

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 75 of 2021
Hemendra Mullick**

Vs.

Metro Railway, Kolkata

For the Petitioner : Mr. Sharanya Chatterjee
Ms. Riya Kundu

For the Opposite Party : Mr. Swatarup Banerjee
Mr. Atanu Basu

Heard on : 20.02.2025

Judgment on : 26.02.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioner herein has taken exception against the judgment dated 21st January, 2020 passed in Acquisition Claim Appeal no. 4 of 2017, arising out of Acquisition claim case no. 8 of 1993, passed by the Appellate Authority, Metro Railway, Kolkata.

2. Petitioner's contention is that the construction undertaken by the Metro Railway led to the emergence of various structural issues within the petitioner's building in the year 1987. A joint inspection report was prepared on 12.04.1988 in presence of both the parties. In pursuant to this in the

year 1991, the petitioner appointed Mr. P.C. Majumder Chartered Engineer to ascertain the value of the damage caused to the premises due to the activities of the Metro Railway and the said engineer by a report dated 20th April, 1992 described the nature and extent of damage amounting to Rs. 35,35,000/-. Petitioner filed claim case no. 8 of 1993 before the competent Authority.

3. Thereafter the competent Authority Metro Railway vide its judgment dated 23rd April, 2003 directed the Metro Authority to pay an amount of compensation to the tune of Rs. 5,47,002/-.

4. Being dissatisfied with the said amount of compensation, the petitioner preferred appeal before Metro Railway Appellate Authority, being claim Appeal no. 3 of 2003 but upon hearing the same, the case was sent back on remand to the learned Competent authority by a judgment dated 30th June, 2003, directing the competent Authority to hear the matter afresh, with liberty to the parties to adduce further evidence.

5. Subsequently in 2003, when the competent authority commenced rehearing process, the petitioner engaged Mr. A.K.Dey, an engineer, to investigate the cause and extent of the damage, as well as the stability and structural condition of the building. Mr. Dey submitted his report and he estimated the necessary repairing cost at Rs. 72,16,000/- and said report was submitted before the competent authority.

6. Subsequently the petitioner further engaged Mr. P.K. Choudhury, a Chartered Engineer and Valuer to evaluate the extent of damage and estimate the costs for both repair and re construction. Mr. Choudhury submitted his report on 16.08.2007. In the said report Mr. P.K. Choudhury

opined that the damage caused due to activities of Metro Railway and suggested the measures to be adopted for repair and reconstruction.

7. The competent authority Metro Railway once again disposed of Claim Case, being no. 8 of 1993 by its judgment dated 30th August, 2007, wherein reliance has been placed upon the report of Mr. A.K. Dey and directed the Metro Railway to pay compensation of Rs. 9,50,314/- and repairing cost of Rs. 5,00,000/-.

8. Being aggrieved and dissatisfied with the aforesaid judgment dated 30th August, 2007 the petitioner herein preferred claim appeal no. 17 of 2007. Said appeal was disposed of vide judgment dated 20th March, 2008, by which the matter was again remanded to the competent authority with the direction to have aforesaid Mr. A.K. Dey (who is a private valuer and surveyor) to appear before the Authority for examination and cross examination in respect of his aforesaid report dated 6th September, 2003. Such remand order was passed in view of the argument made by the metro railway that aforesaid Mr. A.K. Dey has not been examined by the competent authority and without examining him, the authority had relied upon his report which estimated the cost of repair to the tune of Rs. 72,16,000/-.

9. It is submitted by the petitioner that though the competent authority accepted the method recommended by Mr. A.K. Dey, but committed a typographical error in allowing a sum of Rs. 5,00,000/- instead of Rs. 50,00,000/- in terms of assessment made by Mr. A.K. Dey. As per aforesaid order Mr. A.K. Dey was extensively cross examined by the Metro Railway after such remand. Thereafter learned Competent Authority by its judgment

dated 29th November, 2016 allowed the claim application awarding a sum of Rs. 25,000,000/- in favour of the petitioner towards compensation.

10. Being aggrieved by that order Metro Railway Authority preferred instant claim appeal no. 4 of 2007 against the aforesaid judgment dated 29th November, 2016 and the petitioner herein also preferred cross objection being aggrieved by the same judgment, for increasing the amount of compensation awarded by the Authority.

11. However, by the impugned judgment and order dated 21st January, 2020 the Appellate Authority, Metro Railway again remanded the matter before the competent Authority after setting aside the judgment with a direction to call Mr. A.K. Dey and to place the original report before him for identification and for taking other steps, as after examination and cross examination, copy of his report was marked as exhibit, though the original report of Mr. A.K. Dey, according to the Appellate Authority was all along available in the record.

12. Being aggrieved by the aforesaid judgment, Mr. Chatterjee learned counsel appearing on behalf of the petitioners submits that Metro Authority never raised any objection while the copy of the report was marked as exhibit and he has also not put any question to the witness Mr. A.K. Dey, challenging the genuineness of the copy of his report, during cross examination and as such remanding the matter back at this stage on that ground would be a futile exercise. He further contended that the matter, for numerous occasions being remanded by the appellate authority previously. He further contended that the petitioner being a senior citizen has been

running here and there and has been fighting the legal battle since 1988. Accordingly he prayed for setting aside the order of remand.

13. Mr. Banerjee learned Counsel appearing on behalf of the opposite party contended that the petitioners herein has filed cross objection before the court below which indicates that both the parties are aggrieved by the amount of compensation awarded by the competent authority by its judgment dated 29th November, 2016 allowing a sum of Rs. 25,00,000/- towards compensation in favour of the petitioners. Accordingly the appellate authority below has not committed any mistake in remanding the matter before the competent authority for writing fresh judgment in respect of the said claim. He further contended that from the impugned judgment dated 21st January, 2020 it is evident that although said Mr. A.K. Dey was cross examined by the Competent authority, Metro Railway but the original report was not produced by the petitioner herein at the time of examination of Mr. A.K. Dey and the same only forms a part of the report of Mr. P.K. Choudhury as annexure and not in its original form and the same was collectively marked as exhibit 11. He further contended that the compensation of Rs. 25,000,000/- awarded by the competent authority is based on the report of Mr. A.K. Dey, the original of which has not been made part of the cause papers and therefore, it cannot be said that the compensation of Rs. 25,00,000/- awarded in favour of the petitioner was proper, in the absence of original report of Mr. A.K Dey.

14. He further contended that if the proceeding is remanded before the competent Authority for marking the original report of Mr. A.K.Dey as an exhibit, the petitioner herein will have no cause to prejudice. He

contradicted the stand taken by the petitioner that the said matter should not be remanded to the competent authority, by arguing that huge public money is involved and without examining the original report, if the Metro Railway Authority has to disburse the said amount in favour of the petitioner that would go against the principles of natural justice. Therefore, opposite party submits that the order impugned is justified and does not call for interference by this Court, invoking jurisdiction under article 227 of the Constitution of India.

Decision

15. In view of above submissions made by the parties the sole point of determination in the instant application therefore, is whether the procedure adopted by the competent authority in admitting copy of Mr. A.K. Dey's report, which has been marked as exhibit collectively along with the report of Mr. P.K. Choudhury, is acceptable and whether method adopted by the competent authority in admitting the report of Mr. A.K. Dey, is against the principle of natural justice.

16. It is not in dispute in the present context that in terms of earlier remand order dated 30th August, 2007 the valuer, Mr. A.K. Dey was extensively cross examined by the Metro Railway/opposite party herein. Mr. Dey while faced the dock has not disputed the genuineness of the report which was annexed with the report of P.K. Choudhury. It appears from the judgment passed by the competent authority dated 29.11.2016 in claim case no. 8 of 1993, that Metro Railway raised the same issue before the Authority and the competent authority in his judgment dated 29.11.2016 has dealt with the same and ultimately awarded compensation of Rs.

25,00,000/- . The relevant portion of the said judgment may be reproduced below:-

“Resultantly, at the time of argument Ld. Lawyer for the O.P. argued that the report of A.K. Dey was in Xerox copies and as original was not brought on record it cannot be relied and acted upon. On perusal of evidence of P.W. 5, A.K. Dey it is found that he was examined on non producing original but he deposed that he handed over the same to claimant. But O.P. has been given opportunity to examine P.W.5. Here I do find relevancy of ration cited by Ld. Lawyer for claimant in State of Mysore, & Ors. Vs-S.S. Makepur in Civil Appeal No. 400 of 1960 and published in (1964) JLLJ24/(1963) 2SCR943/(1963) O AIR (SC) 375 where it has been observed by Hon’ble apex Court that Qusi Judicial bodies are not bound to adopt the procedure followed in Courts and that it is only necessary that rules of natural justice should be observed. This authority do not find any ground of violating rules of natural justice as O.P. has been given ample opportunities to cross-examine P.W.5.

Further, when the maker of document in dock admitted the document that he prepared the same, and he was cross –examined by opponent on that point, then only non-producing the original cannot workout the contents of said document. AS such, I do find no danger to rely upon such document.”

17. It appears that the appellate authority below without considering such observation in its proper perspective, unnecessarily came to a finding that the matter is required to be remanded only on the ground of producing Mr. A.K. Dey on dock for taking the original report into evidence properly. This approach taken by the Appellate Authority below is clearly an attempt to push the buck from one authority to another, to shift responsibility and this sort of lackadaisical approach has resulted the petitioner herein to run from pillar to post for last 30 years without having any fault of his own. Even the Appellate Authority in her order has clearly observed that Mr A.K. Dey was examined cross examined at length by the competent authority, Metro railway and thereafter he was discharged. However, in order to shift her responsibility to take a decision, she unnecessary blamed the Metro Railway Authority and asked them why they kept mum and had forgotten to raise objection, when the photocopy was taken into evidence with so many other papers.

18. Needless to say that the Appellate Authority below is a quasi judicial authority and strict rule of evidence are not required to be followed by such authority but what is required is that the principle of natural justice has to be strictly followed. In the present context the original report of Mr. Dey even if was not placed before him at the time of evidence, but when he has not disputed the contents in the copy of report placed before him, it cannot act as hindrance for the competent authority to take it in evidence by marking the said document as exhibit. The fact that aforesaid Mr. A.K. Dey appeared before the competent Authority in terms of earlier order and when admittedly he was examined, cross examined extensively and discharged, it cannot be said that marking copy of his report as exhibit, is a departure from the normal procedure in taking evidence or has resulted violation of the rules of natural justice, specially when the reporter never disputed contents of the report and metro authority never raised the question of it's genuineness. Rules of natural justice required that a party should have an opportunity of adducing all relevant evidence on which he relies, that the evidence of opponents should be taken in his presence and that he should be given the opportunity of cross examining the witnesses examining by that party. Here therefore examination and cross examination and marking the copy of report of the witness, has not violated any of the principle of natural justice.

19. The other aspect of the matter is that the provisions contained in rule 23, 23A,24,27 and 33 of Order XLI CPC deals with the provisions of passing order of remand. Under Order XLI rule 23 A, the remand order can be passed after setting aside the impugned judgment, if the court is of clear

view that retrial is necessary. In the impugned judgment the Appellate Authority never arrived at a finding that retrial is necessary because the order against which the appeal was preferred is mainly based on Mr. A.K. Dey's report, who has faced the dock and was extensively cross examined. It cannot be said that only to prove the original report also as an exhibit, a retrial is justified or for that purpose Order XLI Rule 23A can be invoked, specially when maker of the report has never denied the contents in the copy of report.

20. In view of aforesaid discussion I find that the order impugned is absolutely unjustified, irrational and devoid of merit and as such is liable to be set aside.

21. C.O 75 of 2021 thus stands allowed.

22. The impugned judgement dated 21st January, 2020 passed in Acquisition claim Appeal no. 4 of 2017 is hereby set aside.

23. The Appellate Authority below is hereby directed to dispose of the appeal and the cross objection on merit, after giving opportunity to both the parties to be heard further, if required and also on the basis of documents available in the record, within a period of six months from the date of communication of the order, without being influenced by any observation made herein.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)