

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.77 of 1992

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Against the judgment and Award dated 18.09.1991 passed by Sri Syed Akbar Raza Nazvi, Sub-Judge III, Sasaram in L. A. Case No. 17 of 1981 / 42 of 1989

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State of Bihar through Collector, RohtasOpposite party.....Appellant

Versus

Ram Rekha Mahto son of Algo matho R/o village- Bhartiganj, Sasaram, P.S.- Sasaram, District- Rohtas.....Applicant Respondent

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Appearance :

For the Appellant : Mr. Neeraj Kumar, AC to SC 22

For the Respondent : Mr. S. S.Dwivedi, Sr. Advocate
Mr. Rakesh Chandra, Advocate
Mr. R. K. Dubey, Advocate
Mrs. Sangeeta Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
C.A.V. JUDGMENT

Date: 20-05-2015

The sole appellant being aggrieved and dissatisfied with the judgment and award dated 18.09.1991 passed by learned Sub-Judge- III, Sasaram whereby and whereunder seven land acquisition cases were disposed of by the common judgment and award including the Land Acquisition Case No. 17 of 1981 / 42 of 1989.

2. It appears that for the purpose of extension of Sasaram Hospital, large chunk of land was acquired by the State of Bihar and for that Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') was published in the local Gazette on 01.09.1976. The lands under reference were acquired by the State of Bihar the appellant through the Land Acquisition Officer, Bihar in L.A. Case No. 3 /V-1976-77. The Award further mentions that the amount of compensation was determined on the basis of sale deed for the lands in the vicinity prior to notification under Section 4 (1) of the Act. The lands belonged to different claimants. In Land Acquisition Case No. 17 of 1981, 0.24 decimals of land was

acquired from Khata No. 24, Plot No. 267, for which amount of Rs. 4,858.75 Paisa was paid to the sole respondent which he received under protest.

3. The land holders-claimants filed application for enhancement of the compensation. The respondent also filed the application for the same alleging that on the date of acquisition of land, the value was Rs. 20,000/- per Kattha. According to the sole respondent, the lands are valuable lands and situated in the heart of the town and also close to the market place on the Roza Road. There are houses, shops and market near the lands acquired. The lands acquired can also be used for construction of building etc. and it is 'Char Fasla' which produces Maize, Potato, Brinjals, Gobi and Kuwari etc. vegetables in a year. The average annual production of Maize in the acquired land is @ 5 Mann per Kattha, Potato @ 15 Mann per Kattha, Kuwari @ 700/- Kattha. Besides that Dhanias, Mangraia, Onion, Jamain, Saag and Mulli etc. were also produced side by side and annual income was about Rs. 7000/- per year. The land under acquisition was irrigated by tube well and canal water of municipality. The respondent had no other land in Sasaram Town except the aforementioned land which has been acquired by the Government. He was fully dependent on agriculture and it was main source of income for his livelihood. The respondent suffered damages due to acquisition. The Land Acquisition Officer referred the application to Land Acquisition Judge where after evidences and hearing the parties, the Land Acquisition Judge fixed the market value of land at the rate of Rs. 20,000/- per Kattha and accordingly, compensation has been enhanced. According to the Sub-judge, the amount of compensation at the rate of Rs. 480/- per Kattha fixed by the State of Bihar is too low and meager and is not in accordance with the approximate market value of the land prevailing at the time of acquisition.

4. The learned Sub-Judge further awarded solisitium interest at the

rate of 30 % on the amount of enhanced compensation under the amended Sections 23 (2) of the Act and also interest at the rate of 9 % per annum on the enhanced amount of compensation from the time of taking possession till the realization of the compensation awarded. However, no cost was awarded. Thus, total amount of Rs. 4,78,142.49/- was further to be paid to the applicant/respondent.

5. It may be mentioned here that the State of Bihar has not filed any rejoinder to the reference petition but the State of Bihar being aggrieved and dissatisfied with the judgment and award, preferred this first appeal wherein cross-objection has been filed by the respondent claiming compensation at the rate of Rs. 1,00,000/- per Kattha.

6. Learned AC to SC 22, Mr. Neeraj Kumar appearing on behalf of appellant, has submitted that the learned court below has arbitrarily enhanced the compensation to such an extent which is not acceptable and there is no basis for the same. The sale deeds, relying upon by the Land Acquisition Judge, with regard to very small area of land, are not bonafide sale deeds. There is no evidence that the lands involved in the sale deeds, Ext. 1, 1/A and 1/B, are of similar nature as that of the lands acquired. Admittedly, the claimants have stated that the land acquired was the agricultural land having irrigation facilities whereas by the three sale deeds very small area of homestead lands were sold. The appellant has filed Ext. A, Ext. B and certified copy of sale deed Ext. C and order of Land Acquisition officer Ext. D. Ext. C is the certified copy of sale deed executed by Most. Lalmani Kuer in favour of Surajnath Dubey, dated 19.01.1976, and on that basis the Land Acquisition Officer has fixed the compensation rightly as the same is bonafide transaction but the Land Acquisition Judge did not consider and did not rely upon the said sale deed. There is no evidence at all on the record regarding the value of land was Rs. 1,00,000/- per Kattha at the time when the lands were acquired.

7. Learned court below while fixing the market value of land has not granted any deduction either on account of the development that may be required or on account of the fact that the lands involved in Ext. 1 series are very small areas whereas the appellant has acquired more than 2 acres of land at a time. On these grounds the learned AC to SC 22 has submitted that the impugned judgment and award are not sustainable in the eye of law.

8. On the other hand learned Senior Counsel, Mr. S.S. Dwivedi appearing on behalf of the respondent, has submitted that no doubts, lands were used for agricultural purposes but that does not mean that the value of land was not equal to that of homestead land as it was situated in the heart of town and fit for construction of building and, moreover, the same has been acquired for the extension of Hospital itself. The Land Acquisition Judge has not considered the damage caused to the land on account of acquisition of the same and thereby severance of land from the remaining land. In such circumstances, the applicants-respondent was entitled to higher compensation. In view of Section 28 of the Act, the learned Sub-Judge should have awarded the interest at the rate of 15% per annum from the date of taking possession till the payment but only granted 9% interest. The learned Sub-Judge has fully considered the evidences and materials on record and gave categorical finding about the market value and fixed the same at the rate of 20,000/- per Kattha. The judgment and award are not liable to be interfered with in this appeal. The cross objection has been filed by the respondent claiming that acquired lands were valued at Rs. 50,000/- per Kattha and interest at the rate of Rs. 9% per annum has been awarded which should be 15% per annum on the enhanced compensation from the date of taking possession. On these grounds it has been submitted that the first appeal is liable to be dismissed and cross objection is liable to be allowed.

9. In view of the above contentions of the parties, the following points arise for consideration:

(i) Whether the compensation awarded by the Land Acquisition Officer is correct and just compensation ?

(ii) Whether the compensation enhanced and awarded by the Land Acquisition Judge by the impugned judgment and award are just compensation ?

(iii) Whether the cross objection filed by the respondent has got merit?

(iv) Whether the respondent is entitled for more enhancement ?

10. In this case the claimants have examined altogether 13 witnesses, out of which AW 10 Jang Bahadur Singh, AW 11 Jagdish Prasad Singh, AW 12 Shiv Kumar Singh are formal witnesses. They have proved the sale deeds and other papers. AW 1 Parasnath Mahto, AW 2 Shankar Mahto, AW 3 Jamuna Mahto, AW 4 Jawahar Mahto, AW 5 Deolal Singh, AW 6 Ramchandra Mahto, AW 9 Harihar Mahto and AW 13 is Ram Rekha Mahto the applicant himself. They have supported the case of the applicant that the lands acquired were very fertile land having irrigational facilities and it was producing four crops in a year. It is situated just by the eastern side of Roza Road which passes and starts from G.T. Road on its northern point and goes to the Tomb of Shersah. It is situated in the heart of town and it comes within municipal area surrounded by hospital, school and residential houses etc. The rate is increasing just double every year and now the land measuring 1 Kattha is not available even on payment of Rs. 1 ½ lakh and 2 lakh onwards. The land in question, at the time of acquisition, was sold at the rate of Rs. 20/25 thousand per Kattha. Further Ext. 1 to 1/B have been filed. Ext. 1 is the sale deed dated 11.11.1974 executed by Rajeev Ranjan Prasad in favour of Ramashish Singh. This is for 16 dhurs only which was sold for Rs. 14,000/-. That land is of



plot no. 229 of khata no. 42. Ext. 1/A is the sale deed dated 1.11.1974 executed by Roop Narayan Dubey in favour of Jagdish Narayan Singh. This is also for only 8 dhurs and was sold for Rs. 6,000/- which is for plot no. 230 of Khata no. 4. Ext. 1/B is sale deed dated 26.02.1975 executed by Sushila Kashyap in favour of Yamuna Rai for 5 dhurs 6 $\frac{3}{4}$ dhurki which was sold for Rs. 12,000/- from plot no. 254 Khata No. 86. Ext. 4 is the map of the village Chanauthu. Further earlier judgment, dated 16.07.1991, has also been filed which was marked as Ext. 5. The Commissioner report has also been marked as Ext. 2 and summons has been marked as Ext. 3.

11. It may be mentioned here that all the AWs were deposing before the Court in the year 1989. The notification under Section 4 of the Act was published in the year 1976. They are not saying about the situation in the year 1975-76 when the notification was issued. The witnesses have stated that when the lands were acquired the value of the land was of Rs. 20,000/- per Kattha and almost all the witnesses are claiming that there were irrigational facilities on the land and four crops were grown in a year. It is well settled principle of law that on the basis of oral evidence, the market value cannot be fixed as it is not safe to rely on the statement of witnesses regarding the market value. From Ext. 1 series it reveals that lands were homestead land and very small area has been sold. On the contrary, the State of Bihar has produced Ext. C. According to the OPWs, the lands of Ext. C was sold which was in the boundary of the land acquired. The Land Acquisition Officer has taken into account this sale deed and fixed the rate of land acquired which is evident from evidences of OPWs. OPW 1 Ram Suresh Dubey is the Surveyor. He has stated that at the time of acquisition of the land there was no house in the vicinity. The lands situated east of Roza Road and it is deep land and it does not produce crops four times in a year. The said land is far from town and at the time of acquisition the rate of the land was Rs. 480/- per Kattha. OPW 2 Ganesh

Prasad is the retired Draft Man of Land Acquisition Office, Sasaram. He has worked as Amin and he has prepared the sale statement. OPW 3 is the Peon in Land Acquisition Office. He has only proved the signature of Suresh Prasad Verma and Madhukar Jee.

12. From perusal of the impugned judgment and award, it appears that the learned court below has not at all considered the Ext. C and the statement of OPW 1. The Land Acquisition Judge has not given any cogent reason for relying on the sale deeds produced by the applicant-respondent. The other aspect of the matter is that the Land Acquisition Judge has not considered that the lands, which were sold through Ext. 1 series, they are small areas of land and could not have been taken into account the guidelines for determining the rate of large area of land. Further as has been stated by the claimant, the lands acquired were agricultural land, it requires development as it was undeveloped land but the learned court below has not at all deducted any amount towards either for development or for the differences in small area and large area. It appears that abruptly, in paragraph 7 of the judgment, the court below held that “thus, considering Ext. 1 series and to meet the ends of justice, it would be proper to fix Rs. 20,000/- per Kattha.”

13. In the case of **State of U. P. and Ors. Vs. Ram Kumari Devi (Smt.) and Ors.** Reported in (1996) 8 SC 577 the Hon’ble Apex Court has held at paragraph 4 as follows:

“4. It is seen that small pieces of land of an extent of 60’ x 20’, 40’ 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 finalization 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 evidences 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 of foot basis.”

14. In the case of **Karnataka Urban Water Supply and Drainage Board and Ors. Vs. K. S. Gangadharappa and Anr.** reported in (2009) 11 SCC 164, the Apex Court has held that where a large area is the subject matter of acquisition, rate at which small plots are sold, cannot be said to be a safe criterion. In such cases necessary deductions/adjustment had to be made while determining the prices. The Supreme Court further held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. According to the Supreme Court, the principles to be considered is when sale is within a reasonable time of the date of notification under Section 4 (1) of the Act, it should be a bonafide transaction, it should be of the land acquired or of the land adjacent to the

land acquired and it should possess similar advantages. It is only when these facts are present it can merit a consideration as a comparable case.

15. In the case of **Revenue Divisional officer-cum-Land Acquisition Officer vs. Shaik Azam Saheb and Ors**, reported in **(2009) 4 SCC 395**, the Apex Court has again held that while comparing the market value of developed lands with that of undeveloped lands suitable deductions have to be made towards the cost of developments.

16. In the case of **Kanta Devi & Ors. Vs. State of Haryana & Anr.** reported in **(2008) 15 SCC 201**, the Apex Court held that the deduction at the rate of 70 % was on the higher side and deduction of 60 % of market value was found to be reasonable rate. The Apex Court found that the land was adjacent to village abadi which had already developed. In that case, the High Court has granted 70 % deduction of development.

17. The learned Sub-Judge, while relying upon the Ext. 1 series, should have granted suitable deduction of some percentage in view of the settled principle of law laid down by the Apex Court which he has failed to do so. The lands involved in the sale deeds are homestead lands and are very small area, not even 1 Kattha, whereas the land acquired are more than 2 acres.

18. On the basis of above discussions, as the learned Sub-Judge has not deducted any percentage towards the development and also because the lands involved in Ext. 1 series are not similar either in nature or area to that of the lands acquired rather the court below has fixed the market value of the land and thereby allowed even more than that. In my opinion, the market value fixed by the learned court below is exaggerated one and based on Ext. 1 series which are not, in fact, comparable sale instances. Therefore, 30 % should be deducted towards the development and 30 % should be deducted for the fact that the lands of Ext. 1

series are small area and homestead land whereas the lands acquired are large area and agricultural land. Therefore, the market value of the land comes to Rs. 20,000 – 60 % of Rs. 20,000/- i.e. Rs. 20,000- Rs. 12,000/- = Rs. 8,000/- per Kattha. In my opinion, the market value of the lands should be Rs. 8,000/- per kattha. The claimant/respondent is entitled for the said rate and statutory benefits. The claimant /respondent is also entitled to get solisitium interest @ 30 per cent on the amount of enhanced compensation under the amended Section 23 (2) of the Act and also to receive 15 % interest from expiry of one year from the date of taking of possession on the enhanced compensation as provided under Section 28 of the Act. Prior to that the enhanced compensation shall carry on 9 % interest.

19. Since the cross-objection has been filed by the respondent for enhancement of rate of interest from 9 % to 15 % as provided under Section 28 of the Act, the same is allowed but so far as the claim for enhancement of compensation is concerned, the same is hereby refused. The respondent is entitled to receive 15 % interest from expiry of one year from the date of taking possession on the enhanced market rate of the lands acquired.

20. In view of the above discussions and findings, the first appeal is allowed in part. The judgment and award is modified to the extent indicated above. The cross-objection filed by the respondent regarding claim of 15 % interest as stated above is allowed. There shall be no order as to costs.

(Jitendra Mohan Sharma, J)

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