

Md. Aslam and anr. Vs. State of West Bengal and ors.

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SooperKanoon Citation : sooperkanoon.com/883087

Court : Kolkata

Decided On : Nov-01-2006

Reported in : 2007(1)CHN414

Judge : Kalyan Jyoti Sengupta and ;Sanjib Banerjee, JJ.

Acts : West Bengal Land (Requisition and Acquisition) Act, 1948 - Section 4; ;
[Land Acquisition Act, 1894](#) - Section 18

Appeal No. : F.A.T. No. 2162 of 2003

Appellant : Md. Aslam and anr.

Respondent : State of West Bengal and ors.

Advocate for Def. : Bhabani Prasad Mandal, Adv.

Advocate for Pet/Ap. : Soumen Dasgupta and ;Tanmoy Chowdhury, Adv.

Disposition : Appeal allowed

Judgement :

Kalyan Jyoti Sengupta, J.

1. I have gone through the draft judgment prepared by my learned Brother. I agree with His Lordship's findings and ordering portion. However, I feel it expedient to express my own assessment of the matter. On hearing the learned Counsels for

the parties the factual aspect has been dealt with by my learned Brother exhaustively but with reasonable degree of brevity.

2. The learned Counsel Mr. Soumen Dasgupta while attacking the judgement and decree passed by the learned Land Acquisition Judge submits that the learned Judge has exceeded his jurisdiction as he relegated himself to the position of the surveyor and valuer without having any foundation or basis on the one hand and on the other hand almost ignoring the valuation made by the third party expert valuer. He has fallen in error in taking note of the evidence adduced on behalf of the Collector which has got no value as being hearsay evidence. Having regard to the location facility and amenities available on the date of notification, of the acquired land the valuation would have been at least Rs. 20 lakh per cottah. However, his client, he candidly admits the claim of this valuation could not be proved with legally acceptable evidence. His witness, expert valuer, has valued on scientific method and had also followed recognized and judicially accepted method. He has considered comparable instances as far as practicable, and came to conclusion that market value of the acquired property would be Rs. 5,55,000/- per cottah and there is no counter-evidence to buttress this. Under such circumstances the learned Judge would not have assessed and valued by himself. He has no material to reject the method of calculation made by his expert witness.

3. The learned Counsel for the State on the other hand submits that the learned Judge has painstakingly taken note of evidence of both the sides. It is for the learned Judge to accept any of the evidences as he thinks fit. He has given reasons in support of the calculation and the market price of the acquired land what he has found. The witness on behalf of the Collector has testified and produced the rate report, which was prepared by the surveyor and valuer of the Collectorate. While preparing the rate report the valuation made by the High Court in that area has been taken into consideration.

4. He contends that the learned Judge has not done anything wrong either on fact or in law.

5. We have examined the evidence adduced by both the parties. We have heard the learned Counsel. Now question is whether the valuation arrived at by the

learned Judge is correct and proper on the basis of the materials placed before him or not, Normally First Appellate Court does not interfere with the facts findings of the learned Judge but in this case we feel intervention of this Court is needed. What would be the approach of the Court regarding valuation of a property which is sought to be acquired has been explained in a fairly recent Supreme Court decision in case of ONGC Ltd. v. Sendhabhai Vastram Patel and Ors. reported in 2005(6) SCC 454. In paragraph 13 of the said judgment it is stated amongst others that:

While determining the amount of compensation payable in respect of the land acquired by the State, indisputably, the market value therefore has to be ascertained. Although, there exist different modes for arriving at the market value for the land acquired; the best method, however, as is well-known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by the deeds of sale. In the absence of any direct evidence on the said point, the Court may take recourse to other methods viz. judgments and awards passed in respect of acquisition of lands made in the same village and/or neighbouring villages. Such a judgment and award in the absence of any other evidence like deed of sale, report of expert and other relevant evidence, however, would have only evidentiary value.

6. Here there is no direct evidence of the valuation of the property situates in the same vicinity to compare with. A judgment of this Court regarding the valuation of some other property has, of course, been spoken of by the witness but this was not produced.

7. The claimant/ appellant has brought expert who has prepared report and he himself has explained before the Court below how he made valuation. His evidence is very natural and calculation made by him as it appears from testimony, is scientific and he had taken comparable instances. He has not blindly reported what the claimant wants. Therefore, his report according to us is acceptable. The learned Judge ought not to have placed himself to the position of surveyor or valuer without, having any legally acceptable material, true the learned Judge is export of all experts, but expertise of Court without any acceptable basis is nothing

short of judicial misadventure. It is absolutely a technical matter and such technical aspects should have been left with technical people. State on the other hand could not produce any evidentiary material before the learned Judge. The witness concerned had nothing to do with the valuation purported to have been made by some other officials of the Collector. The person who made the rate report did not come forward. Therefore, the evidence according to us as rightly said by Mr. Dasgupta, of the Collector is hearsay. The same should not be relied on at all.

8. We hold as my learned Brother has said that the report of the expert and his evidence brought by the claimant/ appellant should be accepted and should have been accepted by the learned Court below.

Sanjib Banerjee, J.

9. The referring claimants are before us complaining of the inadequate compensation awarded upon the State acquiring their valuable property close to the lakes in the upmarket residential niche of Southern Avenue in Calcutta.

10. The appellants had originally been dissatisfied with the pittance that the Collector had awarded by way of compensation. The appellants remain dissatisfied despite the substantial enhancement of compensation by the learned Land Acquisition Judge.

11. Premises No. 8, Southern Avenue, measuring about 7 cottah 17 sq.ft together with the building and structure thereon, was requisitioned in November, 1985 and acquired by publication of notice on May 5, 1987 under Section 4(ia) of West Bengal Act 2 of 1948 for setting up an office of the National Cadet Corps.

12. The referring claimants asserted in their application under Section 18 of Act 1 of 1894 before the learned Land Acquisition Judge that they were entitled to a rate of Rs. 20 lakh per cottah for the land. In support of the claim, one of the referring claimants examined himself and a former Deputy Chief Valuer of Calcutta Improvement Trust, then in private practice, was called as expert. As a comparable instance, the deed of sale relating to a Keyatala Lane property was relied upon by the appellants in the Court below.

13. Keyatala Lane, of Keyatala Road, is sandwiched between Southern Avenue and Purna Das Road close to where these two thoroughfares converge at Golpark, a kilometre or so to the east of the acquired premises.

14. The principal grievance of the appellants is that notwithstanding the learned Land Acquisition Judge having accepted the two properties to be comparable, his scaling down of the value of the acquired property was without basis.

15. The State examined the Surveyor and Valuer of the Land Acquisition Department, Calcutta.

16. There were two parts to the compensation awarded. The Collector had valued the land and had also valued the structure thereon. The valuation of the structure was not impugned before the learned Land Acquisition Judge.

17. The sale deed of the Keyatala Lane property was of the year 1995. The learned Judge accepted that the two properties were comparable but discounted the value of the acquired property on two counts: on account of the sale deed having been of the year 1995 while the basis of the quantum of compensation was required to be as at May 5, 1987; and, on the situational and other qualitative differences between the acquired property and the property covered by the sale deed produced before him. On the second count, the learned Judge has held that the acquired property was liable to be valued higher in some respects than the Keyatala Lane property but on account of irregular shape and the disadvantageous frontage, it suffered in comparison.

18. The appellants' expert witness produced his valuation report, which was exhibited before the learned Judge. In his view, the land price of Rs. 6 lakhs per cottah in 1995 ought to have been scaled down to Rs. 3 lakhs per cottah in respect of the land contained in the acquired property as at May 5, 1987. His further view was that upon weighing the advantages and disadvantages of the acquired property and the Keyatala Lane property, the land comprised in the acquired property deserved to be valued at a net of 85% over the land value at Keyatala. He based this opinion on the following advantages: wider road, better return frontage, greater commercial importance, better surrounding, close

proximity to the Metro and better frontage per cottah. Against such advantages, according to such expert, the acquired property was disadvantaged in that it had an eastern aspect compared to the southern aspect of the Keyatala Lane property.

19. The oral evidence of the first appellant was irrelevant. He merely climbed the box to repeat the claim of Rs. 20 lakh per cottah as had been made in the application for reference. He may as well have added another couple of zeros at the end of his claim. Evidence was required to be adduced in justification of the claim and not a mere reiteration thereof.

20. The appellants' expert, however, was more staid in his approach and, with cogent reasons, supported his report for finding that the proper valuation of each cottah of land at the acquired property to be Rs. 5,55,000/-. He had provided for downward revision of the price of land by reason of the sale in the comparable instance being about eight years subsequent to the effective date for adjudicating the quantum of compensation. His considered opinion was, however, that the land comprised in the acquired property was more valuable than the land being the subject-matter of the exhibited sale deed.

21. In a case of such nature, there is always an element of subjective assessment. That the Keyatala Lane sale could be taken as a guiding factor, is not in dispute. What is in dispute is the extent to which it should guide in the assessment of compensation in the instant case.

22. The Surveyor and Valuer of the Land Acquisition Department sought to sustain the Collector's award on the basis of a sale report of premises No, 5, S.R. Das Road and a sale report of premises No. 135 EFGH, Shyama Prasad Mukherjee Road. According to him, the valuation per cottah of the acquired premises was correctly assessed at Rs. 1,34,014/-. The State did not, however, offer any expert to counter the appellants' expert witness nor is the State aggrieved by the order passed by the learned Judge or the learned Judge's refusal to rely on the other properties referred to by the State's witness as comparable instances.

23. Without indicating as to how and to what extent the various heads of advantage as cited by the appellants' expert were unjustified, the learned Land

Acquisition Judge has proceeded to propound other criteria, each of which he describes as an 'edge'. The learned Judge has arrived, on the basis of his various heads of 'edge', at a valuation without much reasoning than his subjective assessment.

24. There is also a fundamental error that is evident in the impugned order which does not inspire any confidence in the subsequent 'edge' theory propounded by the learned Judge. In ignoring the expert's view on reducing the unit price by reason of the different time period covered by the sale deed and the publication of the notification relating to the acquired property, the learned Judge has coined a 'deceleration rate'. In applying such 'deceleration rate', the learned Judge held that if the rate of increase in property value was consistent over a period of time, the value of the property in a previous year could be determined if the present value and the consistent rate of increase were given. There can be no quarrel upto this stage.

25. The difficulty arose when the learned Judge put this theory into operation. It is easier to assess a higher value starting from a lower value than calculating backwards. Land of initial value of Rs. 100/- would have appreciated to Rs. 150/- five years down the line if there was a composite appreciation of 50%. However, when calculating backwards, the numerator in the first case cannot become the denominator in the second case. That is to say if the land price of today was to be made the basis for arriving at the land price of five years back, given there has been a 50% appreciation during such period, one cannot deduct 50% of the present value. In that event, in the example above, land valued at Rs. 150/- today on such erroneous calculation would become Rs. 75/- five years back.

26. The learned Judge assessed that land prices appreciated at the rate of 7 1/2 per cent per year during the eight years between 1987 and 1995. He then applied the flawed back calculation referred to above to hold that 60% (7 1/2 per cent multiplied by eight years) had to be deducted from the 1995 price to arrive at the 1987 price.

27. On such basis and taking Rs. 6 lakhs as the value per cottah in 1995, he arrived at a value of Rs. 2,40,000/- per cottah in 1987.

28. It was not necessary to go into such detail relating to the calculations were it not for the other 'edge' theory resorted to by the learned Land Acquisition Judge. It is evident that the learned Judge had no special expertise and it was unusual for the Judge to disregard the appellants' expert without questioning either his credibility or his methodology.

29. We possess no greater expertise than the learned Judge to assess compensation. But we can assess the evidence before us. The appellants' expert did not echo the absurd and unsubstantiated demand of his client. His assessment of Rs. 5.5 lakhs per cottah was no way close to the appellants' claim of Rs. 20 lakhs per cottah. His meticulous explanation justifying the various heads for which he gave the acquired property better score than the Keyatala Lane land, has not been seriously challenged by the State. The State has not, in the cross-examination of this expert, made any dent or put any cogent suggestion warranting his expert view to be discounted.

30. In fine, therefore, we find the valuation put forth by the appellants' expert was reasonable and justifiable.

31. The order impugned is modified by enhancing the value of the acquired land to Rs. 5,50,000/- per cottah. Consequently, the other amounts to which the appellants are entitled, except on account of compensation for the structures, will be on the enhanced land value.

32. The State is directed to make payment of the balance of the enhanced sum within a period of 6 (six) months of receipt of a certified copy of this order, failing which the appellants would be entitled to execute the same.

33. The appeal is, thus, allowed to the above extent and the award stands modified as indicated.

34. There will, however, be no order as to costs.

35. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on the usual undertakings.

