IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.71 of 1985

Against the Judgment and Decree dated 26.07.1984 passed by Subordinate Judge, Bhagalpur in Land Acquisition Case No.48 of 1983.

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State of Bihar

.........Opposite party-Appellant

Versus

Subodh Pd.Ram & Ors

....Cross-objectors-Respondents

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Appearance :

For the Cross objector : Mr. Indeshwari Prasad Mandal, Advocate.

For the State Respondent
In Cross objection : Mr. Neeraj Kumar, A.C. to S.C.22.

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Dated : 7th day of April, 2016

P R E S E N T

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV JUDGMENT

1. The State of Bihar had filed this First Appeal against the Judgment and Award dated 26.07.1984 passed by Subordinate Judge, Bhagalpur in Land acquisition Case No.48 of 1983. In the First Appeal, the respondents of the First Appeal appeared and filed cross objection under Order 41 Rule 22 CPC claiming enhancement of the compensation.

2. The First Appeal was withdrawn before the Lok Adalat in view of the Notification of the State Govt. vide the Award of the Lok Adalat dated 12.12.2015. However, the cross objection filed by the respondents still remained, therefore, I heard the parties on this cross objection.

3. It appears that the cross objectors, land measuring 80 decimal was acquired for Ganga Pump Channel Project, Kahalgoan, Bhagalpur. Notification under Section 4 was issued on 16.09.1980. The Collector awarded compensation of Rs.24,533.64/- which was received by the cross objectors on 21.06.1982 with protest. They filed application under Section 18 of the Land Acquisition Act on the ground that the Collector has fixed arbitrarily the value of the land at the rate of Rs.26,667/- per acre as the lands under acquisition is situated by the side of Godda Pirpati road, near block hospital, Panchayat Bhawan and high school and the land acquired is class 'A' land wherein wheat, maize, sugarcane and vegetables are grown and annual income from the land was Rs.40,000/- per year. The cross objector claimed Rs.5000/- per katha. The application was referred to Land Acquisition Judge. Both the parties adduced respective evidence oral and documentary and thereafter on the basis of the evidences and materials, the Land Acquisition Judge fixed the market value of the land at Rs.1500/- per decimal and awarded total compensation of Rs1,38,000/-.

4. The learned counsel for the cross objector Mr. Indeshwary Prasad Mandal, submitted that the learned Land Acquisition Judge has wrongly not fixed the market value of the land acquired at the rate of Rs.5 lakhs per acre, as the cross objectors produced the sale deeds before the Court below which was very much relevant and also produced oral evidences. According to the learned counsel, the Award of the stock Land Acquisition Judge is wrong and based on wrong appreciation of evidence. The learned counsel further submitted that the land of the cross objector was capable of fetching more value at the time of acquisition and in fact the lands acquired by the State of Bihar for the purpose have been fixed at the rate of Rs.5000/- per katha earlier.

5. On the other hand, the learned A.C. to S.C.22 for the State respondent in cross objection submitted that the learned Land Acquisition Judge has paid higher compensation by fixing the market value on decimal basis when the large area measuring 80 decimal of land was acquired by State of Bihar, therefore, the State had filed the appeal challenging the Award but in view of the notification of the State Government whereby it was decided to withdraw all the First Appeals, the value of which was less than 3 lakhs, if it relates to land acquisition matter, the State withdrew the same. On these grounds, it is submitted that the cross objection be dismissed.

6. In view of the above submissions of the parties, the points arises for consideration in the cross objection is whether the compensation awarded by the Land Acquisition Judge is just and proper or whether the claimants-cross objector are entitled for enhanced compensation and if so to what extent and whether the impugned Judgment and Award are sustainable in the eye of law.

7. The claimants-cross objectors have examined three witnesses. A.W.1 is one of the claimant. According to him, he was earning Rs.40,000/- per year from the lands acquired as the wheat, paddy crop, sugarcane, maize were being cultivated. At the time of Notification, the lands were being sold in the area at Rs.5000/- per decimal. A.W.2 has stated that at the time of acquisition, the lands were being sold at Rs.4,000/- per decimal.

8. The plaintiff has also produced exhibit '1' sale deed by which 1¾ decimal homestead land was sold for Rs.9000/- on 11.04.1977. Exhibit '1A' is the sale deed dated 15.09.1980 by which one decimal land was sold for Rs.8000/- per decimal. It may be mentioned here that on the basis of the oral evidence only, the market value cannot be determined, particularly when the documentary evidences are available. These are only the two sale deeds which can be taken for the guidelines for fixing market value of the land acquired. However, on the basis of the same, the market value of the land acquired cannot be fixed.

9. The State authorities have also filed rate report which has been marked as exhibit ‘A’ on the basis of which the Collector has fixed the rate of the lands acquired. Now, the question is whether the same market value should be fixed as that of land covered under exhibit ‘1’ and ‘1/A’. As mentioned above, homestead lands were sold that too very small land were involved. Here 80 decimal of lands have been acquired. Admittedly, according to the plaintiff, his lands were agricultural land. Except the exaggeration statement made by the cross objectors regarding his earning of Rs.40,000/- per year, nothing had been produced in support of the same. At one place, he himself admitted that because of acquisition of land, he sustained loss of Rs.10,000/- for standing crops. The nature of the land acquired is entirely different than the nature of the land involved in ext. ‘1’ and ‘1/A’.

10. The Hon’ble Supreme Court in the case of ***Ahmadabad Municipal Corporation Vs. Sharda Ben and Ors 1996 (8) SCC 93*** has held **‘the burden is on the claimant to prove by adducing reliable evidence that the compensation offered by**

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 lands and then determined just and adequate compensation'. Same view has been taken by the Supreme Court in ***1996 (3) SCC 766 Hookiyar Singh Vs. Special Land Acquisition Officer, Muradabad.***

11. The Hon'ble Supreme Court in the case of ***Karnatara Urban Water Supply and Drainage Board Vs. K.S. Gangadharappa (2009) 11 SCC 164*** has held at paragraph 8 as follows :-

> **"8. In Suresh Kumar v. Town Improvement Trust, in a case under the Madhya Pradesh Town Improvement Trusts Act, 1960 this Court 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. It is an accepted principle as laid down in Vyricherla Narayana Gajapatiraju v. Revenue Divl. Officer that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded; neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification

under Section 4(1). Similarly, Section 24 of the Act enumerates the matters which the court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the court shall not be less than the amount awarded by the Collector under Section 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork involved while determining the potentiality. "

12. The Hon'ble Supreme Court in the case of ***Gujarat Industrial Development Corporation Vrs. Narottam Bhai Morar Bhai and others (1996) 11 SCC 154*** has held that **'no prudent purchaser would purchase large extent of land on the basis of sale of a small extent of land in the open market. The acid test the court should always adopt in determining market value in the matter of compulsory acquisition would be to eschew feats of imagination, sit in the armchair of a prudent willing purchaser, it should consider whether the willing vendee**

would offer the rate at which the trial court proposes to determine the compensation.'

13. In view of the above discussion, it is clear that the exhibit '1' and '1/A' cannot be made the basis for determination of the market value of the lands acquired. Those sale deeds may be taken into for consideration as guideline. Therefore, it can very well be said that no prudent person would purchase 80 decimal of land on the basis of sale of small land in the open market. I, therefore, find that the Court below has taken both the sale deeds as guideline and then fixed the market rate at Rs.1500/- per decimal.

14. In view of my above finding, ultimately I come to the conclusion that the cross objectors failed to establish that the lands acquired were capable of fetching more value than the value fixed by the Land Acquisition Judge.

15. In the result, I find no merit in this cross objection and accordingly, the cross objection is dismissed.

(Mungeshwar Sahoo, J)

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