

CASE NO.:
Appeal (civil) 7096 of 2000
Appeal (civil) 7097-7098 of 2000

PETITIONER:
Smt. Lila Ghosh (Dead) through LR, Shri Tapas Chandra Roy

RESPONDENT:
The State of West Bengal

DATE OF JUDGMENT: 18/11/2003

BENCH:
S. N. Variava & H. K. Sema.

JUDGMENT:
J U D G M E N T

Variava, J.

These two Appeals are against the judgment dated 16th March, 2000.

Briefly stated the facts are as follows:

It appears that in the concerned premises there was a film studio. The owner had obtained a decree of eviction against the studio. The Appeals against that decree were dismissed all the way to this Court. Thereafter execution proceedings were filed to evict the film studio. At that stage, in order to help the film studio, the State Government on 24th December, 1979 requisitioned the property and took possession thereof. The requisition was challenged by filing Writ Petition No. 850 of 1980. On 28th February, 1980 a settlement was arrived at between the State Government and the owner. It was agreed that this property would be acquired by the State Government. A sum of Rs.11,00,000/- was paid by the Government in advance of acquisition.

Section 4 Notification was issued in July, 1982. However, it was only published in the locality on 5th of August, 1983. Thus for our purposes the relevant date would be 5th August, 1983. As the Government was not taking any further steps, a Writ Petition was filed. On 22nd May, 1985 the declaration under Section 6 was issued. An Award came to be passed on 16th September, 1986. In this Award, the price of land was fixed at Rs.10,940/- per cottah and for the structures a sum of Rs.5,65,726/- was awarded. Solatium at the rate of 30% was also awarded. So was additional compensation awarded at the rate of 12% from 5/8/1983 to the date of Award.

Not being satisfied the claimants filed a Reference under Section 18. Neither party led any evidence of any sale instances. Both the parties relied upon the judgment dated 30th May, 1983 in L.A. Case No.16/1975 which was in respect of acquisition of an adjoining property belonging to the Golf Club. The Reference Court valued the property in various ways, one of which was to take the value as given in the judgment dated 30th May, 1983 for that portion of the acquired land which was farthest from the road. Thereafter applying the belting method the value was arrived at on the following basis:

"1/2-3rd Belt area 42.94 Kt. @ 10,360 p.k. @ 4,44,858.40p
3/8th-3rd Belt area 6.68 Kt. @ 7,770 P.K. @ 51,903.60p
1/2-2nd Belt area recess 6.68 Kt. @ 10,360 @ 71,276.00p
2/3rd-2nd Belt area 41.30 Kt. @ 13,813.33 P.K. @ 5,70,490.52
1st Belt area 23.68 Kt. @ 20,720 P.K. @ 4,90,649.60p

Total: 121.48 Kts. Rs.16,29,178.92p"

The Reference Court then took into account the fact that the earlier acquisition was in respect of Notification dated 8th February, 1975 and gave an appreciation of 10% per annum for 9-1/2 years. The Reference Court also gave an appreciation of 10% for potentiality and further 10% for largeness. The Reference Court thus arrived at the figure of Rs. 31,300/- per cottah. The Reference Court then proceeded to value the land in various other methods. It then took an average of the figures arrived at by calculating in different figures and arrived at a figure of Rs. 27,000/- per cottah. The Reference Court also increased the value of the structure to Rs. 9,04,360/-. The Reference Court granted interest with effect from 24th December, 1979.

Still not being satisfied, the claimants filed an Appeal in the High Court. The Respondents filed cross-objections in the High Court. The High Court by the impugned Judgment fixed the value of the land at Rs.31,300/- per cottah. The High Court has held that Reference Court having fixed compensation on basis of earlier judgment could not have proceeded to compute compensation on any other basis. The High Court held that the belting method was correct. The High Court directed that interest was payable from 8th December, 1986.

Mr. Salve submitted that the Appeal of the State was not maintainable in as much as they had not challenged the belting method or the valuation fixed by the Reference Court. He pointed out that in the impugned Judgment it was mentioned that the Appellants had not pressed the cross appeal. On the other hand, Mr. Rohtagi submitted that the statement in the impugned Appeal to the effect that the cross Appeal was not pressed was erroneous. He submitted that this was clear from the fact that at the instance of the State the date from which interest was payable had been altered. In our view, it is not necessary to go into this controversy. In our view, even in the Appeal filed by the claimants the State can always challenge valuation. We have therefore heard the parties on merits.

It was contended, on behalf of the Appellants, that this was a compact block of land which had been acquired for the purposes of a film studio. It was submitted that there was no necessity to use the belting method. It was submitted that the price of the entire land should be one. That the belting method is not the correct method to be applied, in such a case, was not seriously disputed by Mr. Rohtagi. Both counsels however differed on what the compensation should be.

We are of the opinion that this was not a fit case for application of the belting method. The acquisition was of land on which a film studio stood. The acquisition was for the purposes of the film studio. It was a compact block of land which was acquired for a specific purpose. The land was not acquired for development into small plots where the value of plots near the road would have a higher value whilst those further away may have a lesser value. In such cases where a compact block is acquired the belting method would not be the correct method.

The next question is what is the value which has to be fixed for the land? As stated above neither party filed any sale instances. Both the parties only relied upon the Judgment in Land Acquisition Case No. 61 of 1975. According to the claimants the Judgment dated

30th May, 1983 in L. A. Case No. 61 of 1975 fixes compensation at Rs. 12,950/- per cottah, whereas according to the State the Judgment fixes compensation at Rs. 10.360/-. To resolve this controversy, one would have to look at that judgment.

That judgment was in respect of an acquisition of a very large plot of land admeasuring 17 bighas, 11 cottahs, 12 chittaks and 7 sq. ft. The land then acquired belonged to the Tollygunge Golf Club which held 343 bighas, 7 cottahs and 12 chittaks. A reading of the Judgment dated 30th May, 1983 in L. A. Case No. 61 of 1975 shows that the land then acquired was situated in a developed residential cum commercial area. That land was adjoining the land with which we are concerned. Thus the surrounding area would be the same. The Judgment shows that that land had a road frontage of 2775 ft. on Deshpran Sasmal Road and a frontage of 845 ft. on Baburam Ghosh Road. The judgment sets out that Deshpran Sasmal Road had a width of 120-130 ft. road, whereas Baburam Ghosh Road was a less wide road. The present land has a frontage of only 170 ft. on Baburam Ghosh Road. In the earlier case sale instances had been filed. The Court considered those sale instances and after averaging the price of those sale instances concluded that the value was Rs. 11,260/- per cottah. The Court then added 37-1/2 % for a wider road frontage. While so adding the Court again clarified that this was because it had a large frontage on the 120-130 ft. wide Deshpran Sasmal Road and also on the less wide Baburam Ghosh Road. Considering the fact that the present land only has a frontage on Baburam Ghosh Road, which is a less wide road, obviously an appreciation of 37-1/2% cannot be given. Also as stated above the present acquisition is of a compact block of land for an existing film studio. Therefore a road frontage does not have so much value in such a case. In our view, at the most an appreciation of 5% can be given for frontage in the present case. In the earlier judgment the Court then applied a depreciation of 22-1/2 % for undeveloped condition of the land and for larger size and irregularity of shape. After deducting 22-1/2% from 37-1/2% the Court calculated net appreciation to be 15%. The price of 11,260/- was therefore increased to Rs.12,950/-. This is the figure which according to the claimants is value fixed in the earlier judgment. In the earlier case, the Court then applied a co-efficient of 0.8% as the acquired land was a small piece out of a large tract of land and calculated the value at Rs. 10,360/- per cottah. This value was arrived at by multiplying Rs. 12,950/- by 0.8%. According to the State this is the value fixed in the earlier judgment.

As set out hereinabove by averaging the price of the sale instances the value arrived at was Rs.11,260/-. In our view, this is the price fixed in the earlier judgment. The additions and deductions are due to the peculiar nature of that land which do not apply in this case. As stated above in this case there is no frontage on a very wide road and therefore only 5% appreciation can be given for road frontage. However, even the land now acquired is a large piece of land. There must therefore be some deduction for largeness. The price of Rs.11,260/- is fixed on basis of sale instances of small plots of land. It is well known that a large piece of land would never fetch the same price as a small piece of land. In our view, for largeness a depreciation of 5% can be given. Giving the above appreciation and depreciation the price remains at Rs.11,260/- per cottah. The earlier acquisition was of the year 1974. Normally Courts give an appreciation of 10% per annum. Therefore for the 9-1/2 years there must be an appreciation at 95%. Thus to the figure of Rs.11,260/- a sum of Rs. 10,697/- will have to be added. This would bring the value to Rs. 21,957/- per cottah.

It was submitted that the Court must also take into account the potentiality. It was submitted that the Reference Court and the High

Court have both given 10% towards potentiality and this must be maintained. We are unable to accept that submission. It is to be seen that in arriving at the figure of Rs.11,260/- potentiality had already been taken into consideration. This is clear from the Judgment dated 3rd May, 1983 in L. A. Case No. 61 of 1975 wherein it has been observed as follows:

"Therefore the potentialities have already been taken care of in determining the average market price on the basis of the comparable units situated in a newly developed post residential locality."

Thus the Reference Court and High Court both fell into error in giving a 10% increase for potentiality. Once potentiality has been taken care of no question arises of giving an additional percentage towards potentiality.

It was next submitted that there must be a 10% appreciation for largeness. It was pointed out that both the Reference Court and the High Court has given this appreciation. We are unable to understand the submission or the rationale of the Reference Court and the High Court in giving an appreciation of 10% for largeness. The normal rule is that if a plot is large, then there must be depreciation for largeness. As already stated hereinabove large plots always fetch less than small plots. Therefore there is no question of appreciation for largeness.

It was next submitted that there must be a 10% appreciation on account of the fact that a Metro Railway Station is a stone throw away from this land. It must be noted that the Metro Railway Station has come up on the land in respect of which the judgment dated 30th May, 1983 was given. Apart from the fact that Metro Railway Station has come up everything else namely shops, hospital, T.V. center, residential cum commercial area remains the same as in respect of earlier acquisition. Even earlier there was a Tram Terminal and Bus Stop close by. The mere fact that the Metro Railway Station has come up would therefore not necessitate giving any appreciation on that account.

It was next submitted that in the earlier judgment there was a deduction of 20% and this deduction should be added back. As we have not deducted 20% no question arises of adding back the same.

Thus we hold that compensation payable is at the rate of Rs. 21,957/- per cottah. The claimant would also be entitled to all statutory benefits available to them under the Act.

The next question which arises is from what date interest is payable. On behalf of the claimants it was argued that possession was taken as far back as on 24th December, 1975. Reliance was placed on Section 34 of the Land Acquisition Act. It was submitted that interest has to be paid from the date of taking possession. It was pointed out that the Reference Court had directed payment of interest from the date of taking possession. However, the High Court has directed payment of interest only from 8th December, 1986. In support of this submission, reliance was placed on the case of Shree Vijay Cotton & Oil Mills Ltd. vs. State of Gujarat reported in 1991(1) SCC 262. In this case the possession had been taken much prior to the acquisition proceedings. This Court directed payment of interest under Sections 28 and 34 from the date of taking possession. It was submitted that this authority clearly lays down that the interest must be paid from the date of actual possession.

On the other hand Mr. Rohtagi submitted that interest is payable

under Section 34, only provided compensation is payable and the same is not paid or deposited. He submitted that compensation can only be paid after an award is made. He submitted that interest can only run from the date of the Award. He further submitted that under the Consent Terms dated 28th February, 1980 the claimant had been paid a sum of Rs.11,00,000/- in advance even before the acquisition proceedings started. He pointed out that another sum of Rs.11,00,000/- was also paid to them on 21st May, 1986. He pointed out that this was also before the Award was made. He pointed out that another sum of Rs.7,45,266/- was paid under the orders of the Court on 18th July, 1986. He pointed out that before the Award was passed, a sum of Rs.29,45,266/- was already paid to the claimants. He submitted that therefore this was a case where the claimant had already received a very large amount prior to the Award being made. He submitted that if these amounts are taken into consideration, then it would be found that no interest would be payable under Section 34. Mr. Rohtagi also pointed out that pursuant to the orders of this Court, a further sum of Rs.70,00,000/- was paid on 3rd July, 1977 and a sum of Rs.52,00,000/- was deposited in Court. He further pointed out that another sum of Rs.60,00,000/- has already been deposited in this Court on 13th December, 2002. He submitted that the State must get credit for all these amounts and that there can be no interest on the amounts paid or deposited from the dates on which they were so paid or deposited. On behalf of the claimants it was fairly conceded that on the amounts paid or deposited, interest would not run.

Even though the authority in Shree Vijay Cotton & Oil Mills Ltd. appears to support the claimants, it is to be seen that apart from mentioning Sections 28 and 34, no reasons have been given to justify the award of interest from a date prior to commencement of acquisition proceedings. A plain reading of Section 34 shows that interest is payable only if the compensation, which is payable, is not paid or deposited before taking possession. The question of payment or deposit of compensation will not arise if there is no acquisition proceeding. In case where possession is taken prior to acquisition proceedings a party may have a right to claim compensation or interest. But such a claim would not be either under Section 34 or Section 28. In our view interest under these Sections can only start running from the date the compensation is payable. Normally this would be from the date of the Award. Of course, there may be cases under Section 17 where by invoking urgency clause possession has been taken before the acquisition proceedings are initiated. In such cases, compensation, under the Land Acquisition Act, would be payable by virtue of the provisions of Section 17. As in cases under Section 17 compensation is payable interest may run from the date possession was taken. However, this case does not fall into this category.

In view of the above, we hold that the valuation would be a sum of Rs.21,957 per cottah. The claimants would also be entitled to solatium at the rate of 30% and further entitled to additional compensation at the rate of 12% from 5th August, 1983 to 16th September, 1986. If after giving credit for the amounts paid or deposited, it is found that compensation payable has not been paid or deposited then interest thereon, either under Section 28 or 34 will be payable from that date of the Award i.e. 16th September, 1986 till payment.

The Appeals stand disposed of accordingly. There will be no order as to costs.

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