

Abdul Kuddus Mandal and Others

Vs

State of Assam and Another

Civil Appeal No. 4678 of 1999

(R. C. Lahoti, N. Santosh Hedge, N. Santosh Hedge JJ)

23.08.1999

JUDGMENT

1. The application for bringing on record the legal representatives of Petitioner 2 is allowed. The legal representatives are brought on record. They are present and represented.
2. Delay condoned.
3. Leave granted.
4. This appeal arises out of land acquisition proceedings. The preliminary notification under Section 6(1) of the Assam Land (Requisition and Acquisition) Act, 1964 was issued by the Collector, Dhubri and possession of the subject land was taken over by the Collector on 7-3-1988. The Land Acquisition Collector made an award in the case of the appellants whereby land was assessed @ Rs. 3804 per bigha of basti/sali and Rs 15,953 per bigha of roadside land/trade site land. The appellants were also awarded a sum of Rs. 15,087.10 for demolition and removal of the malba of the houses belonging to the appellants, which were standing on that land. The total award made in favour of the appellants on 2-4-1991 was for a sum of Rs. 46,118.40 including compensation for zirut. The amount was accepted by the appellants under protest.
5. The appellants sought a reference under Section 18 of the Land Acquisition Act, 1894. Evidence was led before the Reference Court of the learned District Judge, Dhubri by the parties. After examination of the evidence, the learned Reference Court determined the market value of the land at Rs. 36,600; value of the houses at Rs. 1,88,000; damages on account of removal of houses at Rs. 15,087.00; interest on the difference on the amount of award made by the Collector from the date of possession of the land i.e. with effect from 7-3-1988 @ 9% per annum and solatium @ 30% on the market value of the land. The amount of compensation, on account of zirut, as made by the Collector, which was included in the detailed award, was upheld.
6. The order of the Reference Court dated 22-8-1994 was put in issue by the State before the Gauhati High Court. The appellants also filed cross-objections in the High Court and sought enhancement of the compensation fixed by the Reference Court. The Division Bench of the High Court, vide order dated 7-2-1996, while directing the respondents to deposit 50% of the amount awarded by the District Judge, Dhubri along with interest calculated till 30-4-1996, permitted the appellants to withdraw the amount so deposited. The appeal was finally disposed of by the High Court vide order dated 13-8-1998. The Division Bench fixed the rate of compensation for the acquired land at Rs. 20,000 per bigha. In so far as compensation for the houses is concerned, the same was completely negated and instead a sum of Rs. 37,000 being 20% of the valuation of the

houses fixed by the District Court was awarded as "just and proper compensation towards the loss and removal costs of the houses". The directions regarding rate of interest and solatium were not interfered with nor was compensation for zirut upset. The appellants have put the order of the High Court in issue.

7. We have heard learned counsel for the parties.

8. It appears to us that the High Court fell in a basic error in not awarding compensation for the houses on the ground that since land had been acquired, it is only compensation for removal of houses standing thereon, which could have been granted because houses had not been acquired. That is not a correct approach. The compensation was required to be paid for the houses which were standing on that land. The land could not have been acquired without the houses standing thereon. The Reference Court had rightly awarded compensation for the houses. The order of the High Court on this account suffers from apparent error. Insofar as the reduction in the rate for land from Rs 36,000 as awarded by the Reference Court to Rs. 20,000 per bigha by the High Court is concerned, we are not persuaded to disagree because we have not found any error, to have been committed by the High Court in that behalf. The High Court has not adverted to the compensation on account of zirut separately, though compensation on that account had been awarded by the Land Acquisition Collector and upheld by the Reference Court.

9. In the facts and circumstances of this case and keeping in view the material on record, more particularly the evidence of the expert who had valued the houses belonging to the appellants, we are of the opinion that while the appellants are entitled to compensation for land @ Rs. 20,000 per bigha, the appellants are also entitled to compensation towards the cost of houses. The cost of houses was calculated by the Reference Court, on the basis of expert evidence, at Rs. 1,88,000. Taking into account proper calculations, in our opinion, the appellants are entitled to receive Rs. 1,70,000 towards the cost of houses and not Rs 1,88,000. Since we are allowing the cost of houses, the question of grant of damages and compensation of Rs. 15,087 for removal of houses does not arise. The order to that extent is set aside. Besides, the appellants are also entitled to a sum of Rs. 10,000 for zirut. So far as interest is concerned, the interest at the rate of 9% per annum shall be so calculated as to take into account the amount already deposited by the State in the executing court under orders of the High Court, which amount was allowed to be withdrawn and has actually been withdrawn by the appellants. The interest shall, therefore, be calculated only on the differential amount for the remaining period from the date of possession of the land by the Collector i.e. 7-3-1988. The appellants shall be entitled to solatium at the rate of 30%.

10. With the aforesaid modification of the order of the High Court, the appeal is disposed of. No costs.