

Amalgamated Development Ltd. Vs. State of West Bengal

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Court : Kolkata

Decided On : Sep-12-2007

Reported in : 2007(4)CHN994

Judge : Bhaskar Bhattacharya and ;Rudrendra Nath Banerjee, JJ.

Appeal No. : R.V.W. No. 4122 of 2006 in F.A. No. 222 of 1995

Appellant : Amalgamated Development Ltd.

Respondent : State of West Bengal

Advocate for Def. : Subrata Mukhopadhyay and ;Gurudas Mitra, Advs.

Advocate for Pet/Ap. : Debasish Mitra and ;Shib Sankar Ghoshal, Advs.

Disposition : Application dismissed

Judgement :

Bhaskar Bhattacharya, J.

1. This is an application for review of the judgement and decree dated 13th January, 2006 passed by a Division Bench of this Court by which the said Division Bench dismissed a first appeal preferred by the present applicant against an award dated 17th March, 1994 passed by the Additional Special L.A. Judge, Alipur, in L.D.P. Case No. 159 of 1967(V) thereby allowing a land acquisition

reference case in part and enhancing the valuation of the acquired land to Rs. 825/- per cottah. By the said judgement, the learned L. A. Judge further directed payment of interest at the rate of 6 per cent on the excess amount from the date of taking possession of the acquired land till the deposit of the same in the Court. The referring claimant was also given solatium at the rate of 10 per cent for compulsory acquisition of land in addition to the market value of the acquired land at the rate of 12 per cent per annum on such market value for the period commencing on and from the date of publication of notification or the date of taking possession of the land, whichever is earlier.

2. Being dissatisfied, the applicant before us preferred a first appeal before this Court and by the judgement and decree dated January 13 2006, a Division Bench of this Court dismissed the said appeal by affirming the judgement and decree passed by the learned Land Acquisition Judge.

3. Being dissatisfied, the present application for review has been filed.

The contention of the applicant before the learned L.A. Judge as well as me Division Bench disposing of the first appeal was that the valuation of the land acquired should be calculated on the basis of a judgement of a Division Bench of this Court dated January 30, 1984 passed in different first appeals heard analogously arising out of acquisition of different lands out of the selfsame notification. Both the learned L. A. Judge and the Division Bench overruled such contention on the ground that in those cases, the lands involved were situated in mouzas Chandipur and Shibpur, whereas, the lands involved herein are situated in mouza Arakpur and that no evidence was adduced indicating that the properties involved in this case are situated in the vicinity of those properties which were involved in the earlier litigations and therefore, the said decision dated January 30, 1984 cannot be used as a yardstick for the purpose of calculating the valuation of the lands in question.

4. By this application for review, it is reiterated that the Division Bench While dismissing the appeal totally overlooked that the lands covered under all the aforesaid three mouzas were the subject-matter of the earlier litigations and those three mouzas are adjacent. According to the learned Advocate for the applicant,

we should, therefore, review the judgement dated 13th January, 2006 on the ground of error apparent on the face of record.

5. After hearing the learned Counsel for the parties and after going through the materials on record, we find that the Division Bench while dismissing the appeal was quite alive to the position that all the three mouzas were included in the notification of acquisition. There is also no dispute that the lands involved in the present litigation are situated on mouza Arakpur whereas the lands involved in the earlier litigation were situated on mouzas Chandipur and Shibpur although all the three mouzas were adjacent. The learned Advocate appearing on behalf of the applicant fairly conceded before us that vast amount of lands are situated in those three Mouzas and even the mouza Arakpur starts from Lake Gardens and ends with Bansdroni of the present Kolkata.

6. In our view, in such a situation, the valuation fixed for lands situated in \$ mouzas Chandipur and Shibpur cannot be of the same value of all the lands situated in mouza Arakpur when the mouza Arakpur itself is a large mouza. It appears from the judgement sought to be reviewed that the Division Bench specifically recorded that in the absence of any evidence showing that the lands involved herein are adjacent to the lands involved in the earlier litigations and that the facilities available to those lands are similar to the ones involved in the present case, the valuation fixed in the earlier litigation cannot be accepted and therefore, the learned L.A. Judge rightly relied upon the sale deed in respect of the land of the selfsame mouza Arakpur by suitably enhancing the valuation three times the one indicated therein as the sale-deed was executed 12 years prior to the date of notification in question.

7. We, therefore, find that there is no error appearing in the order sought to be reviewed, not to speak of error apparent on the face of record so as to modify the same. Although the learned Advocate appearing on behalf of the applicant tried to reargue the matter, we have not permitted him to argue as if we are hearing an appeal against an order passed by a co-ordinate Bench.

8. We therefore, find no substance in the present application for review and accordingly, we dismiss the same. In the facts and circumstances, there will,

however, be no order as to costs.

Rudrendra Nath Banerjee, J.

9. I agree.

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