NAGPUR HIGH COURT

Crown, through Deputy Commissioner

Vs

Chandrabhanlal

Misc. First Appeal No. 50 of 1947

(R. Kaushalendra Rao and Tambe, JJ.)

01.07.1955

JUDGMENT

R. Kaushalendra Rao,J.

1. This appeal is against the decision of the arbitrator under section 19, Defence of India Act. By an order of the District Magistrate, Jabalpur, dated 20-4-1943, an area of 6.45 1/2 acres situated in the villages Hinotia, Sunarwadi, Subhasnagar and Amanpur was acquired under Rule 75A(2) of the Defence of India Rules for the Posts and Telegraphs Department. The 25 respondents were interested in the land acquired and claimed compensation for their interests. The arbitration awarded various sums to the claimants, the total of which came to Rs. 68,607. Against the award, this appeal is preferred under Rule 5 of the C. P. and Berar Arbitration (Defence of India) Rules, 1943, for reducing the compensation on the ground that the prices fixed by the arbitrator were inordinately high and unjustifiable. There is also a cross-objection by respondent 17 for increasing the compensation of Rs. 5,417 awarded to him in para 31 of the judgment.

2. Before we deal with the appeal it would be convenient to dispose of the preliminary objections raised by the respondent.

3. The respondents contended that the appeal presented by the Crown was not competent. In the proceedings before the arbitrator, the Crown was shown as a party without any objection, presumably because of Section 175 (2), Government of India Act, 1935. Naturally, the Crown, being the party feeling aggrieved by the decision of the arbitrator, preferred the appeal. With the advent of the Constitution, under Article 294 (a), the property, which vested in the Crown prior to the Constitution, vested in the Union. Accordingly, the learned Advocate-General applied for substituting the Union of India as the appellant. No question of limitation arises in a case of devolution of interest pendente lite. We order the memorandum of appeal to be corrected accordingly.

4. The next contention is that the appeal abated in its entirety because of the death not disputed before us of respondent 17. It is not disputed before us that respondent 17 died in 1948 during the pendency of the appeal (vide para 2, *Crown through D.C. Jabalpur v. Siddique Ahmad*[1]. The

legal representatives were not brought on record either in the appeal or in the cross-objection. There can be no doubt that the appeal against respondent 17 must be held to have abated. But it is contended for the other respondents that the failure of the appellant to bring on record the legal representatives of the respondent results in the total abatement of the appeal. Though the order is joint in favour of the respondents, the share of compensation of each was ascertained in the order itself. The amount of Rs. 68,607 awarded as compensation in the case is the total of separate items of compensation awarded to each one of the claimants. The result of the death of respondent 17 in no way prevents the Court from considering the separate claim of each one of the other claimants in so far as such claims have been separately compensated by the arbitrator himself. See paras 4 and 13, Crown through *D.C. Jabalpur v. Siddique Ahmad (supra).* The same contention based on the death of respondent 10 which is not disputed before us must also fail.

5. None appears for the Municipal Committee to contend that the appeal has abated because of its supersession. But it is contended for the other respondents that the supersession of respondent 25 resulted in the abatement of the appeal in toto. The contention cannot prevail for the very reasons on which the contention founded on the death of Siddique Ahmad is rejected.

6. Another preliminary objection raised by the respondents is that the appeal is liable to be rejected for non-payment of proper court-fees. A fixed court-fee of Rs. 5/5 was paid on the memorandum of appeal under Article 11, Schedule II, Court-fees Act.
There is authority for the view that Section 8, Court-fees Act which provides for the computation of fee on a memorandum of appeal against an order relating to compensation cannot be made applicable to an appeal by the Government asking for reduction of the compensation awarded. See *In re Assistant Commissioner of Labour*[2]*, (2)* and *Secretary of State v. Baij Nath*[3]*,*

7. The difference between a reference to arbitration under section 19, Defence of India Act and a reference to the Court under section 18, Land Acquisition Act is pointed out in *Ram Brich Singh v. Bengal Province*[4]*,* In view of Section 19 (1) (g), save as provided in the section itself and in any rules made thereunder, nothing in any law for the time being in force applied to arbitrations under the section. See *Associated Oil Mills, Ltd. v. Provincial Government, Madras*[5]*,* The arbitrator appointed under section 19, Defence of India Act makes an award fixing the amount of compensation payable to the claimants. The award cannot be considered as an order within the meaning of Section 8. Nor is such an award a decree or an order having the force of a decree. Therefore in an appeal against the amount of compensation awarded by the arbitrator under section 19, Defence of India Act, the court-fee payable is not ad valorem but fixed. See *Hirji Virji v. Government of Bombay*[6]*,* So we overrule the objection that proper court-fee was not paid on the memorandum of appeal.

8. The last objection of the respondents is that the appeal is not competent, at any rate,
in respect of the respondents who were awarded compensation below Rs. 5,000. The contention is founded on sub-rule (2) of Rule 5, C. P. and Berar Arbitration (Defence of India) Rules 1943. The rule in so far as it is material here reads :

> "No appeal shall lie in a case in which the arbitrator has awarded an amount not exceeding Rs. 5,000....."

According to the respondents, the case of each claimant has to be considered separately for the purposes of this rule. This contention is without force. The land in question was acquired by a single notification and the case has throughout been treated as a single acquisition though it gave rise to different claims by the various persons interested in the land acquired (vide Revenue Case No. 3 Hd. XVI/V 1943-44). If the total amount of compensation awarded in the case is more than Rs. 5,000, the appeal cannot be held to be incompetent because the sum when divided among the different persons interested may in respect of some of them fall below Rs. 5,000/-.

9. Now we proceed to deal with the appeal on merits. The respondents claimed before the arbitrator compensation at rates ranging from Rs. 10,000-Rs. 40,000 per acre. The learned arbitrator rejected all the six transactions proved on behalf of the Crown for determining the value of the land in question. The sale-deeds (Ex. A-1, Ex. A-2 and Ex. A-3 and the one dated 9-2-35) are all for a period much anterior to the date of acquisition and are of little help in determining the value on the date of acquisition.
The sale deed Ex. A-1 is a composite transaction relating to land in Ranipur and Sunarwadi and there is no basis for valuing the land at Sunarwadi separately. That apart, this transaction as well as the transaction evidenced by Ex. A-3 involved alienations by widows without the consent of the reversioners. That being so, they cannot furnish a true index of the value of the kind of property acquired. The sale deed dated 9-2-1935 and the sale deeds (Exs. A-4 and A-5) are sales of leasehold rights.

10. Besides, the land in the transaction evidenced by the sale deed dated 9-2-1935 is far away from the main road and 2 1/2 furlongs away from the land acquired (vide C. W. 2). The land covered by Ex. A-4 is on the border of a nala and, in fact, is a part of it (vide C. W. 6). The transaction evidenced by Ex. A-5 really took place in 1928 when there were no buildings near-about (vide C. W. 5). For all these reasons, we are not prepared to differ from the view of the learned arbitrator that they are of little value for the decision of the case.

11. The learned arbitrator considered five transactions of sale relied upon for the claimants in proof of the market value of the land acquired. They are :

Sale deed dated 7-5-1942,
Sale deed dated 17-1-1943 (Ex. N. A-1),
Sale deed dated 10-5-1943 (Ex. N. A-2),
Sale deed dated 22-6-1943 (Ex. N. A-3),
Sale deed dated 28-6-1943 (Ex. N. A-4).

On the basis of these sale deeds, the learned arbitrator found that the value of the land in the vicinity of the land acquired was between Rs. 16,000 to Rs. 17,000 per acre. He considered the effect of oral evidence, particularly that of Sheonath (A. W. 5) as yielding a price between Rs. 10,000 to Rs. 17,000.

12. The contention for the appellant is that the price fixed by the arbitrator for the land acquired was more or less based on the sale deed dated 7-5-1942 of Karunashankar but that the learned arbitrator erred in fixing the value at Rs. 16,250. According to the learned Advocate-General, the price of the land would come to only Rs. 11,000 and not Rs. 16,250. It is pointed out by the

learned Advocate-General that the price paid by Karuna Shankar (C. W. 4) is for a small plot of land, .02 acre, and that the price included the price for the structure as well. While we have to bear in mind that Karuna Shankar's plot is very small, we see no force in the contention that the price of the land could not be determined apart from the structure on it. The witness did state that the small hut on the land was worth Rs. 15 only and the witness was not cross-examined. In fact, the learned arbitrator valued the structure at Rs. 75. It was on that basis that the price of the land was fixed at Rs. 16,250. Actually, the maximum price fixed by the learned arbitrator for the plots under consideration is only Rs. 15,000, that is, for the land in group A.

13. According to the sale deed dated 17-1-1943 (Ex. N. A-1), the price of land was as much as Rs. 22,000 per acre. The plot is marked L in red in Schedule A. The price yielded by the three other transactions Ex. N. A-2, Ex. N. A-3 and Ex. N. A-5 ranges between Rs. 17,000 and Rs. 27,000. But these transactions were all subsequent to the date of the acquisition. The learned arbitrator did not adhere to the rates yielded by these transactions because of the increase in the value subsequent to the acquisition under consideration. That is why the value of the plot covered by Ex. N. A-3 was taken as between Rs. 15,000 to Rs. 16,000 on the relevant date.

14. The learned Advocate-General particularly relied upon Nanakprasad (C. W. 1) and submitted that respondents 3 to 9 should have been compensated on the basis of his evidence. But the purchase from Pyarelal by Nanakprasad, as we have already noticed, was of the year 1938 and none was willing to buy the land because Pyarelal had purchased it from the widow without the consent of the reversioner Nanakprasad himself. In spite of an offer of Rs. 5,000 to him Nanakprasad refused his consent. The price of Rs. 6000-Rs. 7000 per acre stated by the witness was in 1941-42 and for land both in Ranipur and Sunarwadi. We are concerned with 1943 and with Sunarwadi alone. The evidence of Sheonath (C. W. 5) also shows that building activity had been going on and that there was an increase in prices. We are of opinion that Nanakprasad's evidence cannot furnish the basis for valuation as contended for the appellant.

15. The learned arbitrator rightly gave weight to the factors referred to by him in paras 3-5 of his order. He considered the special adaptability of the sites in question for building purposes. In fact, on some of the lands, plots had already been laid out and structures put up. Because of the demand for building sites in an expanding town, the prices were on the increase especially because of the war.

16. The learned arbitrator was quite alive to the fact that all the land acquired could not be valued at the maximum rate. In determining therefore the prices of the various plots in question, he broadly divided the lands, according to the situation, into three categories, groups A, B and C, and fixed different prices of the respective group at Rs. 15,000, Rs. 14,000 and Rs. 12,000 per acre. Precise evidence about the value of the plots identically situated as the plot in question is not always possible. In the absence of such evidence, no exception can be taken to the method adopted by the learned arbitrator which gave due consideration to the factor of situation of the various plots in question. Though, from the point of view of the authorities, the plot acquired may be a compact area, it cannot be forgotten that it belongs in small plots to different individuals, which, in the case of sites suitable for buildings, is an advantage in favor of the claimants. We are satisfied that the appellant has not discharged the onus which is on it of showing that the fixation of prices with respect of groups A and B, at any rate, is wrong. The

appeal so far as this part of the case is concerned must be governed by the principle of the decision in *Kalyan Mal v. Ahmad Uddin*[7],

17. There is not force in the contention that some of the tenants or the proprietors accepted the compensation given without demur and so the value of the land as well as the proprietary profits should have been fixed on that basis. The case of the claimants who without objection accepted the compensation given by the Deputy Commissioner cannot be taken as decisive on the question of compensation where the parties have not chosen to accept the same and have adduced evidence in support of their case. See *Atmaram Bhagwant v. Collector of Nagpur*[8], and Misc. F. A. No. 49 of 1947, D/-15-4-1955 Nag .

18. The proprietary profits of the malguzars was fixed at 1/4 of the total compensation which is in accordance with the view taken in *Sadasheorao Krishnarao v. Collector of Nagpur*[9], As the learned arbitrator increased the compensation payable, there is no force in the ground that the compensation for the proprietary interest of the malguzars should have come out of amounts already accepted by the tenants for their lands. In any case the appellant has not impleaded the tenants as the respondents to the appeal and cannot be permitted to claim relief this way.

19. The learned arbitrator fixed the compensation payable to the municipal committee in respect of proprietary rights at a higher proportion than that payable to the malguzars. The reasons given are that the municipal committee could have enhanced the rent after the period of the lease and further the leases were subject to conditions. The differentiation made cannot in the circumstances be said to be improper and does not call for any interference.

20. It now becomes necessary to refer specially to land falling in group C because the learned Advocate-General contended - and with much force - that the learned arbitrator erred with respect to these lands in taking the rate at Rs. 12,000 per acre
when the respondents concerned, 1 and 16, did not themselves claim more than Rs.
10,000 per acre (vide written statements dated 29-6-1945 and 9-11-1945). The learned arbitrator did take note of the fact that the land in group C is away from the main road and that there is no road near-about it. The land was really in the interior. That being so, the compensation payable to respondents 1 and 16 could have been valued at more than Rs. 10,000 per acre and the compensation payable shall now be calculated on that basis not only with respect to the land of respondent 1 Chandrabhanlal and respondent 16 Dalchand but also with respect to 18 acre of land of Shiv Shambhoo (respondent 2) which is close to the land in group C.

21. The compensation payable to respondent 2 Shiv Shambhoo in respect of 18 acre of tenancy land shall be Rs. 1,800 instead of Rs. 2,160; and the total compensation payable to him shall be Rs. 7,522 instead of Rs. 7,882.

22. For respondent 1 Chandrabhanlal, the compensation payable in respect 2 acres 3 decimals shall be Rs. 15,225 instead of Rs. 18,270. The total compensation payable to respondent 1 shall be Rs. 15,801 instead of Rs. 18,846.

23. The compensation payable to respondent 16 Dalchand in respect of 10 acre shall be Rs. 1,000 instead of Rs. 1,200. The compensation payable in respect of the tenancy land including the trees shall be Rs. 5,134 instead of Rs. 6,149; and the total compensation payable to respondent 16

shall be Rs. 6,349 instead of Rs. 7,563.

24. In the end, we see no reason to disturb the decision of the learned arbitrator and we affirm it except with respect to respondents 1, 2 and 16 as indicated above. The total compensation payable shall therefore be Rs. 63,987 instead of Rs. 68,607. The appeal succeeds only with respect to respondents 1, 2 and 16 as indicated above and the order below will be modified accordingly. The appellant will be entitled to costs in proportion to success in the appeal from the three respondents and shall pay the costs of the rest. The cross-objection by respondent 17 must also be held to abate and is dismissed.
Order accordingly.

Cases Referred.

[1] Misc. F. A. No. 49 of 1947, D/-15-4-1955
[2] AIR 1924 Mad 489
[3] ILR 8 Luck 85
[4] AIR 1946 Cal 319
[5] ILR (1948) Mad 567 at p. 572 : (AIR 1948 Mad 256 at p. 257)
[6] AIR 1945 Bom 348
[7] AIR 1934 PC 208
[8] 25 Nag LR 68
[9] ILR (1942) Nag 740 : AIR 1942 Nag 86