. 11,

reference and judgment by the Land Acquisition Judge only in respect of the said structures. The said reference was not made for determination of

the value of the land per acre. The learned District Judge had determined the value of the structures by capitalizing the notional rental of the

structures for 10 years purchase. It is unnecessary for us to examine whether or not the learned District Judge was justified in deducing from the

said capitalized rental value of the structures, the price of the land upon which the structures stood. Therefore, it is irrelevant for us to take into

consideration the said calculation of the price of the land upon which the structures stood. In fact, the learned District judge did not record the

reasons for his said finding about the price of the land.

7. The judgment of the First Additional District Judge in L. A. Case No. 30/77 of 1974/1972 need not be also admitted into evidence for

pronouncing our judgment or for any other relevant reasons. The learned District Judge relying upon the same sale deed in respect of .3 1/2 acre of

Plot No. 1336 had determined the market price for acquisition of another portion of the same plot at the rate of Rs. 180000/-. The subject matter

of the said judgment of the learned Additional District Judge was also a very small plot measuring .03 acre, whereas, as already stated, the

acquired plot in the case before us is much bigger in size. Therefore, we reject the application for additional evidence filed on behalf of the

respondent.

8. Mr. Roychowdhury has relied upon certain observations at page 300 (paragraph 12) of the Division Bench decision in State of West Bengal

Vs. Secretary, Union Club, Purulia, and has contended that the appellant State of West Bengal ought not to be allowed to make any submission

that even on the basis of the kobala (Ext.1) produced by the referring claimant, he ought to be awarded compensation at a rate less than Rs.

180000/- per acre. The said decision in State of West Bengal v. Secretary, Union Club (supra), has no manner of application to the facts of the

present case. In the first place, we have already indicated that we concur with the learned Additional District Judge at the kobala (Ext.1) produced

by the referring claimant was a relevant piece of evidence, but in our view, in determining the market value of the acquired lands due allowance

ought to be made for comparatively large size of the acquired plot of land. In this case, no question arises of allowing the appellant State to rely

upon any transaction which was not considered at the time of the passing of the award by the Collector.

9. The learned advocate for the respondent, in our view, is not correct in his submission that the division Bench in State of West Bengal v.

Secretary, Union Club (supra), has laid down as a general proposition that at the time of the hearing of a reference case before the civil court or in

an appeal u/s 54, the State cannot rely upon any transaction which was not considered by the Collector at the time of the enquiry u/s 11 of the

Land Acquisition Act, 1894. It is settled law that proceedings before the Collector and the award passed by him are administrative and not judicial

in their nature. When the Collector holds an enquiry and makes an award u/s 11 of the Act he is not a court (vide Ezra v. Secretary of State ILR

32 Cal. 605 (P.C.): 9 C.W.N. 454). The Division Bench in Fink vs. Secretary of State for India ILR 34 Cal. 599 which was relied upon by the

later Division Bench decision in State of West Bengal v. Secretary, Union Club (supra) pointed out that though the claimant must on a reference u/s

18 of the Act begin and thus start a case showing that the Collector's award should not be accepted, the onus of proof varies according to the

probative value of the enquiry made by the Collector u/s 11 of the Act. The Division Bench in Fink's case (supra), also pointed out that when the

reference is made, the Collector is bound to state u/s 19 the grounds on which his award of compensation was based. If, however, the Collector

makes no enquiry and gives no ground for his valuation, the burden of proof on the claimant is nominal. The Special Judge must decide according

to the weight of evidence irrespective of the question of onus probandi and without throwing on the claimant an undue share of it (vide pages 605

and 606 of the report). Although section 11 of the Act does not expressly require the Collector to mention the evidence on the basis of which he

makes his award, clause (d) of section 19 of the Act is a "most salutary provision of the law of land acquisition, because, by requiring the Collector

to state in the reference to the court the grounds on which the amount of compensation was determined, it operates as a safeguard against any

arbitrary award being made"" (see Madhusudan Das v. The Collector of Cuttack 6 C.W. N. 406). It has been also held that the failure of the

Collector to state the grounds on which the amount of compensation was determined as required by section 19(d) makes it incumbent upon the

Collector to justify the award before the Judge (vide Harish Chunder Neogy, Claimant Vs. The Secretary of State for India in Council).

10. There is however no warrant for the proposition that before the civil court the Government cannot rely only upon those transactions upon

which the Collector had based his award. But when in making his award the Collector himself recorded that a particular sale transaction was not

relevant for determining the market value of the acquired lands, subsequently, at the hearing of the reference case the court may not allow the

Government to take an inconsistent stand by relying upon the very transactions which had been once before rejected by the Collector as irrelevant.

The Division Bench in Charu Prokash Ghosh Vs. State of West Bengal, did not allow the State to rely upon the Exts. B and C because the Land

Acquisition Judge had observed that the said exhibits did not afford any reliable index of the valuation of the disputed property and they were not

relied upon by the Land Acquisition collector also. Similar reasons were given by Narasimham, J. The sub Collector, The Sub-Collector, Ongole

Vs. Yerra Anumanchamma, , for not relying upon Ext. A10, because the officer who passed the award did not consider that as relevant in

awarding market value of the land in question (vide paragraph 28page 234).

11. For the foregoing reasons, we hold that the State in the present case is not precluded from urging that even if Ext.1 is accepted as a relevant

piece of evidence for determining the market value, some deduction ought to be made in calculating the market value of the acquired plot of land.

12. We, therefore, allow this appeal in part, modify the judgment and decree of the trial court and direct that the referring claimant Respondent be

paid compensation for the acquired land at a rate of Rs. 160000/- per acre. In addition, he would be entitled to receive statutory allowance at the

rate of 15% in terms of section 23(2) of the Land Acquisition Act. The sum awarded will carry interest at the rate of 6% per annum from the date

of possession till the date of payment or deposit of the compensation money. We grant three months time to the State to pay the balance amount of

the compensation .

13. There will be no order as to costs.

Sharma, J.

14. I agree.