State of West Bengal Vs Narendra Nath Banerjee

Court: Calcutta High Court

Date of Decision: Dec. 19, 1975

Acts Referred: Calcutta Improvement Act, 1911 â€" Section 43(2), 77A(1), 77A(2)
Land Acquisition Act, 1894 â€" Section 23(1), 23(2)

Citation: (1976) 1 ILR (Cal) 401

Hon'ble Judges: Sharma, J; M.M. Dutt, J

Bench: Division Bench

Advocate: Bhabani Prasun Chatterjee and Suprokash Banerjee, for the Appellant;Amarendra Nath Gupta and Sailendra Nath Baksi, for the Respondent

Final Decision: Allowed

Judgement

M.M. Dutt, J.
This appeal is at the instance of the State of West Bengal and it is directed against an award of the Calcutta Improvement

Tribunal in a proceeding for compensation. The Respondent has also filed a cross-objection to the award. The appeal has been preferred u/s

77A(1)(b) of the Calcutta Improvement Act, 1911. In view of Sub-section (2) of that section, the scope of the appeal and that of the cross-

objection is limited to errors of law or any defect in the procedure affecting the merits of the decision.

2. A portion of premises No. 38/1 Gariahat Road was acquired in connection with C.I.T. Scheme No. LXXII (Gariahat Road level crossing). The

area of the land acquired is 4 cottahs, 7 chattaks.. The acquisition was made for the purpose of construction of a bridge after widening the road.

The bridge has already been constructed in front of the acquired land. The total width of the road is 124" including the width of the bridge or the

high level road, as it is called. The width of the road in front of the acquired premises is 32". Previously the width of the road was 50".

3. The Collector valued the acquired land at the rate of Rs. 6,500 per cottah. Being aggrieved by the award of the Collector, the Respondent, who

was the referring claimant, made a reference to the Tribunal. Before the Tribunal the Respondent claimed the value of the acquired land at the rate

of Rs. 9,000 per cottah on the basis of the report and the evidence of his valuer. On behalf of the Appellant it was urged that the value of the

acquired land would be much less than that and naturally it tried to justify the award made by the Collector. The Appellant also submitted a report

by its valuer, who was also examined before the Tribunal. It was also claimed on behalf of the Respondent that by virtue of the acquisition of the

portion of the said premises, the remaining portion was injuriously affected. On this ground, it was also claimed by him that he was entitled to a

compensation of Rs. 40,000. In this connection, it may be stated that the Respondent''s valuer relied on the sale of 28/1B Gariahat Road as a

comparable unit for the purpose of ascertaining the market value of the acquired land. On the other hand, the Appellant''s valuer relied on the three

transactions of sale--all in respect of premises No. 37/1 Gariahat Road for the purpose of fixing the market value of the acquired land. It was not

disputed that the market value of the acquired land should be fixed as on April 11, 1957, that is, the date of publication of the notification u/s 43(2)

of the Calcutta Improvement Act.

4. The learned Tribunal came to the findings that 28/1B was a comparable unit though it was slightly better than the acquired land. He rejected the

contention of the Appellant that premises No. 37/1 Garahat Road should be taken as a comparable unit. After considering the evidence and the

materials on record the Tribunal gave a net increase of 3 per cent on the sale price per cottah of the land of premises No. 28/1B Gariahat Road

and valued the acquired land at the rate of Rs. 8,672-77 per cottah or per unit of the first belt. On the question of injurious affection, the Tribunal

assessed the compensation therefor at Rs. 4,271-77 P. Hence, this appeal by the State of West Bengal.

5. It has been already noticed that the scope of the appeal is limited to the errors of law or any defect in the procedure affecting the merits of the

decision of the Tribunal. Mr. Chatterjee, learned Advocate appearing on behalf of the Appellant, has urged that the Tribunal was wrong in

accepting premises No. 28/1B Gariahat Road as a comparable unit. He has drawn our attention to the several, advantages and amenities of the

said premises and the disadvantage of the acquired land. He submits that the Tribunal should have held that premises No. 37/1 Gariahat Road was

similar in advantages and amenities so far as the acquired land is concerned and it should have compared the said premises with the acquired land

for the purpose of fixing the market value of the acquired land. The question whether a premises is comparable with another is essentially a

question of fact. It is no doubt true that in deciding a question of fact, points of law may have to be taken into consideration. But in the instant case,

we have not been referred to any point of law which came up for consideration before the Tribunal in deciding the point whether 28/1B should be

taken as a comparable unit or not. It is, however, contended by Mr. Chatterjee that in holding that premises No. 28/1B is a comparable unit, the

Tribunal overlooked the most important fact that the width of the road in front of the said premises is 84'' as against 50 in front of the acquired

premises. There can be no doubt that if an important evidence or fact is not taken into consideration, that affects the decision of the question and in

that sense it becomes a question of law. But this contention seems to be misconceived, for the learned Tribunal has taken into consideration the

width of the road in front of 28/1B Gariahat Road. At p. 88 of the Paper Book the learned Tribunal has summarised its findings and at the end of

the summary we find it has been stated that premises No. 28/1B also stood on wider road. It cannot, therefore, be said that the Tribunal did not at

ail consider the width of the road. We do not, therefore, think that we can enquire whether the Tribunal was right in holding that premises No.

28/1B could be compared with the acquired premises. Regarding the other premises, namely, premises No. 37/1, the Tribunal has rejected the

same as a comparable unit on the ground that the vendor had been selling out lands of the said premises hurriedly under some compelling necessity.

It has been pointed out by the Tribunal that although, according to both the experts, there has been a rise in land value and not a fall, it will appear

from the sale deeds relating to premises No. 37/1 Gariahat Road that there was a fall in price in respect of the subsequent sales although in one of

the portions of the said premises there is a return frontage. For the purpose of finding the market value of the acquired land, it is not sufficient that a

premises is comparable with the acquired premises. But it has got to be proved that the sale price of premises which is held to be comparable

represents the correct market value. By its said observation the Tribunal meant to say that the consideration for the different sales of lands of

premises No. 37/1 Gariahat Road did not represent the correct market value, for in its opinion, the vendor had to sell the said premises under

some compelling necessity. We would, accordingly, reject the contention of Mr. Chatterjee that premises No. 37/1 should have been taken as a

comparable unit and not premises No. 28/1B.

6. It has been strenuously urged on behalf of the Appellant that no compensation should have been awarded to the Respondent on the ground that

the acquisition injuriously affected the other portion of the said premises No. 38/1 Gariahat Road. It has been found by the Tribunal that after the

construction of the bridge, if one travels in a bus along the bridge, one can look through the Windows of the house standing on the unacquired

portion of premises No. 38/1 Gariahat Road. This, according to the Tribunal, interferes with the privacy of the Respondent. Secondly, it has been

found that because of the construction of the bridge, one has to make a long detour in order to go to the other side of the road from the unacquired

portion of the premises. Thirdly, one of the tenants had left the premises because of the acquisition and lastly, that during rains water would

accumulate in front of the unacquired portion of the premises due to the lowering of the road in front of it. Upon the said findings, the Tribunal has

awarded a sum of Rs. 4,271-77 as compensation for injurious affection of the unacquired portion of premises No. 38/1 Gariahat Road. It may be

stated here that the bridge has been constructed outside the acquired land but only a very small part of it, that is, a wall, termed by Mr. Chatterjee

as a baffle wall, has been erected on the acquired land. It is contended by Mr. Chatterjee that as nothing has been done on the acquired land or, in

other words, the remainining portion of the premises No. 38/1, Gariahat Road not having been affected by execution of any work on the acquired

land the Respondent was not entitled to claim compensation under clause "fourthly" of Section 23(1) of the Land Acquisition Act, even assuming

that because of the execution of the scheme by the construction of the bridge or lowering of the road outside the acquired land, the unacquired

portion of the property is affected and there is depreciation of the value thereof. On the other hand, it is argued by Mr. Gupta, learned Advocate

appearing on behalf of the Respondent, that the referring claimant, that is the Respondent being a person interested is entitled to claim

compensation under the clause "fourthly" of Section 23(1) in respect of any work done after the acquisition, whether such works are done on the

acquired land or outside the same. The leading decision on the point is Thomas Christopher Cowper Essex v. District Board for the District of

Acton in the County of Middlesex (1889) 14 A.C. 153 (166). In that case Lord Watson observed as follows:

It appears to me to be the result of these authorities, which are binding upon this House, that a proprietor is entitled to compensation for

depreciation of the value of his other lands, insofar as such depreciation is due to the anticipated legal use of works to be constructed upon the land

which has been taken from him under compulsory powers.

Further, it has been observed by Lord Watson:

I am prepared to hold that where several pieces of land, owned by the same person, are so near to each other and so situated that the possession

and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act, so that if one piece is

compulsorily taken and converted to uses which depreciate the value of the rest, the owner has a right to compensation.

In the same case Lord Chancellor has observed that where the future use of the part of a proprietor''s land taken from him may damage the

remainder, then such damage may be injuriously affecting the proprietor''s other lands, though it would not be injuriously affection of the land of

neighbouring proprietors from whom nothing has been taken for the purpose of the intended works. The principle of law, as laid down in Cowper

Essex''s case Supra referred to above, has been followed by the Privy Council in Sisters of Charity of Rockingham and The King (1922) 2 A.C.

315. It has also been followed by a Bench of this Court in R.H. Wernicke and Ors. v. The Secretary of State for India in Council (1909) 13

C.W.N. 1046. In this case, it has been held that insofar as it could be reasonably anticipated that the rifle range would interfere with the working of

the owner''s land behind the butts as at tea garden, to that extent the value of such land became depreciated and the owner was entitled to

compensation for it and it was no answer to his claim to say that any injury that may be caused in future by the use of the acquired land as a rifle

range will be actionable. In The King v. Mountford (1906) 2 K.B. 314, a tramway company under statutory powers was permitted to lay a

tramway along a street. The company, under further statutory powers, took compulsorily a portion of the Applicant''s land for the purpose of

widening the street and then constructed the tramway along the street, but the tram way did not pass over any portion of the land so taken from the

Applicant. It was held that in assessing the compensation to be paid to the Applicant he was entitled to receive the value of the land taken and

compensation for any depreciation in the value of his other adjoining property by reason of the land being used as part of the street, but that he was

not entitled to compensation for the depreciation in the value of that other property by the running, of trams along the street. This case is an

authority for the proposition that if the depreciation of the value of the other part of the property is not caused by any anticipated action on the

acquired land, the owner is not entitled to any compensation on that account. In a Bench decision of this Court in Madhusudan Das v. The

Collector of Cuttack (1901) 6 C.W.N. 406, a level-crossing across the private road of the Appellant was constructed. It was held that the

Appellant was entitled to compensation if he could prove that he sustained damage or loss for it by reason of his other property having been

injuriously affected. As stated above, the level-crossing was contructed on the private road belonging to the Appellant. The Tribunal has referred

to the English decisions referred to above, but it is of the view that the Indian law is different from the English law. We are unable to agree with the

Tribunal, for in Madhusudan Das''s case (1901) 6 C.W.N. 406 cited above Maclean C.J. observed that cases of this class in the Courts of

England are very useful for our guidance here as in many substantial respects the land acquisition in this country is based upon the principles of law

which hold good in similar cases in England. In Gurudas v. Secretary of State for India in Council (1901) 184 C.L.J. 244 same view has been

reiterated by Maclean C.J. Again fn a later decision of the Privy Council in Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v. The

Revenue Divisional Officer (1938) 43 C.W.N. 557 it has been observed by the Lordships of the Judicial Council that it is well-settled that English

decisions under the Lands Clauses Act of 1845 lay down principles which are equally applicable to proceedings under the Indian Act. In view of

the above, it is clear that the English principles regarding payment of compensations for acquired property also apply to India. The review of the

above decisions clearly shows that so long as the other land of the owner of the property which has been acquired is not affected by anything done

or proposed to be done on the acquired property, he Will not be entitled to any compensation under the clause ''fourthly'' u/s 23(1) of the Land

Acquisition Act. The observation of Lord Chancellor in the case of Cowper Essex Supra, referred to above, has clearly laid down the principle in

that regard.

7. It has been already noticed that only a wall has been erected about 32" away from the unacquired portion of the property. It may be that the

privacy of the Respondent is interfered with and that due to the construction of the bridge he has to detour some distance from the unacquired

portion of the property to go to the other side of the road or that due to the lowering of the road in front of the acquired property there will be

collection of water on the road, but we do not think that he will be entitled to any compensation for the same. We would uphold the contention of

Mr. Chatterjee that the unacquired portion of premises No. 38/1 Gariahat Road has not be injuriously affected by anything done on the acquired

property and that he will not be entitled to any compensation for anything done outside the acquired property. One of the points in the cross-

objection of the Respondent is (that in awarding compensation for injurious affection the Tribunal did not take into consideration the house in

premises No. 38/1 Gariahat Road. For the same reason we hold that this point also has no merit and the Respondent is not entitled to any

compensation even if the house is affected by reason of the works done outside the acquired land. Accordingly, it is not necessary for us to

consider the contention of Mr. Chatterjee that the Board is the final authority for computing the betterment fee and that the Tribunal has no

jurisdiction to weigh the advantages resulting from the execution of the scheme and the disadvantages suffered by the unacquired portion of the

premises in question. But in one respect the cross-objection of the Respondent must succeed to some extent, for the Tribunal has not awarded the

statutory compensation of 15 per cent as provided in Sub-section (2) of Section 23. It has now been held by a Bench of this Court in State of

West Bengal v. Asitendra Nath Mitter (1972) 77 C.W.N. 618 that the provision of the Calcutta Improvement Act depriving the claimant of the

statutory compensation u/s 23(2) of the Land Acquisition Act is ultra vires. We do not find any reason to take a view different from that expressed

in the said Bench decision. In these circumstances, the Respondent will be entitled to compensation of 15 per cent on the value of land, structures

and trees.

8. In the result, the award of the Tribunal is modified to the following extent:

The Respondent will not be entitled to any compensation under clause ''fourthly'' of Section 23(1) of the Land Acquisition Act but he will be

entitled to the statutory compensation of 15 per cent u/s 23(2) of the said Act and interest at the rate of 6 per cent per annum from the date of the

Collector''s taking possession thereof. The rest of the award will stand. The Collector is directed to deposit the amount with necessary adjustment

in terms of the award as modified within four months from date.

9. Both the appeal and the cross-objection are allowed in part to the extent indicated above.

10. There will be no order as to costs.

Sharma J.

11. I agree.