

(2001) 01 CAL CK 0018

Calcutta High Court

Case No: F.A. No. 329 and 350 of 1988 and C.O.T. No. 2382 and 2192 of 1988

Union of India (UOI)

APPELLANT

Vs

Sachindra Nath Sur and Others
and Bijan Kumar Ghosh and
Others

RESPONDENT

Date of Decision: Jan. 24, 2001

Acts Referred:

- Requisitioning and Acquisition of Immovable Property Act, 1952 - Section 11, 8, 8(1), 8(7)

Citation: (2001) 2 CALLT 127

Hon'ble Judges: Gorachand De, J; Altamas Kabir, J

Bench: Division Bench

Advocate: Ranajit Mukherjee and Narayan Chandra Mandal, in F.A. No. 329 of 1988 and Tapas Kumar Chatterjee and Anmola Jha, in F.A. No. 350 of 1988, for the Appellant; Jayanta Biswas and Ananda Jyoti Dasgupta, for the Respondent

Final Decision: Dismissed

Judgement

Altamas Kabir, J.

By a common judgment dated 5th January, 1984, the learned Arbitrator, 24 Parganas and Calcutta, disposed of Arbitration Cases Nos. 35 and 37 of 1983(V), arising out of two reference petitions u/s 8(l)(b) of the Requisitioning and Acquisition of Immovable property Act, 1952. These two appeals have been filed against the said judgment and have been taken up for hearing analogously in terms of the order dated 19th June, 1984.

2. F.A. No. 329 of 1988 arises out of the Award made by the Land Acquisition Collector, 24 Parganas (North) at Barasat, in Case No. XXX/ 10 of 1972-93 involving C.S. plot Nos. 61.58, 6173, 6174, 6229, 6230 and 6260 comprising danga, bastu, tank and garden lands pertaining to Khatian Nos. 295, 2809, 910 and 2295 of mouza

Ichapur, P.S. Noapara, District 24 Parganas.

3. F.A. No. 350 of 1988 arises out of the Award made by the Land Acquisition Collector, 24 Parganas (North) at Barasat, in Case No. L.A. XXX/ 1 of 1972-73, involving C.S. plot No. 5267 pertaining to Khatian No. 618 of mouza - Ichapur, P.S. Noapara, District 24 Parganas.

4. By his award dated 13th and 17th October, 1977, the Land Acquisition Collector assessed the rate of compensation for danga, bastu and garden lands at the rate of Rs. 79,500/- per acre and for tank/doba at the rate of Rs. 39,750/- per acre. In addition, the value of trees was fixed as follows:-

(a) Garden lands	-	Rs.	1.800/- per acre
(b) Bastu and Bank of Tank	-	Rs.	300/- per acre
(c) Danga lands	-	Rs.	100/- per acre

5. Being dissatisfied with the award passed by the Land Acquisition Collector, 24 Parganas (North), the Referring Claimants in the two cases made applications for referenceu/s 8(1)(b) of the Requisitioning and Acquisition of Immovable Property Act, 1952, hereinafter referred to as the "1952 Act", giving rise to Arbitration Cases Nos. 35 and 37 of 1983(V).

6. The Referring Claimants claimed compensation at the rate of Rs. 4,000/- per cottah for the solid lands and that the rate of Rs. 2,000/- per cottah for the tank. A further claim of Rs. 16,000/- and Rs. 5,700/- was made in respect of the trees and plants standing on the acquired lands and Rs. 1,200/- for loss of the fish in the tank acquired. Statutory allowance and interest was claimed at the rate of 10 per cent per annum.

7. The learned Arbitrator by his Judgment and order dated 5th January, 1984 assessed the value of the different lands as follows:-

(a) Bastu and garden lands	-	Rs.	90.000/- per acre
(b) Danga land	-	Rs.	85,500/- per acre
(c) Tank	-	Rs.	42,750/- per acre

8. The learned Arbitrator disallowed the claim of the Referring Claimants towards compensation for the trees on the acquired lands and the Referring Claimants did not press their claim for the compensation on account of fish in the acquired tank.

9. As indicated hereinabove, these two appeals have been preferred against the said judgment and order of the learned Arbitrator in Arbitration Case Nos. 35 and 37 of 1983(V).

10. Appearing for the Union of India in F.A. No. 329 of 1988, Mr. Ranjit Mukherjee submitted that Section 8 of the 1952 Act enumerates the principles and method of determining compensation in different ways. Mr. Mukherjee submitted that in the

present case in the absence of any agreement the provisions of Section 8(1)(b) had been invoked and the same would have to be read along with Section 8(1)(e) of the said Act.

11. It was urged that the lands in question had been requisitioned during the Second World War for the construction of an airfield and the said circumstances were required to be taken into consideration in terms of Clause (e) of Sub-section (1) of Section 8 of the 1952 Act for assessing the compensation payable in respect of the said lands. Referring to Sub-section (7) of Section 8 of the said Act, Mr. Mukherjee urged that it had been categorically indicated therein that the compensation payable u/s 7 would be the price the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition.

12. According to Mr. Mukherjee the compensation payable for the lands in question would have to be computed with reference to the condition of the lands when they were requisitioned and the method used by the learned Arbitrator was wholly erroneous.

13. Mr. Mukherjee submitted that the value of the lands taken as comparative units could not be a basis for assessing the compensation payable for the acquired lands as the nature and character of the lands used as comparative units could not be ascertained from the deeds submitted on behalf of the Referring Claimants. It was urged that the approach of the learned Arbitrator was wrong and the judgment and order passed on the basis thereof was liable to be set aside.

14. Appearing for the Referring Claimants in both the appeals Mr. Jayanta Biswas, learned advocate, submitted that Cross objections had been filed by the Referring Claimants in both the appeals on several grounds relating to payment of statutory allowance, solatium, loss suffered on account of standing trees and payment of interest, but that the Cross Objectors were confining themselves only to the question of the interest payable.

15. Mr. Biswas submitted that the Referring Claimants/Cross Objectors were entitled to receive Interest at the rate of 9 per cent per annum for one year from the date of acquisition and thereafter at the rate of 15 per cent per annum for the successive years till the date of final payment of the entire amount of compensation, as against the flat rate of 6 per cent per annum awarded by the learned Arbitrator from the date of acquisition of the lands in question till the date of payment of the amount offered by the Land Acquisition Collector and also in respect of the difference on account of the judgment passed by him.

16. On the merit of the appeals preferred by the Union of India, Mr. Biswas submitted that there was no merit in the submissions made on behalf of the appellant as the nature and character of the comparable units of land had been specifically indicated in one of the deeds submitted on behalf of the Referring

Claimants and could be inferred from the others.

17. As to the provisions of Clause (e) of Sub-section (1) of Section 8 of the 1952 Act and also Sub-section (3) thereof, Mr. Biswas contended that the assessment of compensation could not relate back to the circumstances in which the lands had been requisitioned but would have to be decided on the price they would have fetched on the date of acquisition.

18. Mr. Biswas urged that there was no merit in the appeals which were liable to be dismissed.

19. Having given our anxious consideration to the facts of the case and the submissions made on behalf of the respective parties, we are unable to agree with Mr. Mukherjee that the value of the lands taken as comparable units could not be a basis for assessment of the compensation payable for the acquired lands of the five sale Deeds produced before the learned Arbitrator, four had been produced on behalf of the Referring Claimants and were marked Exhibits 1 to I(c). The said Sale Deeds were of the years 1971 and 1972 respectively. The fifth Sale Deed, which was produced on behalf of the appellants herein, was dated 27th December, 1972, and was marked Exhibit A. The lands in question were acquired with effect from 10th March, 1973. As was observed by the learned Arbitrator, as the transactions were made within one or two years prior to the date of acquisition it can be said that the dates of the transactions were in reasonable proximity with the date of acquisition.

20. While one of the comparative units, namely, the land comprised in Exhibit 1 has been specifically described as garden lands, it can be inferred from the other deeds that the lands forming the subject matter thereof are bastu lands. In fact, Exhibit "A" produced on behalf of the appellants cuts at the very root of Mr. Mukherjee's submissions. If we are to discard the Sale Deeds produced by the Referring Claimants before the learned Arbitrator and were to rely solely on the sale Deed produced on behalf of the Appellants, even then the compensation awarded by the learned Arbitrator was lower than the consideration reserved in Exhibit A, Mr. Mukherjee's submissions with regard to the circumstances to be taken into consideration while assessing the compensation payable are also negated by Exhibit "A" having been produced before the learned Arbitrator by the appellants herein in support of their case regarding the quantum of compensation payable.

21. The question of interest raised on behalf of the Referring Claimants/ Cross Objectors is also devoid of merit since in the 1952 Act no provision has been made for payment of interest. The interest awarded by the learned Arbitrator is in exercise of his discretionary and inherent powers. There is no statutory or other basis for the claim of the Referring Claimants/Cross Objectors for interest at the rate of 9 per cent per annum for the first year from the date of acquisition and thereafter at the rate of 15 per cent per annum till the date of final payment, and such claim is accordingly rejected.

22. In the circumstances, both the Appeals and the Cross Objections fail and are dismissed.

There will, however, be no order as to costs.

Urgent certified copy of this order, if applied for, be supplied expeditiously, subject to compliance with all the required formalities.

Gorachand De, J.

23. I agree.

Mentioned (January 31, 2001)

This matter has been mentioned on behalf of the respondents after the matter had been disposed of and the judgment had been delivered to bring to the notice of this Court the fact that no direction had been given in the judgment regarding withdrawal of the amount as deposited in this Court by the appellants in terms of the order passed on 10th May, 1984.

By the said order, the appellants were directed to deposit the entire enhanced amount with the learned Registrar General of this Court, with liberty to the respondents to withdraw one third of the same, subject to the decision of the appeal.

The appeal having been dismissed, the respondents have now prayed that they should be allowed to withdraw the remaining balance.

Having considered the submissions made on behalf of the respective parties, we are of the view that the said direction ought to have been included in our judgment dated 24th January, 2001. We, accordingly, modify our said Judgment of 24th January, 2001 by including the direction that the respondents will be entitled to withdraw the remaining two third balance lying with the learned Registrar General of this Court.

There will, therefore, be a direction in the aforesaid terms and the learned Registrar General is directed to arrange for payment of the remaining two-third amount, together with interest accrued thereon, to the respondents, who will be entitled to withdraw the same without furnishing any security at an early date. There will be no order as to costs.

If any urgent xerox certified copy of this order is applied for, the same is to be supplied to the applicant at an early date, subject to compliance of all the required formalities.