SUPREME COURT OF INDIA

C.E.S.C. Limited

Vs.

Sandhya Rani Barik

C.A.No.7201 of 2005

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

07.07.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. These appeals have been filed by CESC Ltd. questioning correctness of the judgment rendered by a Division Bench of the Calcutta High Court disposing of three appeals filed by the present appellant challenging common judgment and order of learned Land Acquisition Judge by which he disposed of three references from the award of the Collector. The acquisition of these lands took place under the *West Bengal Land (Requisition and Acquisition) Act, 1948* (in short the `West Bengal Act') and not under the Land Acquisition Act, 1894 (in short the `Act').

2. Cross appeals have been filed by the claimants seeking enhancement of rent and higher rate of interest.

3. The number of claimants was quite large and about 20. They were booked in three sets. The land was acquired under the West Bengal Act in May 1995. The requisition was made in 1995 and the Notification was issued on 3.5.1995. The total area was more than 3 bighas. One bigha is 20 cottahs and 1 cottah is 720 sq.ft. The land was part of 10 bigha tract situated in 156A, Manicktala Main Road owned previously by a single common ancestor namely, Kali Pada Barik who had since died. The Collector made the award some time in the year 1997 and thereafter the Land Acquisition Judge was approached on reference by the Bariks i.e the respondents in the three appeals. The Collector's award was initially on the basis of about Rs.50,000/- per cottah as compensation but the Land Acquisition Judge on the first occasion raised it to nearly Rupees 5 lakhs per cottah. At that stage the State and the Bariks were opposite parties. Since the land was acquired for the purpose of present appellant which was the requiring authority under the West Bengal Act, acquisition has to be preceded by a requisition for maintenance of supplies essential to public life and in this case supply of electricity was the service involved. A Sub-station i.e. 132 K.V. had already been built over the acquired land. The Requiring Authority filed a Writ Petition before the High Court taking the stand that the matter was decided in its absence. On 3rd May, 2000 order was passed by a

Division Bench of the High Court whereby the matter was remanded to the Land Acquisition Judge directing the appellant to be made a party. It also directed that persons who had already been examined before the Land Acquisition Judge would be again presented for cross examination by the appellant subject to their availability. The matter was considered again. The Land Acquisition Judge again made assessment and after hearing the present appellant held that the rate per cottah would be higher. But in view of the fact that earlier a lower rate had been fixed, same was maintained.

4. The determination was challenged before the High Court.

5. The appellant referred to the evidence of some of the witnesses examined by Bariks. One Chandra Nath Barik admitted that the acquired land was previously being used by the washerman of the family for washing clothes and drying those. Evidence was led by the appellant that at the time of requisition of the land in 1990 the land was low in lying area and was filled with water hyacinths. Just outside the boundary of the tract acquired, there was a big pond. The land had to be filled up by copious supply of fly ash which was supplied by the appellant itself from its generation plant at Titagarh. The thickness of the filling fly ash layer was of the order of 10 ft. The land development was undertaken by the appellant by engagement of certain contractors. Their bills were exhibited and the payment to the order of about Rs.30 lakhs was claimed.

6. Bariks on the other hand took the stand that entire money was not spent on land development, but a part of that was for putting up the structures of the appellant as well. The High Court referred to some factual aspects and took note of the fact that the appellant's main grievance was that large track of land was the subject matter of acquisition and the rates applied for smaller plots cannot have any relevance. After referring to certain factual aspects, the High Court disposed of the appeals in the following manner: "1. the market price of the land acquired is determined to be Rs.2.25 lac per cottah and the referring claimants in all these cases do get an award of compensation of Rs.2.25 lac per cottah.

2. In addition thereto, they are entitled to solatium at the rate of 30% on the said land value.

3. They shall also be entitled to additional compensation of 12% per annum on the land value, but not the solatium, from 3.5.95 to 27.3.97(see: *Sunder's case*[1]) which deals with ultimate i.e. 5.28 interest on solatium but does not pronounce that Section 23(1A) will apply on Section 23(2) also).

4. The respondents/referring claimants shall also be entitled to rent compensation at the rate of 9% per annum from 16.10.90 to 2.5.95 on the land value computed at the rate (per cottah) of Rs.2.25 lac less 25%; we clarify that the land value is to be reduced by 25% and rent compensation shall run thereon the said period 16.10.90 to 2.5.95.

5. On all the items 1, 2, 3 and 4 the respondents/referring claimants shall be entitled to interest at the rate of 9% per annum from 27.3.97 until payment or payment into court; if

such payment is not made within 17th February, 2004 the interest shall be thereafter at the rate of 15% per annum; and

6. Due credit shall be given in regard to the wiping of liability as regards the above heads, on account of payments or payments into court already made by the appellants."

7. Stand of learned counsel for the appellant essentially was that the rate applicable for acquired land cannot be as high as Rs.5,32,000/- per cottah as was fixed by the Reference Court. It is submitted that though the High Court fixed it to Rs.2,25,000/- per cottah, same was also high. The claimants relied upon sale deeds measuring about 5 cottahs. In the Cross Appeals filed, Bariks have taken the stand that the appreciation aspect has not been taken note of. The reductions i.e. 25% for land locking, 15% for road frontage and 5% for belting are irrational. A large number of claimants i.e. 22 are involved and it is their undivided shares which had to be taken note of. It was pointed out that each person on partition does not get more than 5 cottah. The purpose of acquisition was construction of sub-station which required large area. The acquired land was homestead urbanized industrial area.

8. It is pointed out that the statute i.e. West Bengal Act provides that the rate of interest has to be 9% for one year and thereafter 15%.

9. It is submitted that the High Court took note of some common passage concept. There was no lease and licence arrangement with Purbasa Housing Estate. So ingress and egress facilities were known. Because of the locational advantage no deduction is called for any largeness. It is pointed out that the High Court went wrong in not adding land value for 7= years. The High Court while considering the largeness aspect has fixed 15 to 20%. It is the stand of Bariks that largeness cannot be an issue in the present one. The Reference Court rightly held that largeness question was not relevant. It was a case of acquisition of contiguous land. Largeness has to be linked to the purpose. The belting method has no application because it was an open area for particular purpose. Similarly, there was no question of any land locking. The High Court observed, according to the Bariks, erroneously that there was any access. The common passage was linked to the main road. Since the purpose was to have protected area, largeness question was not of any relevance. So far as the frontage factor is concerned, it was submitted that for the purpose for which the land had been acquired frontage may not be necessary. It has to be anywhere in the area.

10. Additionally, belting method is an obsolete method. Further, belting is not a proper method as the land was situated in well defined development block.

11. It has been pointed out by learned counsel for the appellant that the purpose is really irrelevant for determining market value. The potential has to be seen. It is a case of willing buyer and willing seller. It is also pointed out that number of ultimate claimants is really irrelevant because 20 sellers have to join if they have to sell the land and suit for partition has to be filed.

12. The High Court has noticed the following factual position.

"(i) The acquired plot of land is about 150 to 200 ft. away from the Manicktala Main Road. It is the third belt away from the main road.

(ii) It is impossible to conclude that there is any frontage of the acquired land on the southern side where Manicktala main road runs.

(iii) So far as northern and southern sides of the acquired plot are concerned it is admitted that those are land bound. On the west there is other land of Bariks and on the north there was a housing estate called Purbasa Housing Estate."

13. The case of the appellant was that the plot which was acquired for their use was wholly land locked. This forms a very important factual issue which is important while determining the compensation.

14. The issue was whether on the eastern side of the acquired land there was a frontage on 40 ft. municipal public road. The case of Bariks that this was so. On the other hand the appellant took the stand that there was no municipal road and it was a private land of Purbasa Housing leading from the Manicktala Main road on the South into the Housing Estate itself. The road runs south to north and belongs to Purbasa. That 40 ft wide road is not a municipal road and it has no name. There are no premises numbers attached to it.

15. Interestingly, the witnesses of the appellant were asked a question as to whether it had taken permission from the Public Works Department for laying cables under the P.W.D. road. No evidence was there to show that the road was a public road or it connected with the Manicktala Main Road. From the plan it appears that the road goes into the Purbasa Housing Estate and ends there. Therefore, the plot was wholly land locked. The High Court ultimately therefore fixed the rates as noted above.

16. The armchair assessment of land value has to proceed with common sense and circumspection. One should attempt to find out the just and reasonable compensation without attempting any mathematical precision in that regard. For the purpose of assessing compensation, the efforts should be to find out the price fixed for the similarly land in the vicinity.

17. The difference in the land acquired and the land sold might take on various aspects. One plot of land might be larger, another small, one plot of land might have a large frontage and another might have none. There might be differences in land development and location. There might be special features which have to be taken note of and reasonably considered in the matter of assessing compensation.

18. Where a very large plot of land has been acquired and the comparison is sought to be made with a comparatively small piece of land which has been sold or otherwise dealt with, then in that event, a percentage of the price is to be knocked off because of the largeness itself of the acquired land. Accordingly, the High Court made the deductions. The High

Court also dealt with the question of land locking and held that it was a special feature which had to be taken note of.

19. We do not find any infirmity in the approach of the High Court. Therefore, the rate fixed by the High Court does not suffer from infirmity. The appeals filed by the appellant-CESC, therefore, stand dismissed.

20. Rate fixed by the High Court as questioned in the cross appeals does not warrant interference. But there is substance in the plea regarding rate of interest.

21. Section 7(2)(a) of West Bengal Act is as follows:

> "7(2)(a)- When the compensation has been determined under sub-section (1) the Collector shall make an award in accordance with the principles set out in section 11 of the Land Acquisition Act, 1894 and the amount referred to in sub-section (2) of section 23 of that Act shall also be included in the award:
>
> Provided that interest at the rate of nine per centum per annum on the amount of compensation under the award from the date of the publication of the notice under sub- section (1a) of section 4 until payment shall be included in the amount payable under the award:
>
> Provided further that if such compensation or any part thereof is not paid or deposited within a period of one year from the date of publication of the notice under sub-section (1a) of section 4, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

22. The rate of interest as statutorily fixed shall be applicable in place of rate fixed by the Reference Court and the High Court.

23. The cross-appeals are allowed to that limited extent. There will be no order as to costs.

[1]*(2001) 7 SCC 211*