IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 166 of 2009

The Chief Executive Engineer, Damodar Valley Corporation, Right Bank Thermal Power Station, Maithon, P.O. & P.S.- Maithon, District- Dhanbad, through Yogendra Prasad, Joint Director Personnel (Estate), D.V.C. Maithon, P.O. P.S. Maithon, District- Dhanbad

… … Opposite Party No. 4/Appellant

Versus

1. Uttam Kumar Mondal **(died and substituted vide order dated 20.07.2010)**
   1(i) Radha Rani Mondal - widow
   1(ii) Sharbani Mondal (Daughter) Minor
   1(iii) Shreelata Mondal- (Daughter) Minor
2. Ashok Kumar Mondal,
3. Kishore Kumar Mondal,

   All sons of Late Bishwanath Mondal, resident of Village- Barahbendia, P.O. and P.S. Nirsa, District- Dhanbad

… … Applicants/Respondents

4. The State of Jharkhand, through its Chief Secretary, Ranchi
5. The Dy. Commissioner, Dhanbad
6. The District Land Acquisition Officer, Dhanbad

… Opposite Parties/ Proforma Respondents

With

F.A. No. 167 of 2009

The Chief Executive Engineer, Damodar Valley Corporation, Right Bank Thermal Power Station, Maithon, P.O. & P.S.- Maithon, District- Dhanbad, through Mr. Yogendra Prasad, Joint Director Personnel (Estate), D.V.C. Maithon Dam, P.O. & P.S. Maithon, District- Dhanbad

… … Opposite Party No. 4/Appellant

Versus

1. Uttam Kumar Mondal **(died and substituted vide order dated 21.07.2010)**
   1(i) Radha Rani Mondal - widow
   1(ii) Sharbani Mondal (Daughter) Minor
   1(iii) Shreelata Mondal- (Daughter) Minor
2. Ashok Kumar Mondal,
3. Kishore Kumar Mondal,

   All sons of Late Bishwanath Mondal, resident of Village- Barahbendia, P.O. and P.S. Nirsa, District- Dhanbad

… … Applicants/Respondents

4. The State of Jharkhand, through its Chief Secretary, Ranchi
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6. The District Land Acquisition Officer, Dhanbad

… Opposite Parties/ Proforma Respondents

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Mr. Srijit Choudhary, Advocate
Mr. Aayush Ojha, Advocate
Mr. Chiranjeev Mahto, Advocate
Ms. Tanya Rai, Advocate
For the Respondents : Ms. Aditee Dongrawat, AC to GP V
For the Claimants : Mr. Kalyan Banerjee, Advocate

CAV on 21.04.2026 **Pronounced on 27.07.2026**

1. Both the first appeals have been filed against the common Judgement dated 10.07.2008 and Decree sealed and signed on 23.07.2008 passed by the learned Land Acquisition Judge, Dhanbad in L.A. Reference Case Nos.11/2004 and 12/2004 respectively on the applications filed by the applicants / claimants under Section 18 of the Land Acquisition Act whereby and whereunder the learned court enhanced the market rate of the acquired lands and further held that the applicants are entitled to get compensation of Rs.5,500/- for *bahal* land and Rs.5,000/- for other lands and allowed the reference cases in favour of the claimants and directed the opposite parties to pay the compensation amount after deduction of the award amount, if they received. The learned court further held that the pleaders will also get 3% of the enhancement amount. Accordingly, both the first appeals have been heard together and are being disposed of by a common judgment.

2. The finding of the learned court while enhancing the compensation is quoted as under: -

> ***"9. On considering the above discussions and perusal of the evidence of the witnesses which is on the records, I come to the conclusion that the rate (market rate) should be enhanced as Rs. 5000/- to 6000/- per decimals as the land is important land as submitted by the evidence of witnesses in their evidence and no any papers submitted by the O.P. for the same and the applicant has filed Ext-1 for proving the land. Hence the applicants are entitled to get a compensation of Rs.5,500/- for bahal land and other land as Rs.5000/- as flat. and the amount of compensation which was awarded may be modified.***

10. In view of the discussions made above and also perused the oral and documentary evidences, I come to the conclusion that the applicants are entitled to get compensation on the modified amount on the acquired land. …….”

Arguments of the appellant in both the cases

3. Learned counsel for the appellant(s) submitted that the lands acquired in connection with both these cases are related to Mouza-Punai @ Kashitand, Mouza No.110, P.S.- Nirsa, District- Dhanbad and the date of notification under Section 4 of the Land Acquisition Act, 1894 is dated 22.12.2001. The rate of compensation of the acquired lands has been enhanced by the learned Land Acquisition Judge, Dhanbad.

4. The Learned counsel further submitted that there is no cogent evidence on the side of claimants who were seeking enhancement of compensation against the acquired lands. There was only oral evidence claiming that the land was *bahal* land and the market value was Rs.10,000/- per decimal and the land was being sold @ Rs.10,000/- per decimal, but not a single document of the mouza involved in this case was produced by the claimants.

5. He further submitted that one sale deed has been produced in these two cases which is Sale Deed No.5591 of the year 2003 relating to another mouza / Village namely, Pandra, but there is neither any finding that the same was a comparable sale deed, nor there is any evidence to show that the mouza was even adjoining to the acquired lands or even the mouza involved in this case and the same was certainly much beyond the date of acquisition involved in the present cases.

6. Learned counsel submitted that once the claimants adduced oral evidence that the property was being sold at Rs.10,000/- per decimal, it was for them to prove this fact by producing sale deeds, but having not produced any such sale deed, the oral evidence is of no consequence.

7. Learned counsel submitted that the onus was upon the claimants to produce cogent materials seeking enhancement, but the claimants miserably failed to produce and consequently, the enhancement of compensation made in the present cases is without any basis and the enhancement is fit to be set aside.

8. The learned counsel for the appellant relied upon the following judgments passed by the Hon'ble Supreme Court in support of his submissions:

(i) ***(1991) 4 SCC 195 (Periyar and Pareekanni Rubbers Ltd. -vs- State of Kerala)*** Paragraph- 10 and 15

(ii) ***(1995) 2 SCC 305 (P. Ram Reddy and Others -vs- Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others)*** Paragraph- 9 and 12.

(iii) ***Civil Appeal No.5160 of 2013 (Ramanlal Deochand Shah -vs- The State of Maharashtra & Anr.)*** decided on 05.07.2013.

9. The learned counsel for the appellants submitted that upon conjoint reading of the aforesaid judgments, the case of the appellants is squarely covered and the enhancement of compensation is fit to be set-aside.

Arguments of the respondents (claimants) in both the cases.

10. ***Learned counsel for the claimants, on the other hand***, submitted that one documentary evidence was certainly produced, though it was of the year 2003 and of a different mouza, but the enhancement is not the same as mentioned in the exhibited sale deed. He further submitted that other oral evidences were on record for the purposes of enhancement and the Land Acquisition Officer has applied his judicial mind to enhance the compensation and therefore, it cannot be said that impugned judgment of enhancement of compensation is bad in law. He submitted that only a meager amount has been enhanced and therefore, enhancement of compensation does not call for any interference.

11. ***The sole point for determination*** in this case is as to whether the learned court was justified in enhancing the rate of compensation for the acquired land.

Findings of this Court.

12. The case of the claimants was that within Mouza Punai @ Kashitand, Mouza No. 110, P.S. Nirsa, Dist. Dhanbad, 61.43 acres of Raiyati lands have been acquired by Land Acquisition Department vide Notification No. 10/D.L.A. Dhan-DVC-3/2001-4445 R dt. 22.12.2001, Declaration No. D.L.A. Dhan-D.V.C.-13/2001-565 R dt. 31.01.2002, and after issuance of Notification u/s 4 of the Land Acquisition Act, proper inquiry was made by the District Land Acquisition Officer (Collector), Dhanbad by starting L.A. proceeding vide L.A. Case No. 25/95-96. After completion of inquiry, award u/s 11 was made by the Collector being ***Award No. 11 for Rs. 5,02,605.00 in L.A Reference case no. 11 of 2004 [First Appeal No. 166 of 2009] and Award No. 41 for Rs. Rs.28,85,037.81 in L.A Reference case no. 12 of 2004 [First Appeal No. 167 of 2009].*** The Awardees have received their Awarded money under protest.

13. The claimants made out the following case for reference to the court for determination of the market value of the acquired lands: -

a. The agricultural lands are the only source of livelihood of the applicants, which have been acquired for installation of DVC Right Bank Thermal Power Station, for which proper and adequate compensation have not been paid to the applicants according to the present market rate prevailing in the locality.
b. The lands which have been acquired are situated near the Maithon Town, Nirsa Town and Pandra Market, hence the potentiality of the lands are very high, electric facilities are available near those lands and are suitable for constructions etc.
c. In the year 1953-54 vide Notification No. B/L-VII-1393/53-4426 R dt. 7.12.1953 for installation of Damodar Valley Corporation Maithon Dam Reservoir, lands of the

applicants had been acquired and those lands were submerged in the Maithon Dam Reservoir and few remaining lands which are the only source of livelihood have been acquired.

d. The lands which were/are acquired by DVC Right Bank Thermal Power Station are first class Bahal paddy lands which are situated by the side of a streamlet and there is sufficient conveniences for irrigation and two crops in a year produced easily on the lands, paddy, wheat and other seasonal crops and vegetables are grown.

e. In the contiguous village Beldanga, Mouza No. 109, P.S. Nirsa, where lands were acquired for the DVC Right Bank Thermal Power Station under the same notification being No. 10/D.L.A. Dhan-DVC-3/2001-4445 dt. 22.12.2001, compensation for Bahal land i.e. 1st class paddy land was given or provided at the rate of Rs. 3 lakhs per acre whereas within Mouza Punai @ Kashitand, Mouza No. 110, compensation for Bahal land, 1st class paddy land is Awarded or provided at the rate of Rs. 2,70,000/- only which is too low while the lands are of same nature.

f. The present market rate of the lands is Rs. 10,000/- per decimal. District Land Acquisition Officer, Dhanbad and the Authority of DVC Right Bank Thermal Power Station Maithon have not applied Judicial mind while determining the valuation of the acquired lands in mouza Punai @ Kashitand, mouza no. 110, P.S. Nirsa, District Dhanbad.

g. The LA Department have not paid compensation for the trees and other construction or structures standing over the lands which were acquired for DVC Right Bank Thermal Power Station and applicants are seriously prejudiced and suffering irreparable loss and injury and have been deprived from proper and adequate compensation of their lands.

14. The State only filed attendance but did not file any written statement.

15. The DVC (opposite party no.4) filed written statement and raised following objections: -

i. The present proceeding is not maintainable; if the claimants have received compensation amount under protest they be put to strict proof.

ii. The claimants have not produced any documents along with their application showing that market price of acquired land is more than Rs. 10,000/- per decimal and such statement was denied; it is absolutely false to say that potentiality of the land is very high and future potentiality of land on assumption and presumption cannot be looked into by the Court and compensation as assessed by the State is correct.

iii. The statements made by the claimants were denied and it was asserted that the claimants be put to strict proof of the same.

16. In the judgement passed by the Hon'ble Supreme Court in ***Periyar & Pareekanni Rubber Ltd. v. State of Kerala, (1991) 4 SCC 195***, it has been held that the transaction relating to the acquired land of recent dates or in the neighbourhood lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence. When the courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of property is the sale of the acquired land to which the claimant himself is a party, in its absence the sales of the neighbouring lands. In proof of the sale transaction, the relationship of the parties to the transaction, the market conditions, the terms of the sale and the date of the sale are to be looked into. These features would be established by examining either the vendor or vendee and if they are not available, the attesting witnesses who have personal knowledge of the transaction etc. The original sale deed or certified copy thereof should be tendered as evidence. The underlying principle to fix a fair market value with reference to comparable sale is to reduce the element of speculation. In a comparable sale the features are: (1) it must be

within a reasonable time of the date of the notification; (2) it should be a bona fide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired and (4) it should possess similar advantages. These should be established by adduction of material evidence by examining as stated above the parties to the sale or persons having personal knowledge of the sale transactions. The proof also would focus on the fact whether the transactions are genuine and bona fide transactions. The prices fetched for similar land with similar advantages and potentialities and the bona fide transactions of the sale at time of preliminary notification are the usual, and indeed the best, evidence of the market value. Other methods of valuation are resorted to if the evidence of sale of similar land is not available. The prices fetched for similar plots cannot form basis for valuation of large tracts of land as the two are not comparable properties. Smaller plots always would have special features like the urgent need of the buyer, the advantageous situation, the like of the buyer etc.

A reference was also made to an earlier judgement where it was held that in a reference under Section 18 of the Act, the burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant, and he must show affirmatively that the Collector had proceeded upon a wrong basis. The nature and the burden of establishing that he was wrong, depends on the nature of the enquiry held by him and it is equally well settled that where the claimant leads no evidence to show that the conclusions reached in the award were inadequate, or, that it offered unsatisfactory compensation, the award has to be confirmed.

17. In the judgement of ***P. Ram Reddy v. HUDA, (1995) 2 SCC 305*** it has been held that an acquired land could be regarded as that which has a building potentiality, if such land, although was used on the relevant date envisaged under Section 4(1) of the Act of 1894 for agricultural or horticultural or other like purposes or was on that date even barren or waste, had the possibility of being used immediately or in the near future as land for putting up residential, commercial, industrial or other buildings. Such possibility of user of the acquired

land for building purposes can never be wholly a matter of conjecture or surmise or guess. On the other hand, it should be a matter of inference to be drawn based on appreciation of material placed on record to establish such possibility. Material so placed on record or made available must necessarily relate to the matters such as:

> (*i*) the situation of the acquired land vis-à-vis the city or the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;
>
> (*ii*) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;
>
> (*iii*) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;
>
> (*iv*) absence of statutory impediments or the like for using the acquired land for building purposes;
>
> (*v*) existence of highways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;
>
> (*vi*) benefits or advantages of educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and
>
> (*vii*) lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few.

The material to be so placed on record or made available in respect of the said matters and the like, cannot have the needed evidentiary value for concluding that the acquired land being used for building purposes in the immediate or near future unless the same is supported by reliable documentary evidence, as far as the circumstances permit. When once a conclusion is reached that there was the possibility of the acquired land being used for putting up buildings in the immediate or near future, such conclusion would be sufficient to hold that the acquired land had a building potentiality and proceed to determine its market value taking into account the increase in price attributable to such building potentiality.

It has also been held that the point as to whether the acquired land has building potentiality or not, while has to be decided upon reference to

the material to be placed on record, the market value of the acquired land with building potentiality, is also required to be determined with reference to the material to be placed on record or made available in that regard by the parties concerned and not solely on surmises, conjectures or pure guess.

18. In the judgement passed by the Hon'ble Supreme Court in ***Civil Appeal No. 5160 of 2013 reported in (2013) 14 SCC 50 (Ramanlal Deochand Shah Vs. The State of Maharashtra),*** it has been held that it is trite that in a reference under Section 18 of the Land Acquisition Act on the question of adequacy of compensation determined by the collector, the burden to prove that the collector's award does not correctly determine the amount of compensation payable to the landowner is upon the owner concerned. It has also been held that it is for the claimant to prove that the amount awarded by the Collector needs enhancement, and if so, to what extent. The claimant can do so by adducing evidence, whether oral or documentary which the Reference Court would evaluate having regard to the provisions of Sections 23 and 24 of the Land Acquisition Act while determining the compensation payable to the owners. To that extent the claimant is in the position of a plaintiff before the Court. It has been further held that in the absence of any evidence to prove that the amount of award by the Collector does not represent the true market value of the property as on the date of the preliminary notification, the Reference Court will be helpless and will not be justified in granting any enhancement. It has also been held that the Court cannot go by surmises and conjectures while answering the reference nor can it assume the role of an Appellate Court and enhance the amount awarded by reappraising the material that was collected and considered by the Collector.

19. In the aforesaid judgement it has been further held that the law is well settled vide judgment of the Hon'ble Supreme Court in ***"Major Pakhar Singh Atwal and others Vs. State of Punjab and others" reported in 1995 Supp (2) SCC 401*** that a reference under section 18 of the Land Acquisition Act is not an appeal against the award of the

Land Acquisition Officer. It merely is an offer. The proceeding before the Reference Court is of such a nature that it places the claimant in the position of a plaintiff and the Reference Court is akin to a court of original jurisdiction. It has been held in the said judgement that –

> *"……. It is for the claimants to seek the determination of proper compensation by producing sale deeds and examining the vendors or the vendees as to passing of consideration among them, the nearness of the lands sold to the acquired lands, similarly of the lands sold and acquired and also by adduction of other relevant and acceptable evidence. ……. Therefore, if the claimants intend to seek higher compensation to the acquired land, the burden is on them to establish by proof that the compensation granted by the Land Acquisition Officer is inadequate and they are entitled to higher compensation. That could be established only by adduction of evidence of the comparable sale transactions of the land acquired or the lands in the neighbourhood possessed of similar potentiality or advantages……."*

20. The claimants examined 04 witnesses in support of their case. AW-1 is Ashok Mandal (Applicant No.2), AW-2 is Hemapada Hansda, AW-3 is Sitaram Mandal and AW-4 is Mantu Hembram.

21. AW-1 (Ashok Mandal) filed his examination-in-chief on affidavit stating that he is the Applicant No.2 of the case. He further stated that their ancestral lands situated over Mouza-Punai @ Kashitand, Mouza No.110, Thana- Nirsa, District- Dhanbad were acquired for the Damodar Valley Corporation, Right Bank Thermal Power Station, Maithon. He further stated that Maithon Bazar, Chirkunda Bazar, Kumardhubi and Nirsa Bazar were situated around their acquired lands and there was facility of road transport. There were school- college, Maithon College, Electricity Line, etc. near the acquired lands and therefore, its utility was very high. He further stated that the rate of sale-purchase of the lands of the said mouza and the nearby mouza was Rs.10,000/- per decimal at the time of acquisition of the lands of Punai @ Kashitand and higher rate of compensation was paid for the nearby villages by Right Bank Thermal Power Station. They should have been given compensation at least @ Rs.10,000/- per decimal, but they were not given appropriate

compensation. They were also not given compensation for the houses, trees, etc. The acquired lands were the only means for their livelihood and therefore, their claim is correct.

During cross-examination on behalf of the State Government, he admitted that they had 08 acres and 80 ½ decimals of land at Kashitand Mouza which were acquired for the thermal project of the Maithon Right Bank Thermal Power Station. There were 08 acres of bahal lands and 80 ½ decimals of kanali lands. They used to cultivate 03 acres of land themselves and the rest lands through labourers and they used to get 600-650 *Mans* of paddy from the acquired lands. The rate of paddy was Rs.100-120/- per *Man* in the village in the year 2003. The karmachari from the Land Acquisition Department had inspected the acquired lands, but the wells and different kinds of trees situated over the lands were not recorded. He was not given any notice before inspection of the lands and therefore, he was not present at the time of the inspection. He further admitted that the acquired lands are situated at a distance of 7-8 kilometres from Chirkunda Bazar, at a distance of 03 kilometres from Nirsa and at a distance of 04 kilometres from Maithon Bazar. They used to grow paddy, grams, khesari, leaves and vegetables over the acquired lands. Kashitand Primary School is situated at the adjacent and College is situated at a distance of 04 kilometres from the acquired lands. Electric Line is running adjacent to the acquired lands from Kashitand Mouza to Lavghata. He further admitted that Rs.10,000/- per decimal was the rate of sale of lands in the year 2003 and bahal lands were being sold @ Rs.10,000/- per decimal. He also admitted that they have received compensation @ Rs.2,70,000/- per acre. They had total 08 trees over the acquired lands, 03 were Sheesam trees, 03 were Peepal trees and 02 were Saal trees and all the trees were 40-50 years old. The house situated over the acquired land was 10 feet long and 10 feet breadth (10 feet x 10 feet). The opposite parties have paid compensation @ Rs.3,00,000/- per acre for the bahal lands of the adjacent mouza of the acquired lands.

During cross-examination on behalf of D.V.C., he admitted that notice for acquisition of the lands was issued to them by the Land Acquisition Department and they have received the compensation amount from the Land Acquisition Department with objection. They have not been paid any compensation by the D.V.C. He had not enquired that the entire compensation amount for the lands was transferred to the Government by the D.V.C.

22. AW-2 (Hemapada Hansda) filed his examination-in-chief on affidavit stating that he knows the applicants and the ancestral raiyati property of the applicants situated at Mouza- Punai @ Kashitand, Mouza No.110, Thana- Nirsa, District- Dhanbad. The ancestral raiyati lands of the applicants have been acquired by the District Land Acquisition Office for the Damodar Valley Corporation, Right Bank Thermal Power Station, Maithon. After issuance of the notification, the Land Acquisition Department made an enquiry and prepared award of the acquired land. Thereafter, notice under Section 12(2) was issued in the name of the applicants and the applicants received the compensation amount with objection in writing. He further stated that the acquired lands of the applicants were bahal land in which paddy, wheat and various vegetables were cultivated. The acquired lands of the applicants were situated between Maithon Dam and one small river and therefore, three-four crops were being cultivated every year. He further stated that the lands of the applicants were situated between Maithon Dam and Maithon Bazar and Chirkunda Bazar and Nirsa Bazar. There was facility of road and electricity at some distance from the acquired land and the acquired land was suitable for construction of house and its utility was very high. He further stated that at the time of acquisition, the sale- purchase value of the land of the applicants situated at Punai @ Kashitand Village was Rs.10,000/- per decimal, but Right Bank Thermal Power Station, Maithon paid less compensation for the lands of Punai @ Kashitand Mouza in comparison to other mouza. The applicants should have been given compensation at least @ Rs.10,000/- per decimal, as the acquired lands of the applicants were highly useful and were bahal land of first

class and were the only means for their livelihood. The applicants have not been paid appropriate compensation against the acquired lands and therefore, their claim is correct.

During cross-examination on behalf of the State Government, AW-2 admitted that the acquired land is situated at a distance of half kilometre from his house and Kashitand Mouza is situated adjacent to his village. He further admitted that the applicants have 27-28 Bigha land at one place and all the lands have been acquired by the DVC. 2-3 Bigha of the acquired lands are baid lands and the rest are bahal lands and out of the acquired lands, he used to cultivate over one bigha of *Baid* land and 6-7 bigha of bahal lands and he used to grow 130-140 *Mans* of paddy and used to give the half paddy to the applicants. He used to grow 60-70 *Mans* of wheat every year from the lands in which he used to cultivate. He further admitted that he has no land of his own. He further admitted that Maithon Bazar was about seven kilometres away and Nirsa Bazar was about five kilometres away from the acquired lands. He also admitted that at that time, the rate of the bahal land was Rs.10,000/- per decimal. He also admitted that he had not done sale-purchase of land in the year 2003 and he has said the rate of Rs.10,000/- on the basis of hearsay statements.

23. AW-3 (Sitaram Mandal) filed his examination-in-chief on affidavit stating the same facts as stated by AW-2 (Hemapada Hansda). ***During cross-examination on behalf of the State,*** he admitted that his lands under Plot Nos. 294, 295 and 296 are situated at Kashitand mouza which are situated at a distance of about 200 yards from the acquired lands. He further admitted that the acquired lands are Bahal, kanali and tanr lands consisting of 15-16 bahal farms and 4-5 baid farms. He also admitted that he has never sold any land of the said mouza. He also admitted that river is situated adjacent to the acquired lands.

During cross-examination on behalf of the DVC, he admitted that he has no land adjacent to the acquired lands. The forest land of forest department is situated after two plots of the acquired lands. He also admitted that lands of 11 mouzas namely, Paludih, Kashitand,

Madandih, Sana, Palharpur, Bandhtola, Kamardih, Dambhui, Ratanpur, Beldanga and other two mouza have been acquired for D.V.C. and the applicants have filed the case for enhancement of the compensation amount. He further admitted the he used to cultivate the acquired lands for 30 years over the Bahal and Kanali lands. He further admitted that the river channel is situated adjacent to the acquired lands and Nirsa Bazar is situated at a distance of 6 kilometres from the acquired lands and Nirsa-Jamtara Pucca Road is situated adjacent to the acquired lands. There is electricity supply line through the acquired lands.

24. AW-4 (Mantu Hembram) filed his examination-in-chief on affidavit stating the same facts as stated by AW-2 (Hemapada Hansda) and AW-3 (Sitaram Mandal). During ***cross-examination***, he admitted that he used to go to the farms of the applicants for cultivation, which were bahal lands. There were 20 farms over the acquired lands. He further admitted that paddy, wheat and vegetables were being grown over the acquired lands. The acquired lands are situated adjacent to the Jamtara Road and is at a distance of half kilometre from the village. At that time, electric supply line from Ratanpur to Kashitand was running through the lands and the lands are situated at a distance of half kilometre from Barakar River. He further admitted that the rate of bahal land was Rs.10,000/- per decimal at that time, but he had not done any sale-purchase of lands.

25. The appellant did not produce any oral and documentary evidence.

26. This court finds that all the four witnesses of the claimants have made only oral statements that the land was valued @ Rs. 10,000/- per decimal, but have not referred to any sale deed much less, sale deed no. 5591 dated 01.08.2003 which was marked as exhibit -1 by tendering to the court on 29.05.2007 that too after all the witnesses were already examined, cross examined and discharged. The order-sheet of the learned court reveals that the four witnesses of the claimants were examined prior to 29.05.2007.

27. Moreover, the acquisition of land in the present case is of the year 2001 and the exhibit 1 is dated 01.08.2003 that too from another village. Since the witnesses of the claimants have not referred to exhibit-1 during their oral evidence, there is no evidence to even suggest as to whether the concerned village, to which exhibit-1 relates, is even adjoining to the Mouza-Punai @ Kashitand, Mouza No.110, involved in this case. Upon perusal of the exhibit-1, it appears that it is of a different mouza, that is, mouza Paundra bearing mouza no. 95. Further, the area sold through exhibit-1 is only 4 and ½ decimals of *baid* land for total value of Rs.25,000/- [Rs.5555.55 per decimal]. Further other parameters to test as to whether exhibit-1 could be treated as an exemplar sale have not come in the evidence of the witnesses of the claimants. In order to use a sale deed as exemplar sale deed for arriving at the market value of the acquired land, it has to be compared in the light of date of acquisition of land, its location, size, potentiality and usage *vis-à-vis* the exemplar sale deed.

28. This court finds that the aforesaid sale deed cannot be relied upon to fix the quantum of compensation as the deed is of different mouza whose distance from the acquired land has not come during evidence as this deed (exhibit-1) was not even referred to in the oral evidence of the claimants and further, the deed dated 01.08.2003 (exhibit-1) is of much subsequent date from the date of notification issued under section 4 of the Land Acquisition Act , 1894 in the present case.

29. The fact also remains that the witnesses have stated that the lands were being purchased and sold at the time of acquisition at the rate of Rs.10,000/- per decimal which they claimed to be the market value of the acquired land, but have failed to produce any sale deed, much less any comparable sale deed to support their statements. If the aforesaid, as claimed by the claimants, were true, they ought to have supported their statement by producing the sale deeds, which they failed to produce. Rather, the claimants have completely failed to make out a case for enhancement of compensation. It was the case of the claimants that all the necessary enquiries were done and

procedures were followed before for assessing and offering compensation to the claimants for the acquired land, which they received under protest.

30. With respect to the location of the acquired property , the witnesses of the claimants claimed that the property is situated near the market namely, Maithon Bazar, Chirkunda Bazar and Nirsa Bazar. However, in cross examination of A.W-3, it has come that the river channel is situated adjacent to the acquired lands and Nirsa Bazar is situated at a distance of 6 kilometres from the acquired lands and Nirsa-Jamtara Pucca Road is situated adjacent to the acquired lands. There is electricity supply line through the acquired lands. In cross examination of A.W-2 it has come that Maithon Bazar was about 7 kilometres away and Nirsa Bazar was about 5 kilometres away from the acquired lands. He also admitted that he had not done sale-purchase of land in the year 2003 and he has said the rate of Rs.10,000/- on the basis of hearsay statements He further stated that the lands of the applicants were situated between Maithon Dam and Maithon Bazar and Chirkunda Bazar and Nirsa Bazar. There was facility of road and electricity at some distance from the acquired land and the acquired land was suitable for construction of house and its utility was very high. A.W-1 during his cross examination has stated that the acquired lands are situated at a distance of 7-8 kilometres from Chirkunda Bazar, at a distance of 03 kilometres from Nirsa and at a distance of 04 kilometres from Maithon Bazar. They used to grow paddy, grams, khesari, leaves and vegetables over the acquired lands. Kashitand Primary School is situated at the adjacent and College is situated at a distance 04 kilometres from the acquired lands. Electric Line is running adjacent to the acquired lands from Kashitand Mouza to Lavghata.

31. The impugned judgement reveals that the learned court, after having recorded the case of the respective parties and having recorded the examination and cross examination of the witnesses of the claimants as the State or DVC did not lead any evidence, straightaway arrived at the conclusion that the rate (market rate) should be

enhanced as Rs. 5000/- to 6000/- per decimals as the land is important land as submitted by the evidence of witnesses in their evidence and no any papers were submitted by the O.P. for the same and the claimants had filed Exhibit-1 for proving the land. Hence the learned court held that the claimants were entitled to get compensation at enhanced rate of Rs.5,500/- for *Bahal* land and other land as Rs.5000/- as flat.

32. The findings of the learned court to enhance compensation by holding that the land was important land is vague and without any discussions of the materials on record. The claimants were seeking enhancement of compensation primarily on the ground that the acquired lands were near the three markets, but such stand was completely demolished through their cross examination, which as discussed above, reveals that the markets were at considerable distance from the acquired lands. Further, the learned court referred to exhibit-1 for enhancement of compensation without even discussing exhibit-1 as to whether it could be treated as comparable sale deed with respect to the acquired lands. As discussed above, the exhibit-1 was of different mouza and was of the year 2003 and was for a small land of 4 and ½ decimals and the same was not referred to by any of the witnesses but was simply tendered and marked exhibit 1 after the witnesses of the claimants were already examined. The details with respect to exhibit-1 have already discussed above. The learned court while enhancing the compensation has also recorded that no documents were produced by the opposite parties and has failed to consider that the claimants were required to be treated as plaintiffs and the initial onus was upon the claimants to produce cogent evidence to demonstrate that the compensation awarded was not adequate, but in the instant case the claimants failed to discharge their initial onus also. This court is of the considered view that the entire approach of the learned court in enhancing the compensation by the impugned judgement is *ex-facie* perverse when seen in the light of the aforesaid judgements of the Hon'ble Supreme Court as discussed above.

33. In the present case the claimants were seeking enhancement of compensation and in view of the aforesaid judgements they were having the status of plaintiff before the reference court and it was for them to prove by evidence that the compensation offered by the Collector was inadequate and less than the market value of the acquired property and also prove through evidence the market value of the property and the extent of enhancement of compensation they were seeking before the court. The claimants being the plaintiffs had the initial burden to prove that the compensation as offered by the collector was inadequate and not as per market value of the acquired property.

34. This Court is of the considered view that the claimants had miserably failed to lead any cogent evidence for the purposes of enhancement of compensation or to even demonstrate that the compensation awarded was less than the market value of the acquired land and they completely failed to discharge their initial onus to show that the compensation arrived at by the Collector and offered to them which they accepted under protest was inadequate in any manner. This would be the position in the light of the judgments, which have been relied upon by the learned counsel appearing on behalf of the appellant, whose ratio has been fully discussed above. It has been clearly held by the Hon'ble Supreme Court, as mentioned above, that the claimant is in the position of a plaintiff before the Court and in the absence of any evidence to prove that the amount of award by the Collector does not represent the true market value of the property as on the date of the preliminary notification, the Reference Court will be helpless and will not be justified in granting any enhancement as the court cannot go by surmises and conjectures while answering the reference nor can it assume the role of an Appellate Court and enhance the amount awarded by reappraising the material that was collected and considered by the Collector. It has also been held that it is for the claimants to seek the determination of proper compensation by producing sale deeds and examining the vendors or the vendees as

to passing of consideration among them, the nearness of the lands sold to the acquired lands, similarity of the lands sold and acquired and also by adduction of other relevant and acceptable evidence. Therefore, if the claimants intend to seek higher compensation for the acquired land, the burden is on them to establish by proof that the compensation granted by the Land Acquisition Officer is inadequate and they are entitled to higher compensation. That could be established only by adduction of evidence of the comparable sale transactions of the land acquired or the lands in the neighbourhood possessed of similar potentiality or advantages.

35. Considering the evidences placed on record by the claimants/plaintiffs, this court is of the considered view that the claimants having completely failed to discharge their initial onus through cogent evidence that the compensation offered to them was inadequate or was not as per the market value of the acquired property, they were not entitled for enhancement of compensation. In such circumstances, there was no occasion for the learned court to enhance the compensation.

36. Accordingly, the enhancement of compensation by the impugned judgement and award is set-aside.

37. These First Appeals are accordingly allowed.

38. Pending interlocutory application, if any, is closed.

39. Let the records received from the learned court concerned be sent back.

40. Let this Judgment be communicated to the concerned court through “Fax/E-mail”.

(Anubha Rawat Choudhary, J.)

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