

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.370 of 1984

Against the judgment and award dated 23.02.1984 passed by Land Acquisition Judge, Purnea in L.A. Case No.46 of 1975.

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Jairam Singh (since deceased and represented by legal representatives)

.... Claimant-Appellant

Versus

The State of Bihar & Ors.

.... Opposite parties-Respondents

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Appearance :

For the Appellant : Mr. Banwari Sharma, Advocate.

For the Respondents : Mr. Neeraj Kumar, A.C. to S.C.22

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 18-09-2015

The original claimant Jai Ram Singh being aggrieved by the impugned judgment and award dated 23.02.1984 passed by the learned Subordinate Judge-cum-Land Acquisition Judge, Purnea passed in L.A. Case No.46 of 1975 had filed this First Appeal under Section 54 of the Land Acquisition Act.

2. Near about 46.30 acres of land were acquired by the respondents for agricultural marketing board. The said lands belonged to eight different landholders-owners including the appellant of this First Appeal. Notification under Section 4 of the L.A. Act was published on 17.04.1973. Out of the aforesaid lands some lands were *bhith* land, on some portion of lands houses were constructed, on some lands orchards and bamboo clumps were there and 0.36 acres

was *gairmajarua aam rasta* and 13.95 acres were dhanhar II land. The Collector fixed the market value of the land *bhith* I, dhanhar II, house with land, bamboo clumps lands at the rate of Rs.18,460/- per acre and deducted 10 per cent of the price of bamboo for the cost of cutting the bamboos. The Collector valued the orchard at Rs.52,175/- for 2.27 acres and again deducted 10 per cent for cutting the trees. The dhanhar III land was valued at Rs.9,230/- per acre.

3. Being aggrieved by the valuation fixed by the Collector i.e. Land Acquisition Officer the landowners filed application under Section 18 of the Land Acquisition Act claiming higher compensation. The present appellant also filed application claiming Rs.1500/- per katha for his land measuring 4.34 acres acquired by the said notification. The applications filed under Section 18 of the Land Acquisition Act were referred to the Special Land Acquisition Judge. The Land Acquisition Judge heard eight land acquisition cases i.e. Land Acquisition No.41 of 1975 to 47 of 1975 and 22 of 1976 and by the common judgment disposed of all the aforesaid land acquisition cases.

4. The present appellant's land acquisition case was numbered as 46 of 1975. The Land Acquisition Judge after trial on the basis of the materials came to the conclusion that the lands having houses, sahan, bhith II, dhanhar II and bamboo clumps cannot be less

than Rs.25,000/- per acre and accordingly fixed the market value at the same rate.

5. The learned counsel Mr. Sharma appearing on behalf of the appellant submitted that the land of this appellant measuring 4 acre 34 decimal was by the side of the National Highway and there were houses constructed by the side of the land and, therefore, the valuation of the land of this appellant was more than the other lands under acquisition but the court below wrongly fixed the market value of all the lands at the same rate. The claimant produced various sale deeds which were discarded by the court below wrongly. The Land Acquisition Judge did not categorise the land which were by the side of the road, which were at what distance from the road and which land were dhanhar land, homestead land because the market value will differ considering the nature of the land, therefore, the judgment is vitiated. The appellant produced evidences to show that near the land of the appellant Cinema Hall was there and the area was developing. Therefore, considering all these matters the court below should have fixed the market value of the land at Rs.1500/- per katha but has fixed Rs.25,000/- per acre.

6. On the other hand, the learned A.C. to S.C. 22 submitted that the sale deeds produced by the claimant for consideration were relating to the lands and houses within the

municipality area whereas the lands acquired were outside the municipality area. Therefore, the Land Acquisition Judge has rightly not placed reliance on the said sale deeds. According to the learned counsel even according to the appellant, he was claiming Rs.1500/- per katha i.e. Rs.30,000/- per acre and Land Acquisition Judge has given Rs.25,000/- per acre. Therefore, the first appeal has got no merit and in fact the market value fixed by the Land Acquisition Judge is just and proper.

7. In view of the above contentions of the learned counsel for the appellant as well as the learned State counsel only point arises for consideration in this appeal is as to whether the market value of the land fixed by the Land Acquisition Judge is correct, proper and adequate and if not, what will be the market value of the land of the appellant and whether the appellant is entitled to higher compensation or not?

8. In this case according to the claimant-appellant, he claimed Rs.1500/- per katha. The learned State counsel submitted that 20 katha is equal to 1 acre. The Land Acquisition Judge has granted Rs.25,000/- per acre and compensation has been calculated according to Section 23 of the Land Acquisition Act.

9. The Hon'ble Supreme Court in **A.I.R. 1997 SC 2625** (**Special Deputy Collector and another etc. Vs. Kurra Sambasiva**

and others etc.) has held as follow:-

“Whether fair and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification under Section 4 (1) of the Act; but not an anxious buyer dealing at arm’s length with throw away price, nor façade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions. The court is, therefore, enjoined with the bounden duty of public function and judicial dispensation in determination of the market value of the acquired land and compulsory acquisition.”

10. In 1996 (3) SCC 766 (Hookiyar Singh and others Vs. Special Land Acquisition Officer, Moradabad and another) the Hon’ble Supreme Court has held that it is settled law that the burden of proof of market value prevailing as on the date of publication of notification under Section 4(1) of the L.A. Act is always on the claimants. The Hon’ble Supreme Court has also held that though the Apathy and Blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of

interest on the part of counsel for the State to examine the witnesses, on material facts it is the duty of the court to carefully scrutinize the evidence and determine just and adequate compensation. All these decisions of the Hon'ble Supreme Court clearly speaks that it is the burden of the claimants to satisfy the Court that the compensation awarded by the Land Acquisition Officer is inadequate.

11. In the case of **State of U.P. and others Vs. Ram Kumari Devi (Smt.) 1996 (8) SCC 577** the Hon'ble Supreme Court at paragraph 4 has held as follows :-

"4. It is seen that small pieces of land of an extent of 60' x 20', 40' x 40' and 1600 sq. ft. were sold by the claimants, obviously on coming to know of the proposed acquisition. It is common knowledge that acquisition proposal would be made at an earlier point of time and finalisation of acquisition would take a long time. In the process, on becoming aware of the acquisition, obviously, these sale deeds have been brought into existence to inflate the market value. It is laid down by this Court which is a well-settled principle that it is the duty of the court to assess reasonable compensation. Burden is on the owner to prove the prevailing market value. On adduction of evidence by the parties, the acid test which the court has to adopt is that the court has to sit in the armchair of a prudent purchaser, eschew feats of imagination and consider whether a reasonable prudent purchaser in the open market would offer the same price which the court is intending to fix the market value in respect of the acquired land. Since it is a compulsory acquisition, it is but the solemn duty of the court to assess reasonable compensation so as to allow the same to the owner of the land whose property has been acquired by compulsory acquisition and also to avoid needless burden on public exchequer. No feats of imagination would require to bog the mind that when 13.75 acres of land was offered for sale in an open market, no

prudent man would have credulity to purchase that land on square foot basis. The High Court as well as the District Judge have committed a grave error in not applying the above acid test while considering the case. They merely proceeded by accepting the sale deeds which were obviously brought into existence to inflate the market value and determined the compensation on the price settled by them. Thus, we hold that both the courts have applied a wrong principle of law in determining the compensation."

12. In the present case, the claimant has been examined as claimant witness no.13. In his evidence he has only stated that he claimed Rs.1500/- per katha but the compensation has been paid is very low. In his evidence he further stated that he was growing three crops per year on his land but at the same time he said that he does not know the name of three crops, which he was growing. He further stated that his land was suitable for construction of house. He has not stated anything about yearly income from agriculture. It further appears that his lands were not by the side of road as he has stated in his evidence that his lands were at a distance from the road. From perusal of the impugned judgment, it appears that the Land Acquisition Judge has taken into account all these aspects of the matter regarding existence of National Highway, residential houses nearby etc. Now, therefore, the only evidence produced by the claimant himself is that the appellant's land was agricultural land which was also fit for construction of house i.e. *bhith* land.



13. The Hon'ble Supreme Court in the case of **State of J & K Vs. Mohd. Matinvari, A.I.R. 1998 SC 2470** has held that the report of local Tehsildar regarding market value of the land submitted in discharge of his duty and after inspection and thorough inquiry can be made basis for determining the market value. The claimant produced some sale deeds which are Ext.1 series. Ext.1 relating to 2 katha of land sold for Rs.3,000/- and Ext.1 (kha) is also with respect to 2 katha of land sold for Rs.3,000/-. Both the sale deeds are dated 30.11.1972. These sale deeds were produced before the Collector also and the Collector after enquiry found that those sale deeds are bogus sale deeds. Likewise, the other sale deeds i.e. Ext.1(ga), 1(gha), 1(anga) are the sale deeds relating to the lands and houses on it, which were within the municipality area.

14. Here, in the present case, 46.30 acres of land were acquired by the State for Marketing Board. Further the appellant's land is also not a small area but it measures 4.34 acres. In view of the decision of the Hon'ble Supreme Court in the case of **State of U.P. and others** (supra) can it be believed that when 46 and odd acres or 4.34 acres of land is offered for sale in open market, anybody would have credulity to purchase that land on katha basis. The Hon'ble Supreme Court said that no prudent man would have credulity to purchase on katha basis. Therefore, the claim made by the appellant to

fix the market value on the basis of Ext.1(ka) and 1(kha) cannot be accepted. Moreover, according to the Hon'ble Supreme Court on coming to know of the proposed acquisition it is common knowledge that acquisition proposal would be made at an earlier point of time and finalisation of acquisition would take a long time. Obviously, therefore, these sale deeds were brought into existence to inflate the market value.

15. The learned counsel for the appellant relied upon **(1991) 4 SCC 506 (Bhagwathula Samanna & Ors. Vs. Special Tahsildar & Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam** and **(2001) 7 SCC 211(Sunder Vs. Union of India)**. From perusal of these decisions I find that the Hon'ble Supreme Court has given guidelines for deciding the market value. There is no dispute about these settled principles of law. The Land Acquisition Judge has considered all the material facts brought before the Court and then enhanced the compensation awarded by the Collector. Now, therefore, it was the burden on the appellant to show that in fact the market value of the land was higher than what is fixed by the Land Acquisition Judge but as discussed above the claimant himself has given his oral evidence contrary and in general form. He only stated that he is claiming Rs.1500/- per katha. What is the basis for this valuation is not given by him. The sale deeds produced by the

claimant i.e. Ext.1(ka) and Ext.1(kha) relate to very small area i.e. only 2 katha each and, therefore, those sale deeds cannot be made the basis for fixing market value of the land when large chunk of land has been acquired by the State.

16. In view of my above discussion I find that the appellant has failed to show that the market value of the land acquired was higher than what has been fixed by the Land Acquisition Judge or that the appellant is entitled for higher compensation. In my opinion, therefore, the market value fixed by the Land Acquisition Judge is proper, correct, just and adequate. The finding of the court below on this point is, therefore, hereby confirmed.

17. In the result, I find no merit in this first appeal. Accordingly, this first appeal is dismissed. In the facts and circumstances there shall be no order as to cost.

(Mungeshwar Sahoo, J)

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