Badal Chandra Das Vs Collector (Land Acquisition)

F.A. No. 196 of 1997 and F.A. No. 198 of 1997

Court: Calcutta High Court

Date of Decision: Feb. 15, 2008

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 27#Land Acquisition Act, 1894 â€" Section 18

Citation: (2008) 2 CHN 741

Hon'ble Judges: Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Bidyut Kumar Banjerjee and Shila Sarkar, for the Appellant;None, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.
These two first appeals are at the instance of a referring claimant and are directed against the common award

dated 21st August, 1996 passed by the Land Acquisition Judge, Raiganj in L.A. Miscellaneous Case No. 26 of 1994 heard along with L.A.

Miscellaneous Case No. 27 of 1994 thereby enhancing the award passed by the Collector to Rs. 10,74,615/- together with interest at the rate of

9 per cent per annum on the excess amount which the Collector had already paid to him.

2. The facts giving rise to filing of these appeals may be summed up thus: Being dissatisfied with the awards of compensation passed by the

Collector (Land Acquisition, Uttar Dinajpur), the petitioner made two references u/s 18 of the Land Acquisition Act. According to him, the market

value of the acquired land was not properly assessed considering the position, location and future prospect of the land. The appellant further

complained that no amount was paid for acquisition of fishery notwithstanding the fact that there was large quantity of fishes therein and the

Collector made award of a meagre amount for the acquisition of the standing trees on the land.

3. At the time of hearing of the proceeding, no deed was marked as exhibits in support of the price of the land of the locality although several

deeds were relied upon by the parties showing the price of the lands in the area as it appears from the awards impugned herein. It further appears

from record that the learned Court below, based on the documents, which are not marked as exhibits, and even not available on record, and the

submissions made by the learned Counsel for the parties, disposed of those references. Before this Court, an application under Order 41 Rule 27

of the CPC has been filed for an opportunity of giving evidence showing the valuation of the land by production of registered deeds executed by

the different parties. The appellant also has tried to produce materials showing the amount of income from the fishery business at -the relevant point

of time. It appears from awards impugned that some deeds were relied upon by the parties before the learned Court below but for the reasons

best known to the Court below as well as the parties, those were not marked as exhibits and are not even available on the records of the case.

4. In spite of service, none appears on the behalf of the State-respondent, although, initially Mr. Bhabani Prasad Mondal, Advocate, appeared for

the State. On his personal ground, he returned the brief; thereafter, a specific notice was given to the learned Government Pleader for engaging

another lawyer in his place but in spite of such communication,, none has appeared.

5. After hearing Mr. Banerjee, the learned Advocate appearing on behalf of the appellant and after going through the aforesaid materials on

record, we are of the view that the way, the reference cases have been disposed of, cannot be supported and the parties should be given

opportunity to lead evidence in support of their respective claim in accordance with law. We, accordingly, allow the application under Order 41

Rule 27 and at the same time, permit the State-respondent to lead evidence to controvert those additional pieces of evidence. As regards the

various receipts produced by the appellant are concerned, the maker of those statements must also be examined for proving the contents thereof

and opportunity to cross-examine such persons must be given to the State-respondent.

6. We, therefore, set aside the award passed by the learned Court below and remand the matter back to enable the parties to lead evidence in

support of their respective claims in accordance with law. The learned Trial Judge after consideration those pieces of evidences and of the

materials already on record will pass fresh awards. We are given to understand that the awarded sum has been already been withdrawn by the

appellant without prejudice to his right and contentions in these appeals. Such being the position, the amount withdrawn should be adjusted

towards the future awards that will be passed after remand. The appeals, thus, are allowed. The award impugned is set aside and the matter is

remanded back in terms of our above order. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

7. I agree.