In Re: Dulal Chand Auddy

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Court : Kolkata

Decided On : Feb-11-1975

Reported in : AIR1975Cal341

Judge : Sabyasachi Mukharji, J.

Acts : Presidency Towns Insolvency Act, 1909 - Sections 9 and 12(2)

Appeal No. : Insolvency Case No. 14 of 1973

Appellant : In Re: Dulal Chand Auddy

Advocate for Def. : Manjulala Bose and ;M. Roy Choudhury, Advs.

Advocate for Pet/Ap. : P. Banerjee, Adv.

Judgement :
ORDER

R. Bhattacharya, J.

1. This appeal is by the claimant Sardarmull Kankaria against the valuation arrived at by the President Calcutta Improvement Tribunal in a Reference under Section 18 of the Land Acquisition Act 1894. The premises No. 19, Chatta-walla Gulee appertaining to the Calcutta Improvement Trust Scheme No. LXVI in award No. 40 of the Calcutta Municipality was acquired. Notice under Section 43(2) of the Calcutta Improvement Act was published on 9th October, 1952. Declaration under

Sec. 6 of the Land Acquisition Act was published on 4-8-1955. Notice under Section 9(1) of the Land Acquisition Act was served on 26-6-1956. The claim petition was filed before the Land Acquisition Collector on 6-7-1956. The award was made on 19-8-1959 and the Reference petition under Section 18 of the Land Acquisition Act was filed on 24-8-1959 claiming an increase in the market value of the premises acquired and the statutory allowance of 15 per cent. with interest on the additional amount of compensation to be awarded.

2. Before the Tribunal the claimant prayed for solatium at the rate of 15 per cent. on the valuation made by the Collector but the Tribunal turned down the claim as untenable after amendment of the CalcuttaImprovement Act in 1955. Against that decision the present appeal has been preferred.

3. Mr. G. K. Deb appearing on behalf of the appellant has urged two points before us. It has been contended first that the amendment of the Calcutta Improvement Act in 1955 will not affect the claimant's right to solatium under Section 23(2) of the Land Acquisition Act, 1894 as the right to receive solatium accrued before the said amendment. The second ground of challenge is that the amendment of the Calcutta Improvement Act barring solatium is ultra vires the Constitution. Mr. Nanigopal Das learned Advocate has appeared for the respondent.

4. The first point for consideration is whether the right to get statutory allowance under Section 23(2) of the Land Acquisition Act had accrued to the claimant before the amendment of the Calcutta Improvement Act in 1955. The amendment of the said Act came into operation on the 20th October, 1955. There is no dispute that according to the Act the market value is to be determined with reference to the date of publication of the declaration under Section 6 of the Land Acquisition Act. The amendment of the Calcutta Improvement Act in 1955 has refused statutory allowance to be paid under Section 23(2) of the Land Acquisition Act. There is no question about the fact that the amendment has no retrospective effect. In this case, the declaration under Section 6 of the Land Acquisition Act was published on 4-8-1955 and the notice under Section 9(1) of the said Act was served on 26-6-1956 after the amendment of the Calcutta Improvement Act. The Tribunal has held that the relationship of the vendor and the vendee 'arises at the stage of Section

9.' Let us now consider the relevant provisions of the Land Acquisition Act. Section 4 of the Act relates to publication of preliminary notification and powers of the officers thereupon. 'Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose,' a notification under Section 4 is published. Practi- cally, this is an introductory notice. Section 5-A of the Land Acquisition Act allows an opportunity to the persons interested to file objections to the acquisition referred to in the notification under Section 4. Section 6 of the Land Acquisition Act is important. It says that after the consideration of the objections under section 5A of the Act, if the Government is satisfied that there is need for acquisition of the land for a public purpose or for a company, a declaration shall be made to that effect subject to the proviso to Sub-section (1) of Section 6 which says as follows:

'provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of the public revenues or some fund controlled or managed by a local authority.'

Sub-section (2) says that in this declaration shall be published specific particulars of the land sought to be acquired as stated therein. Sub-section (3) of Section 6 is significant. It says, 'The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.' From the reading of Section 6 as a whole it is clear that the Government makes a firm declaration, a sure decision for acquiring the lands in question, after taking necessary steps and having ready fund for payment of compensation after acquisition.

5. In this connexion, reference may be made to the case of Babu Barkya Thakur v. State of Bombay, reported in : [1961]1SCR128 . There it is held as follows:

'It is only under Section 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a company. What was a mere proposal under Section 4 becomes the subject-matter of a definite proceeding for acquisition under the Act.'

Regarding the effect of Section 5-A read with Section 6 of the Land Acquisition Act, we may, for convenience, refer to the case of Mowasi v. State of Uttar Pradesh, reported in : AIR1953 All595 where we get as follows:

'It is only when it is finally determined that the land is needed for a public purpose, and that the compensation-money is chargeable wholly or partly against the public revenues or some fund controlled or managed by a local authority or the funds of some company, that a declaration can be made which becomes final and cannot be questioned.'

6. There cannot be any doubt that after due consideration as to the need for public purpose and having some source of money to the compensation to persons interested, the Government becomes determined and makes a firm declaration for the acquisition of the land under Section 6 and as a result thereof the owner of lands in question cannot refuse to deliver the lands. He cannot then make a building on the land with profil to himself and he cannot make any profitable transaction out of that land and then when the land is ultimately taken possession of in pursuance of the Land Acquisition proceeding, all his investment in the land building or otherwise subsequent to the proceeding will bear no fruit. For all practical purposes, the Land Acquisition proceedings start with Section 6 culminating in taking possession of the land by the Collector. Reference may be made in this connexion to the case of Mangal-bhai Patel v. State of Gujarat, reported in : AIR1964 Guj82 . It says in paragraph 24 with reference to Patel Gandalal Somnath v. State of Gujarat, : AIR1963 Guj50 . 'That decision makes it clear that acquisition proceedings can only be said to have commenced when a declaration is made under Section 6 of the Act.' We may also, in this connexion, look to the decision in : AIR1963 Guj50 where it has been held as follows:

'The notification under Section 6 is ex-propriatory in character and has serious consequence on persons interested in the land since they would be deprived of their interest in the land without their consent and against their will.'

7. The right to compensation accrues to the person interested in the land as soon as declaration is made or the acquisition proceedings start as then his right and interest in the land is fettered or affected by such declaration and he acquires a

right to claim compensation for the land. If the land is ultimately taken possession of in connexion with that land acquisition proceedings, the owner or the person interested gets compensation for the land so acquired. But if for any reason the land is not taken possession of but the proceedings initiated are given up, his right to claim compensation for land may cease or is frustrated and he may not get compensation for land but his right to claim compensation in that case too must be deemed to have accrued because of the damage he has suffered for the curtailment of his right in the land due to land acquisition proceedings and the declaration. The addition of proviso to subsection (1) of Section 6 means that Government takes a decision to pay compensation for land before issuing notification under Section 6 of the Land Acquisition Act. It is evident, therefore, that if the land acquisition proceedings culminate in the taking of possession of the land from the persons interested, the right to compensation ripens into the fruitful result of getting compensation. The right to claim compensation is not the same thing as getting compensation after the completion of the acquisition proceedings with the delivery of possession of land taken bv the Government when the title to the land completely vests in the Government. The case of the State of Madras v. Balaji Chettiar, reported in : AIR1959 Mad16 relied on by the Tribunal has also been considered by us but with great respect to the Division Bench of the Madras High Court in question, I cannot share the same view with regard to the proposition of law enunciated therein. The acquisition of land, as in the instant case, cannot be a case of an ordinary vendor and vendee, but it is a case of acquition of land by compulsion under the law and this is why the Land Acquisition Act provides for 'compensation' and not the price of the land so acquired. The right to claim compensation arises as soon as the right of the owner of the person interested in the land is affected adversely or his right is fettered by the firm declaration under Section 6 of the Land Acquisition Act.

8. According to the President of the Tribunal 'the relationship of purchaser and vendor' arises at the stage of Section 9. Section 9 simply speaks about giving notice of the intention of taking possession of the lands in respect of which a declaration has already been made in connexion with the acquisition and invites claims. Two things are clear. Claims are invited after the right to compensation accrues to the persons interested in land. Secondly, the claims are invited before

the possession of the land is taken by the Government. There is no doubt that with the taking of possession the land vests in the Government and the acquisition is complete. Evidently the right to claim compensation accrues before the stage of Section 9 in the acquisition proceedings which commence from the declaration under Section 6. Of course, the Government can under Section 48 of the Land Acquisition Act give up the proceedings to withdraw from the acquisition of any land before the possession of the same is taken. As we have already seen, the acquisition proceeding ends with the taking of possession after which the Government cannot avoid liability to pay compensation for land but must be bound to pay the same.

9. In view of the discussions above, it is held that if any land is acquired and taken possession of, as in the instant case, the right of the owner or the person interested in the land to claim compensation for such acquisition must be deemed to have accrued as soon as the declaration under Section 6 of the Land Acquisition Act is published. In this case the declaration was made on 4-8-1955 before the amendment of the Calcutta Improvement Act came into force on 20-10-1955. The claimant-appellant is, therefore, entitled to claim compensation as allowed by the unamended Calcutta Improvement Act including solatium under Section 23(2) of the Land Acquisition Act.

10. Coming to the second point regarding the validity of the amendment of the Calcutta Improvement Act in 1955 on the question of solatium there is already a decision of this Court in the case of the State of West Bengal v. Asitendra Nath, reported in : AIR1973 Cal478 decided by a Division Bench of this Court constituted by Gupta and Chanda, JJ. Two appeals from the judgment of the Tribunal under Section 72 of the Calcutta Improvement Act were heard by their Lordships. There the question that arose was whether the provisions of the Calcutta Improvement (Amendment) Act of 1955 (West Bengal Act XXXII of 1955) disallowing the statutory allowance under section 23(2) of the Land Acquisition Act was ultra vires the Constitution due to the infringement of Article 14 of the Constitution. In the main judgment Gupta, J. discussed the decisions of two Supreme Court cases, viz., one reported in : [1969]1SCR90 and the other reported in : [1965]1SCR614 . The first case related to the Madras City Improvement Trust Act having similar

provisions to refuse solatium under Section 23(2) of the Land Acquisition Act and the Supreme Court found a clear caseof discrimination, as it infringed the guarantee of equal protection of law. Relying on the principles of the two Supreme Court decisions, Gupta, J. has held that the provisions of the amendment Act of the Calcutta Improvement Act refusing solatium under Section 23(2) of the Land Acquisition Act ultra vires the Constitution and void, as it infringes Article 14 of the Constitution. Accepting that decision we find that the contention as raised by Mr. Deb is sound. The claimant-appellant, in view of our findings above, is entitled to statutory allowance at the rate of 15 per cent. under Section 23(2) of the Land Acquisition Act.

11. In the result, the claimant-appellant shall get solatium at the rate of 15 per cent. on the compensation awarded by the Collector. The claimant shall also be entitled to get interest on the excess amount of solatium at the rate of 6 per cent. per annum from the date of possession till paymenf is made or deposited. We allow 4 months time from the date of drawing up of the decree to the respondent to pay the said amounts to the appellant failing which the latter will be at liberty to execute the decree.

12. The appeal is thus allowed with costs. The judgment of the Calcutta Improvement Tribunal in Case No. 28 of 1962 (V) is hereby set aside. Hearing fee is assessed at 7 gold mohurs.

Sen Gupta, J.

13. I agree.