

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No.35 of 2009

1. State of Chhattisgarh, through the Sub Divisional Officer (Revenue), Land Acquisition Officer, Patan, Headquarter Durg (C.G.)

---- Appellant

Versus

1. Gaukaran Singh Chandrakar, S/o Late Bisheshwar Prasad Chandrakar, R/o Jewartala, P.H.No. 124/83, Tah. And District Durg, Presently Tahsil Gunderdehi.

---- Respondent

For Appellant – Shri Chitranjay Patel, Govt. Advocate.
For Respondent – Shri Ram Kumar Tiwari, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

12/03/2015

(1) By this First Appeal (M) filed under Section 54 of the Land Acquisition Act, 1894 (in brevity 'the Act, 1894') the appellant/State has challenged the legality and propriety of the award dated 29-08-08 passed by the 9th Additional District Judge (FTC), Durg, C.G. in MJC No.07/2007 by which the learned trial Court disposed of a reference presented by the Land Acquisition Officer as the respondent made objection for being unsatisfied for the fixation of compensation. The Court below enhanced the compensation from Rs.36,065/- to Rs.50,215/- as the Court below held that the land in question is adjoining to the road and having facility of irrigation through bore and the land was multi-crop.

(2) By filing this appeal the appellant has challenged the propriety and legality of the judgment as the judgment is not according to Law.

(3) As per the award and record of the Court below, the land 0.42 acre from

Khasra No. 38 (386) from the total area 2.91 hectare of Village Jevartala Patwari circle No.4 Gundardehi, District Durg belonged to the respondent and was acquired by the appellant for the purpose of Kharkhara Monhandipat Canal Project. The Land Acquisition Officer assessed the compensation for 36,065/- against which the respondent made objection before the Land Acquisition Officer and for the same a reference was presented before the Court below under Section 18(2) of the Act, 1894.

(4) While affording opportunity of hearing to the parties, the learned Court below by deciding the issue framed held and assessed that as the land acquired is near the tar road and is also having facility for irrigation through bore and is multi-crop and enhanced the compensation upto Rs.50,215/- along with the interest to be paid by the appellant to the respondent.

(5) The appellant has filed this appeal and has taken the ground that the Court below has grossly erred in allowing the reference of the respondent. The order is patently perverse and has been passed without application of judicial mind. It failed to appreciate the material evidence available on record in its correct perspective and erred in determining the rate as per the guideline prevailing for the purpose of registered sale deed; the trial Court ought to have considered the actual rate on which the transactions were being effected. Also taken ground that the respondent had not preferred any objections before the Land Acquisition Officer and therefore they could not re-agitate the matter before the Court below. Also taken ground that award is against the guidelines framed for the compensation. By filing this appeal the appellant has prayed that award passed by the Court below as aforementioned be set aside and the appeal may be allowed.

(6) I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

(7) Learned counsel for the appellant supported the memorandum of appeal and submitted that on the basis of grounds taken in the appeal, the appeal may be allowed. He insisted on Ex.-P/1, the report of the concerned Patwari, which describes that the land was far away from the tar road. The same document is not relied by the Court below. The case of the appellant based on this document and on the basis of this document, the Court has to assess that the compensation fixed by the appellant is correct. Hence, the appeal may be allowed.

(8) On the other hand, learned counsel for the respondent submits that the maker of Ex.-P/1 was examined by the respondent before the Court below and in the cross-examination itself this witness deposed that on account of clerical mistake, it is mentioned that the land in question is far away from the tar road and far away from the village, on the other hand, the land in question is adjoining to the tar road and at a distance from the village. This witness also stated that the land in question is multi crop and irrigated through bore. Hence, on all these 3 grounds, this witness although employee of the State and also working as Patwari, the Court below has rightly accepted his statement and accordingly enhanced the compensation. Therefore, there is no scope in the appeal and the appeal may be dismissed as not maintainable.

On behalf of the respondent also the cross objection under Order 41 Rule 22 of the CPC for enhancing the compensation for Rs.1,00,000/- is filed. In the grounds therein the respondent stated that the Court below failed to take into account the fact of damage sustained by the respondent by dividing the land taking some portion which was adjacent to the main road which was being used for approaching the entire land and also the Court below erred in not giving the amount of interest from the date of acquisition till the date of award, and the compensation is on lower side as the potentiality of the land being acquired

by the appellant has not been taken into account.

(9) For appreciating the arguments advanced on behalf of the parties, I have perused the entire record and the evidence adduced by the parties before the Court below. The respondent only examined two witnesses. No any witness on behalf of the appellant to prove his case. Patwari Jagdish Ram Thakur (AW-1) in para 2 of his examination-in-chief stated that the land in question is multi crop and irrigated through bore. In the cross-examination on behalf of the appellant this witness deposed in para 3 that on account of clerical mistake at distance from the tar road and too much distance from the village is mentioned whereas the land in question is connected with the road and away from the village. On all these facts the witness remained firm and on the basis of above evidence, the trial Court assessed and held that instead of compensation awarded by the Land Acquisition Officer, enhanced compensation may be given. The appellant failed to examine any witness against Jagdish Ram Thakur (AW-1) who is employee of the State and working as Patwari authorized to give reports. In view of this Court, looking to the entire facts, evidence and circumstances, the trial Court has rightly assessed, held and made an award for enhanced compensation in favour of the respondent. I do not see any scope for interference in the award passed by the Court below.

(10) So far as the cross objection under Order 41 Rule 22 of the CPC made by the respondent is concerned, for the grounds taken in the cross objection no specific evidence is ever adduced on behalf of the respondent, hence, there is no factual support for the cross objection filed by the respondent before this Court. Looking to the above facts, the cross objection filed on behalf of the respondent is without any corroboration from the evidence of facts adduced by the respondent before the trial Court. In view of this Court, the cross objection filed on behalf of the respondent is not having any merit, hence, it is liable to be dismissed and is hereby dismissed.

(11) Consequently, the appeal filed on behalf of the appellant has no substance. Therefore, the appeal filed on behalf of the appellant is liable to be dismissed and is hereby dismissed.

(12) No order as to cost.

Sd/-

(C.B.Bajpai)
JUDGE

