Supreme Court of India
Mathura Prasad Rajgharia And Ors. vs State Of West Bengal on 27 October, 1970
Equivalent citations: AIR 1971 SC 465, (1970) 3 SCC 730
Author: J Shah
Bench: A G Shah, K Hegde
JUDGMENT J.C. Shah, J.

1. An area of land known as "premises No. 104" Narkeldanga Main Road, in the town of Calcutta admeasuring 39 bighas and 19 cottahs (63980 sq. yards) was notified for acquisition under Section 4 of the Land Acquisition Act, 1894, by a notification published on August 1, 1946. The notification under Section 6 of the Land Acquisition Act was published on June 12, 1947. The land was situated at the junction of Narkeldanga Main Road and Kankurgachi Road and had a frontage on the Narkeldanga Main Road of 675 feet and on the Kankurgachi Road of 629 feet.

2. Before the Collector the appellants claimed Rs. 27,00,000/- as compensation for the land. The Collector by his award under Section 11 of. the Land Acquisition Act awarded Rs. 10,38,700/- as compensation for the land, and Rs. 800/- for trees. The amount of compensation awarded (inclusive of the statutory solatium of 15% under Section 23(2) of the Land Acquisition Act) was Rs. 11,95,425/-.

3. The appellants applied for a reference under Section 18 of the Land Acquisition Act as amended by the Calcutta Improvement Act, 1911. The reference was heard by the Calcutta Improvement. Tribunal. The Tribunal enhanced the amount of compensation by Rs. 2,54,240/- and 15% solatium thereon.

4. The appellants and the State of West Bengal appealed to the High Court of Calcutta. The appeal filed by the appellants was dismissed and the appeal of the State was partly allowed. The High Court awarded to the appellants Rs. 11,59,430/- as compensation and statutory solatium of 15% in addition thereto. Against the award made by the High Court, this appeal has been preferred by the appellants, with certificate granted by the High Court.

5. Compensation for the land was determined under the Land Acquisition Act, 1894, as modified by the Calcutta Improvement Act, 1911. By the Calcutta Improvement Act, certain modifications are made in the Land Acquisition Act, 1894. Section 69 of the Calcutta Improvement Act, 1911, provides:

The Board (Improvement Trust Board) may, with the previous sanction of the State Government acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act" Section 70 provides:

A Tribunal shall be constituted, as provided in Section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894" Section 71 provides:

For the purpose of acquiring land under the said Act for the Board,-

(a) The Tribunal shall (except for the purposes of Section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act;

(b) the said Act shall be subject to the further modifications indicated in the Schedule;

(c) x x x x x x

(d) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall, subject to the provisions of Section 77-A, be final.

Section 72 provides for the Constitution of a Tribunal. The Tribunal consists of the President and two assessOrs. The section further provides for the qualifications of the President and the two assessOrs. Section 77-A provides:

An appeal shall lie to the High Court from an award under this Chapter (Chapter IV), in any of the following cases, namely:

a) x x x x x x

(b) Where the decision is that of the Tribunal, and-

(i) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(ii) the High Court grants special leave to appeal:

Provided x x x x (2) An appeal under Clause (b) of Sub-section (1) shall only lie on (one or more of) the following grounds, namely:

(i) the decision being contrary to law or to some usage having the force of law;

(ii) the decision having failed to determine some material issue of law or usage having the force of law;

(iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

X X X X X X The Schedule to the Act sets out the modifications in the Land Acquisition Act, 1894. At the relevant time, by Rule 9 of the Schedule, it was provided:

At the end of Section 23 of the Land Acquisition Act, the following shall be deemed to be added, namely:

(3) For the purpose of Clause 1 of Sub-section (1) of this section:

(4) The market value of the land shall be deemed to be the market value according to the disposition of the land at the date of the publication of the declaration relating thereto under Section 6.

There were six other sub-clauses which are not relevant to this appeal.

6. The land of the appellants was notified for acquisition to ensure improved facilities in respect of the area covered by Improvement Scheme No. VI (Manicktola) of the Calcutta Improvement Trust. For improving the area contiguous to the area sought to be acquired in these proceedings, Scheme No. IV-M was undertaken in 1941 by the Improvement Trust. The boundary of Scheme No. IV-M included a portion of premises No. 104, Narkeldanga Main Road. For the purpose of that scheme some lands covered by the scheme were notified for acquisition. No part of premises No. 104 was included in the notification. The acquisition of premises No. 104 was undertaken under Scheme No. VI-M in 1947.

7. In determining the market value of premises No. 104 the Tribunal followed, what is called 'the belting method'. The Tribunal laid out belts parallel to the two frontages. Along the Narkeldanga Main Road the first belt was of a depth of 100 feet and the second belt of a depth of 150 feet. Similarly parallel to the Kankurgachi Road the first belt was of a depth of 100 feet, and the second belt was of a depth of 150 feet. The remaining area was taken as the third belt of the land having frontage on the Narkeldanga Main Road. The land was accordingly laid out into five belts - three out of the land on the Narkeldanga Main Road, and two out of land on the Kankurgachi Road. According to the accepted practice, the price of the second belt was taken at 75% of the price per cottah of the land in the first belt, and the land of the third belt at 50 % of the price per cottah of the value for the first belt of land.

8. The land on the Narkeldanga Main Road and the two interior belts was valued by the Tribunal on the basis of an award made in respect of premises No. 43J which had its main frontage on the Rajendra Lal Mitter Road and a second frontage on the Narkeldanga Main Road. The area of premises No. 43J was 12 cottahs 2 chattaks, and was valued at Rs. 1,500/- per cottah in respect of the belt abutting the Narkeldanga Main Road. Relying upon that evidence the Tribunal held that the market value of the first belt on the Narkeldanga Main Road was Rs. 1,500/- per cottah in September 1941, and that there was, between the years 1941 and 1947, 80% appreciation in the value of the land. The Tribunal also held that since Scheme No. IV-M had been in operation in the vicinity of "premises No. 104" and that two supplementary schemes Nos. IV-M1 and IV-M2 had come into operation, an additional allowance of 25% over the value of the land which had not the benefit of the Schemes should be taken into account. Thus the value of per cottah of the first belt on the Narkeldanga Main Road was computed at Rs. 3,375/-. The Tribunal allowed an additional 1% "on account of vista", and determined the value of the land in the first belt on the Narkeldanga Main Road at Rs. 3,400/- per cottah.

9. In determining the market value of the front belt on the Kankurgachi Road, the Tribunal relied upon Ext. 42 - which is an award made by the Collector in a land acquisition proceeding in respect of land premises No. 31, Kankurgachi Road, and on that basis valued the land of the front belt at Rs. 2,703/-. Premises No. 31 was within Scheme No. VI-M and was notified for acquisition under

Section 4 of the Land Acquisition Act, on August 1, 1946. The date of the declaration under Section 6 was June 12, 1947. The Collector allowed in respect of premises No. 31, compensation at Rs. 2,703/- per cottah. The Tribunal regarded the award for acquisition of premises No. 31 as furnishing good evidence of the market value of the land in the first belt on the Kankurgachi Road. No allowance for the benefit of underground drainage connections and other amenities was made in regard to that land. In respect of the second belt on the Kankurgachi Road the price was taken at 75% per cottah of the value of the land per cottah in the front belt. The total amount determined for the Kankurgachi belts was Rs. 2,87,000/-, and adding thereto the price of the front belt on Narkeldanga Main Road at Rs. 3,400/- and the rear belts at 75% and 50% which worked out at Rupees 11,80,750/-, the total amount determined by the Tribunal was Rs. 14,77,650/-, but since a very large area of land was acquired, the Tribunal was of the view that a deduction of 12 1/2% of the aggregate value should be made. Accordingly the Tribunal determined the compensation at Rs. 12,92,940/- for the land under acquisition.

10. In the appeal filed by the State of West Bengal, three contentions were urged before the High Court: (1) that in respect of Kankurgachi Road belts the Tribunal was in error in determining the market value of the land on the basis of Ext. 42. It was urged that Ext. 42 was not an index of the market value of the lands, since the award was made by consent of the claimant and the Improvement Trust Board and not on any decision given by the Collector; (2) that the Tribunal adopted an "artificial method" of determining the value of the land having a frontage on the Narkeldanga Main Road by first adding 80% to the value prevailing in 1941 and then adding to the value so determined an additional 25% in consequence of the operation of Schemes Nos. IV-M1 and IV-M2, and then adding thereto 1% for "vista"; and (3) that the valuation under the Calcutta Improvement Act, 1911, is to be made according to the "disposition" of the land at the date of the publication of the declaration under Section 6 and in so doing the Tribunal was not entitled to take into consideration the potentialities of the land at the date of the declaration under Section 6 of the Land Acquisition Act. The High Court rejected the first contention, and accepted the remaining two contentions.

11. The market value for compulsory acquisition of land under the Calcutta Improvement Act, 1911, has to be ascertained in the manner provided in Section 23 of the Land Acquisition Act, 1894, as modified by the Calcutta Improvement Act, 1911. The modifications which have a bearing are - (1) that the market value of the land is to be deemed the market value according to the disposition of the land at the date of the publication of the declaration relating thereto under Section 6 of the Land Acquisition Act, 1894; and (2) that an appeal lies against the order of the Tribunal only on questions mentioned in Section 77A of the Calcutta Improvement Act, 1911. In the view of the High Court the expression "disposition" of the land at the date of the publication of the declaration relating thereto under Section 6, means the market value without taking into consideration the potentialities of the land. The High Court observed:

The Act does not allow the Land Acquisition Officer to take into consideration the potentialities of the land, nor does it allow the Land Acquisition Officer to consider the possible betterment fees. It provided for granting compensation not on the basis of what the value actually is but on the basis of what the value must be deemed to be and in considering that we have to take into account the

disposition of the land. The word 'disposition' means how the land could be disposed of at that time. It does not mean the existing use of the lands but mean its disposing power 'with the arrangement as it was on that date'." The expression "market value according to the disposition of the land" apparently means the value of the land in a hypothetical market which a willing purchaser may in the prevailing conditions pay for the land to a willing vendor, taking into consideration its situation and advantages. In determining the "disposition" the hypothetical purchaser would normally take into consideration the advantages of the situation and the potentialities of the land, for the market value of land, especially in urban areas, depends upon its situation, special adaptability, advantages and inherent potentiality in the light of the demand for land. We, however, do not think it necessary to dilate upon this question further, because, in our view, the award made by the High Court reducing the amount awarded by the Tribunal' cannot be justified on the evidence on 'the record, and the law applicable thereto. We accede to the request of Mr. Gupte appearing on behalf of the State of West Bengal not to express our opinion on the meaning of the expression "disposition of the land" as used in Rule 9 of the Schedule to the Calcutta Improvement Act, 1911, as it stood at the date when the land was declared to be needed by the Calcutta Improvement Trust under Section 6 of the Land Acquisition Act, 1894.

12. Where a large area of land in an urban locality is sought to be acquired in determining the market value, "the method of belting" is appropriate. It is common knowledge that lands having frontage on the main roads in urban areas are always more attractive than the lands which have no such frontage. No objection was raised before us against the adoption of "the method of belting". It was also accepted that of the land under acquisition the front belt would be 100 feet deep; the second belt 150 ft. deep and the rest may be included in the third belt. No objection was again raised to the opinion of the Tribunal that the price of the second belt should be taken at 75% per cottah of the value of the land per cottah in the first belt; and the price pecottah of the third belt should be taken at 50% of the value of the land per cottah in the first belt.

13. The Tribunal determined the value of the Narkeldanga Main Road land on the basis of the market value in 1941 of premises No. 43J at Rs. 1,500/- per cottah and estimated the rise in the ruling price since 1941 at 80% of the basic price. In the view of the High Court the rise of 80% in the price of the land between 1941 and 1947 was due to "all the factors acting together" including the operation of the two Schemes IVM1 and IV-M2, and the Tribunal was in error in considering separately the effect of "different factors" which contributed to wards the rise. On that hypothesis the High Court held that in determining the market value of the Narkeldanga Main Road belts the additional 25% awarded for the application of Schemes Nos. IV-M1 and IV-M2 should be disallowed.

for that addition was based on no legal principle, but on speculation without any basis for such speculation.

14. It is common ground that In Calcutta the period between the years 1941 and 1947 was abnormal. During this period first there was bombing of some parts of the town by the Japanese Air Force. This resulted in a large exodus from the town. After the migrant returned, there were communal riots which were followed by the partition of the Province of Bengal. Notwithstanding these abnormal

events, in the price level of the land there was an upward trend which was accentuated by the influx of refugees from East Pakis tan. It was found by the Tribunal that as a result of the inter-action of these events there was between 1941 and 1947 a rise of 80% in the value of the land. This, the High Court called, the increase in the price of the land on account of the "time factor". This 80% increase was not restricted to the area which was served by the improvement schemes. In the view of the Tribunal there was a general rise in the price level of the land all over the town, and with that view the High Court agreed. But the High Court still held that in respect of the land benefited by schemes Nos. IV-M1 and IV-M2 the rise in land values should be taken to be 80% above the 1941 level.

15. In our judgment, the High Court was in error in so holding. Appreciation in the price level in localities served by the Schemes and localities not served by the Schemes cannot be assumed to be uniform. If in respect of the localities not covered by the improvement schemes there was a rise of 80%, for the lands served by the supplementary schemes the rise would be appreciably higher because of the better amenities available as a result of those two schemes. The finding of the Tribunal that the rise of 80% in the value of the lands in the town of Calcutta between 1941 and 1947 was a finding on a question of fact, was accepted by the High Court, as it was bound to accept in an appeal under the Act. The High Court was also bound to accept the finding of the Tribunal that the additional 25% was attributable to the two schemes. That conclusion was not without evidence. In determining the value of land at the date of declaration on the basis of value at an earlier date, it would often be difficult to determine the operation of different factors contributing to the increase in the value of the land, and the valuer may generally take into account the overall rise due to the various factors operating upon the land in (determining the market value of the land compulsorily acquired. It would certainly have been more consonant with principle if the Tribunal had instead of bifurcating the appreciation into 80% on account of the general conditions and 25% on the aggregate on account of the special conditions adopted a composite increase. But we are unable to agree that the valuation of the improvements resulting from Schemes Nos. IV-M1 and IV-M2 was "completely artificial and speculative". We do not again agree with the High Court that the valuation was not based on "correct principles of valuation". Nor are we able to hold that because the Tribunal did not determine a composite increase resulting from the inter-play of all factors, and determined the appreciation from the "time factor" and the additional amenities separately, the conclusion is open to any serious challenge.

16. The Calcutta Improvement Act, 1911, was enacted to make provision for the improvement and the expansion of Calcutta by opening up congested areas, laying out or altering streets, providing open spaces of ventilation or recreation, demolishing or constructing buildings, clearing bustees, executing housing schemes and schemes for the rehousing of persons displaced by the execution of improvement schemes.

The object of the Act was to secure improvement of the town by opening up congested areas and making available amenities such as wider roads, underground drainage, parks and other urban facilities. The locality of the Narkeldanga Main Road and Kankurgachi Road was a congested locality. It had not the benefit of underground drainage. The land was uneven and at several places water used to accumulate. In 1941 a scheme for providing better amenities for the entire area was laid out, and a part of the land covered by the scheme was notified for acquisition. Provision for

better amenities inevitably reflects in the upward trend in the price of the land in the locality covered by the scheme and the adjacent areas. The High Court recorded no reasons for assuming that the increase in the price of lands served by the improvement schemes and not served by the schemes will be the same. In effect the High Court discarded, without assigning any reasons, the appreciation resulting from the application of the improvement schemes.

17. The Tribunal is a statutory body consisting of an expert in valuation with whom are associated assessOrs. In determining the value of the lands, inter-play of various factors has to be taken into account. An Appellate Court may be justified in interfering with the valuation of land made by the Tribunal if it be shown that the Tribunal made an error of principle, or has ignored or misconceived important evidence which substantially affected the valuation that its conclusion was vitiated because of substantial error or defect of procedure. We are unable to hold that the judgment of the Tribunal is open to challenge on the ground of error of principle or other infirmity which justified the High Court in interfering with the conclusion of the Tribunal. The valuation of the land by the Tribunal on the basis that the front belt on the Narkeldanga Main Road should be valued at Rupees 3,400/- and adjustments should be made in respect of the rear two belts, and the overall value should be reduced by 12 1/2 % on the ground that a large area of land was acquired, must be accepted as correct.

18. The first belt of the land on the Kankurgachi Road was valued on the basis of Ext. 42 which was an award of the Collector for acquiring premises No. 31. The sole criticism made against the adoption of Ext. 42 as the basis of valuation is that though called an award it was in reality an order of the Collector without considering the evidence, and on the consent of the claimant and the Improvement Trust Board. The Collector, acting under the Land Acquisition Act is, it is true, not a judicial authority: his proceedings are administrative. As observed by the Judicial Committee in Samiullah v. Collector of Aligarh the Land Acquisition Officer in awarding the amount of compensation under Section 11 of the Land Acquisition Act, 1894, is performing a statutory duty, and in assessing compensation he is bound to exercise his judgment as to the correct basis of valuation, and his judgment cannot be controlled by an agreement between the parties interested. It appears, however, that in Ext. 42 the Collector was not guided solely by the agreement between the claimant and the Improvement Trust Board: he had determined the value of the structures, the value of the fixtures, the value of the machinery, the value of the land, and had made an award for the value determined by him. The valuation of the land was based on the agreement between the claimant and the Improvement Trust Board. The Collector accepted the agreement, which, he was not bound to but could accept and made an award on the basis of the agreed figure. The award had some evidentiary value. The land was being acquired for the Improvement Trust. The Improvement Trust is a statutory body, exercise of the power of which is controlled by the provisions of the Act. Even granting that the order made by the Collector pursuant to the agreement between the Board and the claimant be not regarded as an award, the order made by consent furnished good and cogent evidence of an agreement to purchase property at its market value at the date of the declaration under Section 6 of the Land Acquisition Act. Even if an order made by the Collector valuing land with the consent of the acquiring authority and the claimant may not strictly be regarded as an award made on a consideration of all the relevant materials, the agreement formally reached between the acquiring authority and the claimant agreeing to a certain amount to be paid as

compensation for the land acquired is good evidence of the market value of the land. The Tribunal relied upon Ext. 42 as furnishing good evidence of the market value at the relevant time of the land under acquisition. The Tribunal was of the view that a completed contract between the claimant and the Board was a good and sufficient evidence of the price of land. The Collector accepted the agreement and made an award on the basis thereof. It would require strong and cogent reasons to displace the value of the evidence furnished by the order. The award cannot be said to be "null and void". The Tribunal accepted the award and on the basis at that award determined the value of the adjacent land which was also sought to be acquired under the same notification. The Tribunal did not on that account commit any error of law which would justify the High Court in interfering with the conclusion recorded by the Tribunal.

19. The Tribunal also relied upon Ext. 35 which furnished some evidence of the value of the land. The Tribunal accepted Exts. 42 and 35 as forming the basis, for calculating the market value of the land under acquisition. Sitting in appeal under Section 77A of the Calcutta Improvement Act, the High Court could not set aside the conclusion reached by the Tribunal on a matter of valuation.

20. The valuation of the Kankurgachi belt made by the Tribunal and affirmed by the High Court must therefore be accepted.

21. No argument was advanced In regard to the additional 1% for "vista". The valuation of the land abutting on the Narkeldanga Main Road first belt at Rs. 3,400/- and adjusting the value in respect of the two rear belts, therefore, must be accepted as correct.

22. The Tribunal reduced the price determined on the valuation made by it. on the basis of Ext. 42 and the value of premises No. 43J by 12 1/2 % in the aggregate. On this part of the case no argument has been advanced before us by either side.

23. On the view taken by us, without expressing any opinion on the question whether within the meaning of Rule 9 of the Schedule to the Calcutta Improvement Act, 1911, disposition of the land at the date of the publication of the declaration relating thereto under Section 6 of the Land Acquisition Act justifies the Court in taking into account the potentialities of the land, we are of the view that the conclusion of the Tribunal was not vitiated by any such error as would attract the jurisdiction of the High Court under Section 77A of the Calcutta Improvement Act, 1911.

24. The appeal filed by the appellants is therefore allowed. The order passed by the High Court is set aside and the order of the Tribunal restored. The appellants will be entitled to their costs in this Court. The order of costs passed by the High Court directing each party to bear its own costs is maintained.