

Union of India (Uoi) and ors. Vs. Asit Kumar Mondal and anr.

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SooperKanoon Citation : sooperkanoon.com/855478

Court : Kolkata

Decided On : Apr-12-1973

Reported in : AIR1974Cal180

Judge : A.C. Gupta and ;Salil Kumar Datta, JJ.

Acts : Defence of India Rules, 1939 - Rule 19; ;Land Aquisition Act, 1894 - Sections 23, 23(2) and 24; ;Defence of India Act, 1939

Appeal No. : A.F.O.D. Nos. 197, 288, 289, 290 and 291 of 1958

Appellant : Union of India (Uoi) and ors.

Respondent : Asit Kumar Mondal and anr.

Advocate for Def. : Hemanta Krishna Mitra and ;Narendra Krishna Mitra, Advs. in F.A. No. 197 of 1958, ;Prabhat Kr. Sen Gupta and ;Dhruba Kr. Mukherjee, Advs.

Advocate for Pet/Ap. : Bhabanath Dutta, ;Hemanta Krishna Mitra and ;Narendra Krishna Mitra, Advs.

Judgement :

Salil Kumar Datta, J.

1. These appeals arise out of a common award in connection with claims for compensation for kinds acquired under the Defence of India Act, 1939- The lands

were originally requisitioned in 1943 and they were thereafter acquired on 12-4-1946 without derequisition. The Collector assessed compensation at the rate of Rs. 500/- per bigha in respect of firm lands of majority plots, Rs. 600/- per bigha in respect of two such plots and Rs. 250/- per bigha in respect of tanks and doba. The Collector also awarded compensation for trees at the rate of Rs. 50/- per bigha in respect of some plots. The claimants being aggrieved filed applications for reference and the Arbitrator passed an award holding that the amount assessed by the Collector in respect of the lands and also tanks and doba was more than fair market price of the lands. About the bamboos in case No. 125 of 1957 the Arbitrator awarded an additional sum of Rs. 650/-. Except as aforesaid no other amount was awarded by the Arbitrator. Against this common award five appeals have been preferred, four by the claimant and one by the Union of India. The Union of India has preferred F. A. No. 197 of 1958 against the award of Rs. 650/- for bamboos, while F. A. No. 289 of 1958 had been filed in the same case claiming Rupees 8,283/- for trees. In all the appeals the claimants have preferred it has been claimed in addition Rs. 1,500/- per bigha by way of difference regarding the value of the suit-land and for the tanks and dobas the claimants claimed additional compensation at the rate of Rs. 750/- per bigha, and in F. A. No. 288 of 1958 an additional amount of Rs. 3,960/- was claimed for bamboos. In F. A. No. 290 of 1958 a sum of Rs. 800/- was claimed for bamboos and fencing, while in F. A. No. 291 of 1958 a sum of Rupees 1,366/- was claimed for trees and fencing.

2. Before we take the appeals for consideration regarding compensation, we shall discuss about the maintainability of F. A. No. 291 of 1958 as also F. A. No. 288 of 1958 on the ground that they are valued at below Rs. 5,000/-. It appears that under the relevant Rules an appeal can only be preferred against an award of Rs. 5,000/- or more in lump. Mr. Dutta, learned Advocate appearing for the Union of India has drawn our attention to the decision in the case of Sonti Devi v. Province of West Bengal, : AIR1954 Cal212 in which it was held that the word 'award' in proviso to Rule 19 of the Rules made under the Act prima facie refers to the entirety of the award made by the Arbitrator irrespective of the award to which the particular appellant is entitled. As the Arbitrator in the cases before us had passed a common award covering all lands of different cases, it would appear that in respect of the claims for amounts less than Rs. 5,000/- the award itself in its

entirety had been challenged. Accordingly, the appeals on the authority of the above decision even though valued below Rupees 5,000/- would be maintainable. We, therefore, hold that F. A. No. 291 of 1958 as also F. A. No. 197 of 1958 are maintainable in law and the applications under Article 227 of the Constitution filed by the claimants in respect of F. A. No. 288 of 1958 (which is valued at above Rs. 5,000/-) and F. A. No. 291 of 1958 are misconceived and unnecessary and the said applications are rejected.

3. Coming now to the amount of compensation, the point in dispute between the parties before us is as to whether the value of the lands should relate to 1943 when the lands were requisitioned or to 12-4-1946 when the lands were acquired. Under Section 299 of the Government of India Act, 1935 the word used is 'compensation' which means just equivalent and the authorities are uniform in holding that the compensation should be just equivalent of the property or its market value of which the claimants are being deprived of. There was an amendment to the Act by an Ordinance as noted by the Arbitrator wherein it was provided that for compensation for acquisition, the relevant date would be in such cases the date of requisition. This provision has been challenged by the appellants claimants. It would however appear that whether we take the relevant date as 1943 or 1946, the evidence adduced by the parties do not assist us in coming to any figure whatever be the year taken as the market value. The Arbitrator has rejected all documents filed by the claimants and also two documents filed by the Government, Exts. A and A-1 which respectively are of 1943 and 1942. The properties covered by these documents do not appear to us to be comparable. As a result, it appears that there is no comparable unit for determining the market value of the compensation. Nonetheless, we have ample materials to come to a decision about the market value of the lands on the basis of the compensation for requisition therefor which was paid during the period of requisition at the rate of Rs. 60/- per bigha for firm lands. The judicial authorities have laid down that the capitalised value of the return would afford an adequate standard of compensation as was held in the case of *State of Kerala v. P. P. Hassan Kova*, AIR 1968 SC 1201 as also in the case of *State of Gujarat v. Vakhatsinghji Vajesinghji*, : [1968]3SCR692 . Accordingly we proceed, in the state of evidence we have before us, to determine the capitalised value on the basis of the compensation for

requisition. We consider that 6 1/2 per cent would be a proper return of the investment at the material time. Accordingly the amount of compensation for requisition multiplied by 16 would afford the correct market value of the firm lands under acquisition. The value of tank and doba will be 50 per cent of that amount. Accordingly we hold that the claimants should be entitled to Rs. 960/- per bigha for compensation of firm lands and Rs. 480/- per bigha for tank and doba. Out of this amount, as it appears, the Collector has already assessed Rs. 500/- per bigha for majority of plots and Rs. 600/- per bigha for two of the plots, and Rs. 250/- per bigha for tank or doba, all under acquisition which amounts will have to be deducted in calculating the value of the lands under appeal.

4. In respect of the value claimed by the appellant for bamboos in FA No. 289 of 1958 the Arbitrator has found on evidence that there is no scope for making any further award therefor on the evidence adduced by the claimants. We have carefully gone through the evidence and have come to the conclusion that the Arbitrator was justified in awarding Rs. 650/- as compensation for bamboos as was done and the claimants are not entitled to any further compensation in respect thereof. About trees, the evidence adduced by the claimants is unacceptable as held by the Arbitrator and the claimants are not entitled to any further amount than what had been offered by the Collector. Similar is the position in respect of pucca wall bamboos, and fencing as also claimed in FA No. 290 of 1958 as also in FA No. 291 of 1958. Accordingly the claimants' claims in respect of these items fail.

5. The Union of India's claim in FA No. 197 of 1958 disputing the award of Rs. 650/- as compensation awarded by the Arbitrator is also untenable and we reject the same.

6. In the result F. A. No. 197 of 1958 filed by the Union of India is dismissed.

7. Coming to the claim for solatium provided under Section 23(2) of the Land Acquisition Act it appears that under Section 19(1)(e) the Arbitrator will have regard in determining the compensation for acquisition to the provision of Sub-section (1) of Section 23 of the said Act. The Defence of India Act and its Rules do not mention anything about Sub-clause (2) of Section 23 in determining such compensation. In view of the fact that long before the Constitution came into force

the acquisition was complete, it cannot be said that the absence of provision for solatium in the statute is in any way unlawful or contrary to the provisions of the Constitution which had no application. Accordingly we reject the claim for solatium made in respect of the compensation in all the appeals.

8. Turning now to the question of interest we feel, on the authority of the Supreme Court in the case of *Satinder Singh v. Umrao Singh*, : [1961]3SCR676 , the claimants are entitled to interest at the rate of 6 per cent per annum from the date of acquisition on the outstanding dues. It appears that the Collector has paid some amount as solatium which according to him was payable, but has been held as not payable by us. If any amount has been paid as solatium purporting to be under Section 23(2) of the Act such amount will be adjusted against interest awarded by this judgment.

9. In the result, F. A. Nos. 288 to 291 of 1958 filed by the claimants partially succeed and are allowed in part. The value of the firm lands is determined at Rs. 960/-per bigha and Rs. 400/- per bigha for tank and doba less the a amount in all cases assessed by the Collector and the claimants should be entitled to the amount calculated on that basis less the amount if any already received by them on the basis of the assessment made by the Collector and affirmed by the award. The claimants will be entered to interest on the outstanding dues calculated from the date of acquisition, that 13 12-4-1946 till payment, taking into account the amount they have already received as and by way of solatium which is to be adjusted against such interest. The Collector will determine the amount payable to them and will arrange to pay the same to the claimants within six months from the date of arrival of the copy of the judgment in his office.

10. There will be no order for costs to all these appeals.

Gupta, J.

11. I agree.