

(1954) 02 CAL CK 0023

Calcutta High Court

Case No: Appeal from Original Decree No. 27 of 1950

Kanti Bhusan Sarkar and Others

APPELLANT

Vs

The Province of West Bengal and
Others

RESPONDENT

Date of Decision: Feb. 26, 1954

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 30

Citation: 59 CWN 297

Hon'ble Judges: Renupada Mukherjee, J; Mookerjee, J

Bench: Division Bench

Advocate: Abinash Chandra Ghose and Biraj Mohan Roy, for the Appellant; Hemendra Kumar Das, Salil Kumar Dutta and Bansorilal Sarkar, for the Respondent

Final Decision: Dismissed

Judgement

Mookerjee, J.

In view of the order we propose to pass in this appeal, it is not necessary to make a detailed statement of the facts. Certain plots within Mouja, Surul, in Touji No.26 of the Birbhum Collectorate were notified in 1943, for compulsory acquisition and the declaration was published in February, 1946. The Land Acquisition Collector made his award on the 26th September, 1946. An application for reference u/s 18 of the Land Acquisition Act was made by some of the claimants. An objection was raised on behalf of the Governor before the Judge that the reference was not maintainable. During the hearing of the reference the Secretary of the Viswa Bharati for whose benefit the plots were being acquired moved from time to time and filed certain documents in the case. The learned Judge dismissed the Reference with costs to the Province of West Bengal as it then was and to the Viswa Bharati. The award as made by the Collector was affirmed by the Land Acquisition Judge.

2. This appeal has been preferred on behalf of the claimants who had made the reference. It appears that in course of the hearing before the Land Acquisition Judge the records in the office of the Land Acquisition Collector had been called for. Some only of the papers were exhibited in the present case. Reference, however, was made in the judgment passed by the learned Judge to other papers from the records of the Land Acquisition Collector though such papers had not been marked as exhibits, or even proved in the present case. This was irregular. Our attention has not been drawn to any provision of law under which all the papers in the records of the Land Acquisition Collector, whether in course of proceedings before the declaration had been made, or, after thereof, but before the award was made, automatically become a part of the record of the Land Acquisition Judge when the case comes on a reference u/s 18 of the Land Acquisition Act. Only such papers out of the Collector's records, as are proved or marked as exhibits according to law, are available to the Court for resting the decision along with such other evidence as may be adduced by the parties. If the case is to be decided by us at this stage, all those unexhibited papers which are referred to by the Judge are to be expunged, and the case decided according to law. The parties also were not properly advised when the proceedings were going on before the Judge. It has been represented by both the parties before us that under the above circumstances and for a proper adjudication of all the points in issue it is necessary to give opportunities to the parties to adduce further evidence. Some portion of the Collector's records may then be proved. We think this is the proper course to be followed.

3. We should, however, at this stage deal with the objection raised on behalf of the State about the competency of the Reference. This point will not be raised again at the subsequent stage. On behalf of the State it is pointed out that the award as made by the Collector was in favour of different sets of persons. The Collector did not fix the market-value of the land under acquisition, but determined what was payable to each set independently. This was really, it is contended, apportionment of the total amount of compensation payable. Only the parties making a reference are entitled to the enhanced valuation, if on such reference the amount of compensation as may be or have been satisfied, the Collector must u/s 30 of the Land Acquisition Act reference such dispute for the decision of the Court. In the apportionment proceedings the State is not a necessary party at all. All the contesting claimants, who are interested in the apportionment must be impleaded.

4. In a Reference made u/s 18 of the Land Acquisition Act for determining the amount of compensation the State is a necessary party - the claimants making the reference must implead the State as the opposite party.

5. It is not known whether in the present case the Land Acquisition Collector had either before the valuation matter had been heard by the Land Acquisition Judge or afterwards, made any reference u/s 30 of the Act for apportionment.

6. In the present valuation reference, however, the only point with which the Court is concerned is the fixation of the market value of the land acquired. The additional amount of compensation if any, as may be allowed by the Judge will accrue to the benefit only of the persons making the reference, and not of the other parties, who had not made the reference. The question as to the manner in which the total amount payable, subject to the limitation, as mentioned above, is to be distributed, is for determination in the apportionment case, and not in this the valuation case.

7. The Court has to determine the market value of the land including the trees with the reservation that the parties making the reference will get the benefit and no body else. The question of apportioning the total amount as amongst the different sets of claimants does not arise in the reference as regards the valuation. The Collector had not followed the correct procedure in valuing each interest separately when he was determining the market value of the land under acquisition. The wrong method adopted by the Collector did not affect the competence of the valuation reference made by some of the claimants u/s 18 of the Land Acquisition Act. In this view the reference made is not incompetent.

8. The judgment and decree of the lower Court must accordingly be set aside and the case remitted to the Land Acquisition Judge for decision according to law after giving opportunities to the parties to adduce such evidence as may be necessary on the issues which arise for decision in this valuation.

9. It has been pointed out already that the lands in question were being acquired for the ultimate use of the Viswabharati and the Secretary had taken certain steps in the lower Court. Our attention was not drawn to any order by the Judge adding the Secretary as a party, but in the decree as drawn up. "The Board of Viswabharati" has been mentioned as one of the Defendants and costs have been awarded in favour of the said Board. This is not allowed by the law. Compulsory acquisitions of the Government and by the Collector or some other officer specially empowered in that behalf under the Land Acquisition Act or some other special statutory provision. The lands are acquired by the Land Acquisition Act that the land is required for a public purpose. After acquisition such lands are transferred to the local body or public company as the case may be. The particular body concern for whose needs lands are being acquired may assist the Collector but is not a necessary party who can come in by entering appearance. It is not necessary for us to consider whether the Court can or need him as a party when an application is made to that effect.

10. As the name of the "Board of Viswabharati" was included in the Decree, the appellants have also added that name in the Memorandum. There is no material before us to ascertain whether there is any such body as the Board of Viswabharati. Recently a central statute was passed incorporating the Viswabharati as a University. Under the circumstances referred to above it is not necessary to consider whether the appearance purported to have been entered on behalf of Respondent No.2 is in order.

11. The direction as to costs therefore will be that Respondent No.1, the State of West Bengal will pay the appellants costs of this appeal. The hearing fee is assessed at 5 gold mohurs. The appellants will be entitled to Rs.433-3-0 as costs of the preparation of the paper books. We disallow the costs incurred for printing the Appendix portion of the paper book which do not include any exhibited portion of the records.

Renupada Mukherjee, J.

12. I agree.