

IN THE HIGH COURT OF JUDICATURE AT PATNA



First Appeal No.328 of 1984

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Uzra Khatoon & Ors.

.....Applicants--appellants

Versus

State of Bihar.

.....Opp. party - Respondents

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With

First Appeal No.329 of 1984

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State of Bihar.

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**Against the Judgment and Award dated 20.01.1984 passed
in Land Acquisition Case No.8 of 1983, 29 of 1983 and 28
of 1983 by Land Acquisition Judge, Gaya.**

Appearance :

For the Appellant/s (in all the Appeals) :- Mr. Kaushal Kumar, Advocate.

For the State (in all the Appeals) :- Mr. Jharkhandi Upadhaya, Advocate

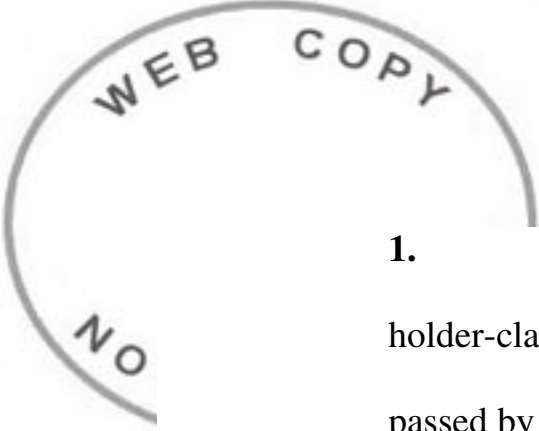
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Dated : 26th day of October, 2016

P R E S E N T

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV J U D G M E N T



1. All these three First Appeals have been filed by the land holder-claimants against the Judgment and award dated 20.01.1984 passed by Addl. District Judge-II, Gaya-cum- Land Acquisition Judge in Land Acquisition Cases No.8 of 1983, 29 of 1983 and 28 of 1983.. Since common Judgment is there and parties are same, these three First Appeals are being decided by common Judgment.

2. The lands of the appellants measuring 0.20 acres in plot No.454 and 460 were acquired which were Bhit two categories in Land Acquisition Case No. 8 of 1983. In Land Acquisition Case No.28 of 1983, 3.40 acres of lands were acquired in plot No.4 and 514. These lands were Bhit three categories. In Land Acquisition Case No.29 of 1983, 0.10 was acquired. All these lands were acquired for construction of canal. The Notification under Section 4 was made on 08.08.1978. Possession was taken on 19.03.1981 and the State Govt. awarded the compensation at the rate of 13,636/- per acre for Bhit category two land Rs.10,000/- per acre for Bhit category three lands.

3. The claimants filed application under Section 18 of the

Land Acquisition Act and claimed compensation at the rate of Rs.300/- per decimal and Rs.10 per decimal on account of damage for severance from their compact land. This matter was referred to the Land Acquisition Judge.

4. Before the Land Acquisition Judge, four witnesses were examined by the claimants and also produced documentary evidences in support of their claim that the lands acquired were more valuable land and in fact the lands were homestead land. After considering the evidences, the learned Land Acquisition Judge dismissed the claim.

5. The learned counsel for the appellant submitted that sale deeds were produced by the appellants in support of their case that when the Notification was issued in the year 1978, the lands by the side of the acquired land were being sold at the rate of Rs.300/- per decimal. The witnesses examined by the appellants also supported the claim that the acquired lands were valuable lands but the Court below erroneously rejected their plea.

6. On the other hand, the learned State counsel submitted that the Court below has minutely examined the evidences and then has recorded the finding that the compensation awarded is just and proper. On the basis of oral evidence, the market rate of the land cannot be fixed and, therefore, the Court below rightly dismissed the claim

finding that the sale deeds produced by the appellants are not reliable document.

7. In view of the above contentions of the parties, the only point arises for consideration in these First Appeals is as to whether the compensation awarded by the Land Acquisition Judge is just, proper, adequate or not and whether the appellants are entitled to more compensation.

8. The appellants have adduced oral as well as documentary evidences. A.W.1 and A.W.4 have stated that the lands which were acquired were Bhit lands and such nature of lands were being sold at the rate of Rs.300/- per decimal in the year 1978. A.W.2 stated that some land was sold to Md. Ziyauddin which were of similar quality and nature. A.W.4 is the original applicant. A.W.3 is purchaser. These are the oral evidences. The sale deed dated 10.10.1978 executed by Sakav Arsalan in favour of Md. Ziyauddin has been produced. This sale deed has been executed just two days after the Notification under Section 4 of the Land Acquisition Act. These are the evidences.

9. It may be mentioned here that the Hon'ble Supreme Court in the case of *Ahmadabad Municipal Corporation Vs. Shardaben (1996) 8 SCC 93* has held that 'the burden is on the claimants to



prove by adducing reliable evidence that the compensation offered by the Land Acquisition Officer is inadequate and the lands are capable of fetching higher market value. It is the duty of the Court to closely scrutinize the evidence, apply the test of prudent and willing purchaser, i.e., whether he would be willing to purchase in open and normal market, conditions of the acquired land and then determine just and adequate compensation.’ Same view has been taken in the case of *Hookiyar Singh Vs. Special Land Acquisition Officer (1996) 3 SCC 766*.

10. In the present case, merely the appellants have produced the oral evidences regarding the market value of the lands acquired. They are claiming 300/- rupees per decimal. It may be mentioned here that when more than 3.5 acre of the lands have been acquired, no prudent person will purchase the land on the decimal basis.

11. The Hon’ble Supreme Court in the case of *State of U.P. Vs. Ram Kumari Devi (1996) 8 SCC 577* has held at paragraph 4 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. So far the sale deed is concerned, only ten decimal of land was sold for Rs.1500/- that too just two days after the Notification under Section 4 of the Land Acquisition Act. Even according to this sale deed, the rate was at Rs.150/- per decimal only. Therefore, this sale deed cannot be made the basis of fixing the market value of the land acquired which is about more than 3.5 acre.

13. In view of my above discussion, I find that the appellants

have failed to prove that the lands acquired were capable of fetching higher market value. I, therefore, find that the compensation awarded by the Land Acquisition Officer is just, proper, adequate and thus the finding of the Land Acquisition Judge is hereby confirmed.

14. In the result, I find no merit in these three First Appeals. Accordingly, all these three First Appeals are hereby dismissed. No order as to cost.

(Mungeshwar Sahoo, J)

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