

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Madhuresh Prasad

F.A. 315 of 2016

Ashis Roy

Versus

The State of West Bengal & Anr.

For the appellant : Mr. Bhaskar Ghose
Mr. Sukumar Bhattacharyaa
Ms. Piyali show
Ms. Swaralipi Sarkar
Ms. Oindrila Chatterjee
Ms. Puja Sonkar

For the State respondents : Mr. Rabindra Narayan Dutta
Mr. Hare Krishna Halder

Heard on : November 28, 2023

Judgment on : December 21, 2023

Madhuresh Prasad, J.:

1. The appellant is aggrieved by determination of the amount of compensation by the learned Special L.A. Judge 1st-cum-Additional District Judge, Alipore, South 24 Parganas in The Land Acquisition Act, 1894 (L.A. Case No. 299 of 2004) on a reference under Section 18 of the Land Acquisition Act, 1894 (Act for the sake of brevity) at the instance of the appellant herein.

2. In terms of a declaration dated 07.03.2001 in Part 1 of the Kolkata Gazette dated 14.03.2001, the petitioner's premises at 1B, Ballygunge Place comprising of 0.0092233 Acre (structural land) have been acquired. Pursuant to the inquiry before the Collector under Section 11 of the Act, compensation Rs. 507610.73 (Rupees Five Lakh Seven Thousand Six Hundred and Ten only) was awarded in respect of the petitioner's acquired lands. The said amount has been paid in terms of Section 17. The petitioner was dissatisfied with the determination made by the Collector which according to the petitioner was undervalued and not a fair determination of the compensation. The petitioner thus did not accept the award and sought a reference to the Court in terms of Section 18 of the Act.

3. The petitioner's grievance is founded on the fact that in the inquiry the Collector, has placed reliance on irrelevant and unreliable material and thus arrived at the erroneous conclusion confirming the amount of compensation/ award granted by the L.A. Collector. The Collector had relied upon Sale Deeds under serial Nos. 3, 4, 6, 9, 12 and 13, being the Sale Deeds of lands situated in another area namely "Topsia" and "Tirjala". Due to the distance between these two areas with Ballygunge Place, where the petitioner's acquired lands are situated, the Collector's reliance placed on Sale Deeds in respect of these two areas is clearly unsustainable. Reliance on these Sale Deeds is also unsustainable for the fact that at the time of acquisition in the year 2000-2001 these two areas were much less developed than the area of the acquired property, namely Ballygunge

Place. Though D.W.1, the witness produced by the State, admitted in his deposition that he is not an expert in the field, the Collector has placed reliance on his deposition based on the rates prepared by the Executive Engineer, Public Works Department Highway Division, whose signature also is not known to the D.W.1. The Executive Engineer who is said to have prepared the rates was not examined before the Collector or the learned L.A. Judge in L.A. Case No. 302 of 2004. The learned L.A. Judge has thus erred in upholding the Collector's award. Before the learned L.A. Judge a valuation report by an expert had also been placed in the proceedings. The learned L.A. Judge, however, has failed to take into consideration the valuation report dated 02.02.2015 (Exhibit-1) submitted by the Chartered Engineer and Valuer approved by the Calcutta High Court and Banks. The appellant is also aggrieved by the fact that the learned L.A. Judge has failed to take into consideration the provisions contained in Section 23 of the Act which casts an obligation on the Court in every case to award the 30 per centum, on market value in addition to the market value as consideration for the compulsory nature of acquisition. The Court has also overlooked the statutory mandate to grant of interests as contemplated under sub-Section 1 (1A) of Section 23 of the Act. Section 23 (1), (2) of the Act are considered useful to be quoted herein:-

"23. Matters to be considered in determining compensation. -(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration- first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land and [seventhly, the loss of earnings, if any, caused to the person interested, in consequence of the acquisition of land, when earning was derived directly from such land.]

...

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition."

4. Learned Counsel for the petitioner has also placed reliance on decision of the Apex Court in the case of **State of Punjab v. Amarjit Singh and Anr. Reported in (2011) 4 SCC 734**. He has also submitted that the learned L.A. Judge has failed to take in to consideration the opinion of experts being the Chartered Engineer and Valuer, and thereby formed an opinion overlooking the requirement of Section 45 of the Indian Evidence Act. The learned L.A. Judge has erred in law by relying upon the valuation alleged to have been made by the Executive Engineer P.W.D. National Highway Division, even though D.W.1 has specifically in his cross-examination claimed ignorance about identification of the alleged signature of the Executive Engineer on the report. The learned L.A.

Judge has thus also violated the provisions contained in Section 67 of the Indian Evidence Act.

5. The learned State Counsel on the other hand submits that the compensation/ award is pursuant to an inquiry under Section 11 of the Act, as per procedure prescribed under the Act, after due consideration of oral as well as documentary evidence, the evidence of D.W. 1 and the land rates as per report of the Executive Engineer P.W.D. National Highway Division. The learned L.A. Judge has also considered six Sale Deeds, noted above. The learned L.A. Judge has rightly refused to take cognizance of the valuation report submitted by the Chartered Engineer and Valuer (Exhibit 1). The same is unsustainable being based on oral statement of a local shop owner; and on the basis of a real estate directory for the year 2003, though the acquisition was made prior thereto in the year 2000-2001.

6. On consideration of the submissions of the parties, based on the material on record and on going through the relevant provisions of the Act/(s) noted above we, find that reliance placed by the learned L.A. Judge on the six Sale Deeds is clearly unsustainable as the six Sale Deeds are in respect of lands which are not in the vicinity of the lands of the petitioner which have been acquired. They are situated in a different locality, which in comparison to the petitioner's lands subject to acquisition, at the relevant time was less developed. The same cannot be considered a valid basis to assess the market value of the petitioner's lands or assess any damage sustained by the petitioner as a result of the acquisition for his lands situated in

Ballygunge Place. Reliance placed by the learned L.A. Judge on the six Sale Deeds, therefor is in the opinion of this Court contrary to the statutory mandate under Section 23 of the Act.

7. The learned L.A. Judge has also erred in taking into consideration the deposition of D.W. 1, even though in his evidence, he has specifically stated that he has no knowledge in respect of valuation of the land. D.W. 1 has also expressed ignorance in identifying signature of the Executive Engineer P.W.D. National Highway Division on the report (Exhibit 1), relying on which the learned L.A. Judge has accepted and confirmed the rate of compensation/ award of the L.A. Collector.

8. The report of the Chartered Engineer and Valuer, an expert, was required to be considered by the learned L.A. Judge. There is no basis to doubt credibility of the valuation done by the Chartered Engineer and Valuer. His claimed credentials of being a Valuer approved by the Calcutta High Court as well as Banks was not in any manner discredited before the learned L.A. Judge. Thus, there was no basis for the learned L.A. Judge to overlook the report dated 02.02.2015 submitted by the approved Chartered Engineer/ Valuer. The report in the opinion of the Court is a comprehensive one and has taken into consideration conveyance of land in the year 2000 at Ballygunge Place, the locality where the petitioner's lands, subject to acquisition were also situated. The relevant extract from the report in this connection reads as follows:-

“It has been noted from the copy of the title deed No. I-3269, Volume No. 12, Page No. 139 to 152 for the year 2000, registered at Alipur where the market value of 7-Ch. 10-sft. land together with 1000 sqft. building at Pre. No. 26, Ballygunge Place under KMC Ward No. 68, Kolkata-700019 together with the building thereon is valued for Rs. 10,61,000/- by Sub Registrar ADSR, Alipur, hence after considering the location, the said value is justified after deducting the value of the building.”

9. We, therefore, find that omission to take into consideration such expert opinion is also fatal to the determination of the amount of compensation by the learned L.A. Judge. The learned L.A. Judge has also failed to take into consideration the provisions contained in Section 23, extracted above which warrants payment of interest in terms of sub-Section (1A) and additional amount in terms of sub-Section (2) to which the petitioner has a statutory right.

10. The valuation of petitioner's lands as contained in report of the Chartered Engineer and Valuer (Exhibit-1), on the other hand, in our opinion is a fair determination, based on relevant material, being the Deed of Conveyance with respect to property situated in Ballygunge place itself, for the year 2000, quoted above.

11. By now it is settled proposition of law that the most preferred determination of compensation for the purposes of acquisition under the Act is based on the contemporaneous market value prevailing in the immediate surrounding within the locality of the lands sought to be acquired. Viewed from this perspective we find that the report submitted by the Valuer dated 02.02.2015 contains the market value of the land in the same locality, Ballygunge Place based on the copy of a Title Deed No. I – 3236, Vol. No. 12, Pg. No. 1392152 for the year 2000 registered at Alipore where the contemporaneous market value

of structured Premises No. 26, at Ballygunge Place itself has been made the basis of determining the market value for the appellant's lands, also located in Ballygunge Place. Based on this document and other facts, the approved Valuer has given a calculation showing the fair market value for the purposes of acquisition under the Act.

12. Since in our opinion, the market value as per the report dated 02.02.2015 of the approved Valuer is fair we have no hesitation in reproducing with approval the calculation based on such valuation, done by the Chartered Engineer and Valuer in Exhibit-1 which reads as follows:-

"CALCULATION:

The proportionate cost of the 800 sft.

Building @Rs.600/- per sft. (calculation enclosed) Rs. 4,80,000/-

The proportionate value of the oland with the land

Development by boundary wall, gate etc.

@Rs.1000/- per sft. Rs. 8,00,000/-

The area of the flat is 800sft. @Rs.1600/- per sft. Rs. 12,80,000/"

13. In addition to this valuation of the appellant's lands, the appellant is entitled to receive certain other elements of compensation for acquisition of his lands, namely the compensation as contemplated under Section 23 (1), (2) and (1 - A) of the Act. Under the said provisions, the person whose lands have been acquired under the Act are entitled to certain payments, regarding which the Hon'ble Apex Court in the case of **State of Punjab v. Amarjit Singh and Anr. Reported in (2011) 4 SCC 734** as in paragraph 12 has observed that no judicial exercise is involved in regard to additional amount payable under Section 23 (I - A), and the

solatium payable under Section 23 (2) as they are statutory benefits payable automatically at the rates specified in those sub-Sections, *qua* the market price. We, therefore, hold the petitioner entitled to the additional amounts at the specified rates as contemplated in these Sections.

14. Payments be made to the petitioner as per entitlement above expeditiously and preferably within eight weeks.

15. The appeal is allowed in the aforesaid terms.

(Madhuresh Prasad, J.)

16. I agree.

(Harish Tandon, J.)