

(2006) 08 CAL CK 0042

Calcutta High Court

Case No: F.A. No. 302 of 2005

Secretary, Irrigation and
Waterways Department and
Others

APPELLANT

Vs

Choudhury Manjur Affaqu and
Another

RESPONDENT

Date of Decision: Aug. 30, 2006

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 20, 23, 50, 50(2)
- Land Requisition and Acquisition Act, 1948 - Section 4

Citation: (2008) 3 CHN 623

Hon'ble Judges: Sanjib Banerjee, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: Bikash Ranjan Bhattacharyya and Sitaram Samanta, for the Appellant; Asok Banerjee and Goutam Kurmar Thakur, for the Respondent

Final Decision: Dismissed

Judgement

1. This appeal is directed against the judgment and award, dated 31st March, 1999 and 8th April, 1999 passed by the learned Land Acquisition Special Judge in case No. 69 of 1996. The instant appeal has been preferred by some officials of the State of West Bengal being aggrieved by the quantum of compensation award by the learned Land Acquisition Judge. The short facts of the case are as follows.

2. Several plots of land were acquired by and under a notification issued u/s 4 of Land Requisition and Acquisition Act, 1948 (hereinafter referred, to as Act II) All the plots of land in question are situated in mouza Choprajhar bearing Nos. 1212 and 1240, and khatian Nos. 574 and 580 in the District of Uttar Dinajpur. The land was acquired for the purpose of the Teesta Barrage Project. The Land Acquisition Collector had awarded compensation, which was not found by the claimant

respondent. Hence an application for reference u/s 18 of the Land Acquisition Act, 1894 (Act I of 1894) was made. The learned Land Acquisition Court, has enhanced the compensation by the impugned judgment and decree .on such reference. It appears from the records, and so also from the judgment rendered by the learned Judge that the State of West Bengal duly contested through the learned Government Pleader before the learned Judge.

3. The State of West Bengal did not prefer any appeal against the instant judgment and decree, however, some officials of the State of West Bengal claiming themselves to be persons interested and being third party have preferred this appeal. At the ad interim stage leave was granted by this Court to prefer this appeal. In the grounds it has been agitated by the appellants that they being the real requiring body and/or beneficiary of the land acquired should have been notified and added as a party so that they could get an opportunity of being heard. In connection with this appeal an application for permission to adduce evidence in this appeal has been made. The said application is required to be disposed of.

4. Mr. Bikash Bhattacharjee, learned Senior Advocate and also the Mayor of Kolkata Municipal Corporation, appearing in support of the appeal, contends that the award was passed behind the back of the appellants and without having any legally admissible evidence. He contends that this project is funded by the Central Government. The officials of the State Government are executing this project. Therefore, in a sense, these officials are independent persons within the meaning of Section 50 of the Act I of 1894. His further contention is that if the award is read together with the records it will appear that there was no evidence before the learned Judge to come to conclusion that the quantum of compensation was required to be enhanced. He submits that mere production of and further reliance on the certified copy of the previous judgment in respect of the other plots of land is not good enough to prove market value on the date of notification of the lands in question. He submits that it has to be proved that lands in question are situated in the same area and vicinity as those referred to in the judgment cited as a comparable instance. It has to be proved further that such judgment was rendered in connection with identical plots of land and mouzas. Referring to and relying on the letter of Superintending Engineer, Mahananda Barrage Project to the Chief Engineer, Teesta Barrage Project annexed to the application, Mr. Bhattacharjee submits that such document is the only acceptable evidence which will substantiate just and fair amount of compensation in respect of almost identically same plots of land, the value being much less than what has been awarded. According to him, this letter together with the map of the land annexed thereto will afford conclusive proof of the market value of the plots of land, demolishing the evidence adduced by the claimant respondent. In support of his submission he has referred to the following decisions of the Supreme Court and High Courts viz [Pal Singh and others Vs. Union Territory of Chandigarh](#), , [U.P. Awasthi Vs. Gyan Devi \(Dead\) by LRs. and another, etc. etc.](#), , [M/s. Neyveli Lignite Corpn. Ltd. Vs. Special Tahsildar](#)

[\(Land Acquisition\), Neyvely and others, Karan Singh and others etc. Vs. Union of India, and Amalgamated Development Limited Vs. State of West Bengal, .](#)

5. Mr. Asok Banerjee, learned Counsel appearing in support of the respondents, submits that the award was passed by the Collector without any materials or shred of evidence what so ever. According to him, u/s 23 of Act I of 1894, the Collector was obliged to take note of the market value of the land on the date of notification u/s 4 of Act 11 of 1948. The learned Land Acquisition Judge has found from the records and taken, note of this fact from the records that there had been no evidence to pass an award for such paltry amount. It was therefore open for the claimant to produce any evidence to prove that the Collector's assessment was absolutely wrong and market value of the land was much more. He contends further that in these circumstances his client produced a judgment of the Land Acquisition Judge rendered previously in respect of other plots of land situated in the same mouza. The State of West Bengal through the learned Government Pleader duly contested the proceedings and at the time of admission of the certified copy of the said judgment did not raise any objection. It was never contended that the aforesaid documentary evidence was not adequate for decision. He contends that the learned Government Pleader did not raise any dispute as to whether the plots of land were situated in the same areas or moujas.

6. Moreover, he contends that the officials of the State Government cannot be termed to be the persons, interested within the meaning of Section 20 of the Act I of 1894. In order to maintain an appeal and also to take part in the proceedings before the learned Land Acquisition Judge the objector must be a person within the meaning of the Section 50 of the Act I of 1894. The State of West Bengal being the real contesting party, consequently the officials of the Government department cannot be termed to be the persons interested within the meaning of Section 50 of the- said Act. Instant appeal, therefore, is incompetent.

7. Thus there is no reason to interfere with the judgment and award passed ,by the learned Judge.

8. He contends that the so-called evidence being the document produced by the appellants before this Court in their application is of no value. It merely contains the communication of information. There is no document worth receiving to show that the market value of the land was different from the award passed by the learned Judge.

9. We have heard the respective contentions of learned Coinsels for the parties. The issues raised before us are firstly whether the appellants can be treated to be the persons interested within the meaning of Section 20 of the Act 1 of 1894 and secondly, if so, whether the judgment and decree passed by the learned Land Acquisition Judge is rendered on the basis of the legally admissible evidence or not.

10. While taking up the first point we are not forgetful that the appellants were granted leave to prefer the appeal, but granting of leave at the ad interim stage is not a conclusively decisive fact to hold that the appeal is maintainable. In our view, Court, being prima facie satisfied, at the ad interim stage, grants leave to the third party to prefer appeal. But, at the final stage, the Court has every power to examine in detail upon hearing the respondents as to whether the appellants are in real sense third party or not, as at the initial stage there was no scope for detailed agreement to decide such issue finally.

11. It is an admitted position that the appeal has been preferred by the officials of the Department of Irrigation and Waterways of the State of West Bengal but not by the State of West Bengal itself. Of course in the memorandum of appeal in ground No. VII, the appellants were sought to be described as a statutory body or as a beneficiary but this ground was not pressed by learned Counsel for the appellants. He fairly admit that the appellants are not the statutory bodies. Mr. Bhattacharjee wants to give a colour of independent entity saying that this is a project work and the engineers are acting under the scheme of project independently. In our considered view in order to become an interested person within the meaning of Section 20 of the Act I of 1894 one has to satisfy its status which is "akin to Section 50 Sub-section (2) of the said Act. Therefore, we think it is appropriate to set out the said section:

50. Acquisition of land at cost of a local authority or Company

(1)...

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference u/s 18.

12. We do not find any material that the appellants are to be treated as persons independent from the State of West Bengal. It is naive to think that scheme of the project or for that matter any committee if formed at all to implement a project, is to be categorized as being a company or local authority. The officers of the Government cannot claim any different or independent identity while acting as such. We think that no notice was required to be served upon them at the time of hearing before the Land Acquisition Judge. Their right or interest is to be looked after by the Government itself by engaging the Learned Government Pleader. We, therefore, do not think that the appellants being the officials of the State Government are entitled to initiate separate proceedings to challenge the same when State of West Bengal has not come for preferring appeal. We hold that this appeal cannot be maintained for the foregoing reasons. The decision [M/s. Neyveli Lignite Corpn. Ltd. Vs. Special Tahsildar \(Land Acquisition\), Neyveli and others](#), cited

in this connection by Mr. Bhattacharjee is applicable in principle here but in view of the fact finding as above the same cannot be made applicable to hold the appellants as being persons interested.

13. Now, coming to the merits of the appeal it is contended that there was no legal evidence, meaning thereby that only a previous judgment of the Land Acquisition Judge was placed and there was no oral evidence to prove that the property was situated in the same area or vicinity. The contention is that the judgment being Exhibit-T cannot be a comparable instance to ascertain compensation in this case.

14. In this regard we have gone through the judgment of the learned Trial Judge. From the recording of the learned Court below we find that there is no dispute raised by the Government as to the location of the plots of the land in question which are situated within the same mouza as those mentioned in the judgment being Exhibit- "1". The learned Government Pleader while appearing for the State of West Bengal did not raise any objection as regards the admissibility of the previous judgment being Exhibit-"1". The judgment rendered previously is relevant while receiving as evidence. The question of oral evidence arises only when there is a dispute that the plots of the land were situated at different mouzas and different places. Here the plots of land in question are situated in the same mouza as is apparent from the judgment being Exhibit- "1". The decisions cited by Mr. Bhattacharjee appear to be of no consequence or no relevancy for the reasons stated hereunder.

15. In the case of ONGC Limited reported in 2005(6) SCC 454, the Supreme Court has taken note of the earlier case of [Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others](#), . In paragraph 11 it is observed amongst others that in the absence of any direct evidence the Court may take recourse to other methods viz. judgments and awards passed in respect of acquisition of land made in the same village and/or neighbouring villages. Such a judgment and award in the absence of any other evidence like deed of sale, report of expert and other relevant evidence, however, would have only evidentiary value.

16. The Supreme Court judgment reported in [Pal Singh and others Vs. Union Territory of Chandigarh](#), does not lend any support to the argument of Mr. Bhattacharjee because it was a case wherein the claimant did not produce any previous judgment either before the Land Acquisition Judge or before the High Court to prove the market value. Subsequent judgment regarding market value was sought to be relied on. In that context it was held that the judgment of the Court is of no assistance unless it is proved that the property is situated in the same area for which the judgment would be a relevant factor, in the case of [Karan Singh and others etc. Vs. Union of India](#), in paragraph 8 it is held that it is only the previous judgment of a Court or an award which can be made the basis for assessment of the market value of the acquired land subject to the party relying on such judgment adducing evidence to show that due regard being had of all attendant facts, it could

form the basis for fixing the market value of acquired land. In this case the previous judgment was not relied on and as such the judgment of the Court was not treated to be a piece of evidence.

The Division Bench judgment of this Court in case of [Amalgamated Development Limited Vs. State of West Bengal](#), was rendered on a different fact. In that case it was found that the property in question was situated in different mouzas and further there was no oral evidence that the land in question, was within the same vicinity in order to get the benefit of the rate awarded by the previous judgment.

17. In this case there is no dispute raised by the learned Government Pleader and, in fact, the mouzas are not different. In our view the learned Land Acquisition Judge has followed the correct principle of law and this judgment is not assailable on such ground. The question of oral evidence arises only when there is a challenge or dispute relating to location and situation of the plots in question or relevancy of the judgment in question. When a document has been admitted in evidence without any objection, the admissibility of the same cannot be questioned. The relevancy of contents of the judgment may be questioned. This aspect has been examined by the learned Judge and there is no ground taken in the Memorandum of Appeal that the judgment is otherwise not relevant. We do not think that we should re-read or re-appreciate evidence taking note of the material produced before us in the application of the appellants as such material is of no value and it is merely a letter. According to us the opinion given by one officer and other relating to the market rate cannot override and/or outweigh the effect and impact of the judicial finding and pronouncement regarding the market rate more so, when such judgment has been accepted by the State. According to us, the judicial pronouncement is the best evidence on an identical question of the fact. When the appellant is unable to produce any other evidence diluting the value of the Exhibit- "1" we do not think this appeal has any merit. Hence, the appeal is dismissed on merit also. The deposit which has already been made should be released within a period of fortnight from the date of communication of the judgment; and order.

18. There will be no order as to costs.