

Constitutional Writ  
PRESENT: The Hon'ble JUSTICE I.P. MUKERJI  
Judgment on: 29.04.2010  
W.P. No. 11042(W) of 2007  
SRI DIPAK DUTTA  
Versus  
GENERAL MANAGER, METRO RAILWAY AND OTHERS

Points:

**Compensation:** Determination of valuation as per letter of District Sub-Registrar – No cross examination of the sub-registrar \_whether proper - Metro Railways (Construction and Works) Amendment Act, 1987 S.13(1)(4)

Facts:

Notification for acquisition of the land of the writ petitioner was published by the Railways on 28<sup>th</sup> March 2002. This notification was published in Delhi and the petitioner had no knowledge of it when he bought the land. On 28th February 2003, this land was acquired by the Central Government. A claim for compensation was filed by the petitioner before the competent authority on 25th April 2003. The competent authority passed its order on 4th May 2006. This was affirmed by the order of the appellate authority on 26th September 2006. This valuation was considered by the competent authority. Being aggrieved by its valuation the writ petitioner preferred an appeal before the appellate authority. The appellate authority affirmed the valuation of the competent authority. Hence this writ application.

Held:

When a responsible adjudicating authority comes to a finding that the sale was speculative, or that it was suspicious or that the consideration mentioned in the sale deed was not honest, some grounds and reasons to support that finding ought to have been forthcoming. Para 11

A sale deed may be indicative of the consideration it is certainly not proof of the market value of the land on the date of the above notification. Para-12

The competent authority has relied upon the said letter by the District Sub-Registrar stating that land valuation in Chakgaria was 1.5 lac per cottah. First of all, a District Sub-Registrar is not a valuer of property. He may be having specific powers under the relevant statute to make market valuation of properties in suspicious conveyances for the purpose of calculation of stamp duty. Further, if this land valuation by the District Sub-Registrar was to be relied upon, then the petitioner should have been given an opportunity to cross-examine the District Sub-Registrar.

Para-13

The power of the Civil court in trying a suit under the Code of Civil Procedure has been conferred upon the competent authority. When such power has been given to this competent authority, a determination of the market value of the land on the date of the notification should have been made on more surer ground and principles. More substantial evidence should have been considered by the competent authority to arrive at its finding.

Para-14

Cases Cited:

State of M.P. – vs – Harishankar Goel---- 1997(2) SCC 487  
Ashutosh Law & Anr. – vs – The General manager, Metro

Railways & Ors. -----2008(2) Cal 151in (para 20)

For the petitioner : Mr. Subrata Talukdar

Mr. Debasish Basu

For the respondents : Mr. S.N. Pal

Mr. R.P. Mookerjee

The Court:

This writ application is about the award of compensation to the writ petitioner for his land acquired for Metro Railway purposes.

FACTS:

2. Way back in 1978 Metro Railways (Construction of Works) Act, 1978 was enacted by our Parliament. This Act was amended by the Metro Railways (Construction and Works) Amendment Act, 1987. It provided for acquisition of land for the construction of Metro Railways.

3. The area of the land is 6 cottahs 2 sq. ft. in Mouza – Chakgorta, Chakgaria , Kolkata, J.L. No. 26, Dag No. 13, Khatian No. 106 (New). This land was purchased by the petitioner on 29th April 2002. The consideration mentioned in the sale deed is Rs.15,00,695/- @ Rs.2.5 lacs per cottah. Notification for acquisition of the land of the writ petitioner was published by the Railways on 28<sup>th</sup> March 2002. The writ petitioner says that this notification was published in Delhi and he had no knowledge of it when he bought the land. While hearing the matter I made an enquiry whether lands could have been acquired after they were notified for acquisition. I was told that there was no such bar. On 28th February 2003, this land was acquired by the Central Government. A claim for compensation was filed by the petitioner before the competent authority on 25th April 2003. The competent authority passed its order on 4th May 2006. This was affirmed by the order of the appellate authority on 26th September 2006.

**LAW:**

4. The whole question is how to value this land for the purpose of award of compensation. This valuation was considered by the competent authority. Being aggrieved by its valuation the writ petitioner preferred an appeal before the appellate authority. The appellate authority affirmed the valuation of the competent authority. Hence this writ application.

5. Before I proceed to discuss the adjudication orders, some sections of the above Act are very relevant. Section 13(1) enacts that when any land is acquired under the above Act, an ‘amount’ has to be paid. This ‘amount’ is to be determined by the competent authority constituted under the Act. Sub-section 4 says that the market value of the land on the date of publication of the notification has to be taken into consideration.

6. Now the procedural part. Sub-section 1 of Section 7 provides for declaration of intention of the Central Government to acquire lands for the purposes of public. This declaration of intention was made by the said notification of the Ministry of Railways published on 28th March 2002. Subsequently, the land was acquired. Sub-section 2A of section 13 of the said Act lays down that before determining the amount mentioned in sub-section 1 of that section, the competent authority will issue a public notice inviting claims from all persons interested in the land. Such notice is to state the details of such land [Section 13(2B)]. Section 15 vests the competent authority with all powers of a Civil court while trying a suit under the Code of Civil Procedure 1908, namely, (a) Summoning and enforcing the attendance of any person and examining him on oath; (b) Requiring the

discovery and production of any document; (c) Reception of evidence on affidavits;

(d) Requisitioning any public record from any court or office; (e) Issuing commission for examination of witnesses.

7.If the amount as determined by the competent authority is not acceptable to either of the parties an appeal can be preferred to the appellate authority within a period of sixty days from the date of the order of the competent authority [section 13(3)].

8.Therefore, the competent authority was required to determine the market value of the land on the date of the notification.

#### DISCUSSION & FINDINGS

9. I have gone through the order of the competent authority as well as the appellate authority, in detail. While determining the market value of the land on the date of the said notification, the competent authority admitted three sale deeds for the purpose of ascertaining the amount. One was the sale deed of the petitioner obtaining conveyance of this land on 29th April 2002 and registering it on 30th April 2002, where consideration was shown about to be about Rs.15,00,000/- @ Rs. 2.5 lacs per cottah.

10. Two other sale deeds comparable to the consideration of the one concerning the petitioner in the same locality were also considered being exhibits 6 and 7. The competent authority has also admitted in evidence, a letter of the District Sub-Registrar –I, South 24 Parganas to the Chief Engineer, Metro Railway, dated 17th November 2003 showing that the valuation of Mouza Chakgaria was 1.5 lakh/ per cottah.

11. Mainly, the above were the evidence before the competent authority. The competent authority said that since the sale was made after the date of the above notification the sale was speculative. It held that the consideration mentioned in the sale deed did not indicate the true market value. The competent authority said that the sale deed of the petitioner was “shrowded with suspicious circumstances.” Now, when a responsible adjudicating authority comes to a finding that the sale was speculative, or that it was suspicious or that the consideration mentioned in the sale deed was not honest, some grounds and reasons to support that finding ought to have been forthcoming. What was

sought to be suggested by the competent authority was that in anticipation that the land was to be acquired and in further anticipation that after such acquisition the owner of the land would get a very handsome compensation from the Metro Railways or the government, which would be much higher than the cost of acquiring it, the writ petitioner acquired this land. There was no evidence before the competent authority that the writ petitioner is a speculative trader of real property. There was equally no evidence before it to suggest that the compensation obtainable from such land would be out of proportion to the sale value or market value, to arouse even remotely a suspicion that the sale was being concluded for that purpose. Further purchase of land involves substantial financial expenditure. I refuse to believe readily that an ordinary citizen like the petitioner would invest this substantial amount for buying a land in the hope of getting an uncertain compensation in an unforeseeable future. Therefore, this kind of speculative reasoning by the competent authority is not appreciated by me at all. This reasoning is plainly erroneous.

12. Secondly, a sale deed may be indicative of the consideration it is certainly not proof of the market value of the land on the date of the above notification. It is common knowledge that in a sale only the consideration which is paid or received by bank draft or cheque is shown as consideration in the sale deed. A lot of consideration may pass in cash which is not shown in the sale deed to avoid stamp duty, taxation and other statutory consequences. I do not say that it happens in all cases but this kind of practice is notorious. The consideration mentioned in the sale deed is only indicative.

13. Further, I am surprised that the competent authority has relied upon the said letter by the District Sub-Registrar stating that land valuation in Chakgaria was 1.5 lac per cottah. First of all, a District Sub-Registrar is not a valuer of property. He may be having specific powers under the relevant statute to make market valuation of properties in suspicious conveyances for the purpose of calculation of stamp duty. Therefore, inviting a letter from the Sub-Registrar was not proper. Far less proper was a general assertion by this District Sub-Registrar that the land valuation in Chakgaria was 1.5 lacs per cottah. I would have understood if upon consultation of the record, the District Sub-Registrar had stated that in a particular conveyance the valuation of a particular property was stated to be a particular amount, and that upon making due enquiry he had revised the valuation to a particular amount for the purpose of calculation of stamp duty.

But a generalised land valuation attempted to be made by him was not proper at all. Further, if this land valuation by the District Sub-Registrar was to be relied upon, then the petitioner should have been given an opportunity to cross-examine the District Sub-Registrar. On the question of valuation of land the Supreme Court has said in State of M.P. – vs – Harishankar Goel, reported in 1997(2) SCC 487

“3. The question, therefore, is what would be the reasonable market value the lands are capable to fetch as on the date of the notification had it been sold in the open market to a willing purchaser? It is seen that when 33 and odd bighas of land was sought to be sold in the open market, no willing prudent purchaser would with any credulity agree to purchase it on sq.ft. basis. It is well-settled law that if this land valuation by the District Sub-Registrar was to be relied upon, then the petitioner should have been given an opportunity to cross-examine the District Sub-Registrar. It would, therefore, be clear that the learned Judges did not apply correct legal tests to determine the compensation but determined the compensation on the basis of sq.ft. which is illegal per se. We, therefore, hold that the learned Judges had applied the wrong principle of law in determining compensation.” The same dictum has been followed by our court in Ashutosh Law & Anr. – vs – The General manager, Metro Railways & Ors. reported in 2008(2) Cal 151 in para 20.

14. As I have already noticed the power of the Civil court in trying a suit under the Code of Civil Procedure has been conferred upon the competent authority. When such power has been given to this competent authority, a determination of the market value of the land on the date of the notification should have been made on more surer ground and principles. More substantial evidence should have been considered by the competent authority to arrive at its finding.

15. The order of the competent authority made on 4th May 2006 was affirmed by the appellate authority on 26th September 2009 on more or less the same grounds.

16. Therefore, the order of the appellate authority is also erroneous for the same reasons as the order of the competent authority.

17. In the circumstances the order of the competent authority dated 4th May 2006 as well as the order of the appellate authority dated 26th September

2006 are set aside and quashed. This case is sent back to the competent authority for re-determination in accordance with the guidance given in the judgment and in accordance with law within a period of three months from the date of communication of this order.

18. Before parting with this matter I record that it was the common submission of both parties that affidavit-in-opposition and affidavit-in-reply had been filed by the respective parties. But during hearing of this application, the same could not be located in the records. Therefore, I directed learned counsel for the petitioner to file copies of the affidavit-in-opposition and affidavit-in-reply in Court. By consent of the parties, such copy affidavits are treated as affidavits filed in this application.

Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.

(I.P. MUKERJI, J.)