IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.119 of 2016

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Krishna Mohan Narayan Tiwari @ Krishna Mohan Tiwary & Ors.
.... Petitioner/s
Versus
The State of Bihar & Ors.
.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. T.N.Maitin, Sr. Advocate
Mr. Rajeev Kumar Sinha, Advocate
For the Respondent/s : Mr. Binod Kumar, A.C. to G.P.10
Ms. Deepanjali Gupta, A.C. to G.P.10

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. ORDER

5 07-09-2016 (1) The appellants-petitioners filed this review application for review of the judgment dated 09.03.2016 passed by this Court in First Appeal No.35 of 1973 whereby the appeal was allowed in part and the judgment and award of the Land Acquisition Judge was modified.

(2) The short fact for deciding this review application may be stated that the land of the appellants-petitioners measuring 40.47 acres was acquired by the State of Bihar in the year 1964. The Land Acquisition Officer awarded compensation for the acquired land of the petitioners. The petitioners then filed application under Section 18 of the Land Acquisition Act which was referred to Land Acquisition Judge and the Land Acquisition Judge fixed the market value of the acquired land at Rs.10,000 per bigha for class I land and Rs.400 per katha for dhanhar land.

The valuation of the orchard land was enhanced. Accordingly, total market value of the land was fixed at Rs.4,01,700. The petitioners then filed the First Appeal before the High Court for enhancement of the compensation. By the judgment and decree dated 09.03.2016, this Court has decreed in part the First Appeal. The review application has been filed for review of the judgment of this Court.

(3) The first point for review raised by the petitioners is that there is apparent error on the face of the record that the Court below deducted the compensation of Rs.2,61,373.75 (which includes the interest and solatium) from the value of the land fixed by the Land Acquisition Judge. According to the learned counsel, it is a mistake because the value of the land fixed by the Land Acquisition Officer should have been deducted from the value of the land fixed by the Land Acquisition Judge. After deduction of the valuation of Land Acquisition Officer from the valuation of the land fixed by the Land Acquisition Judge, the petitioner will be entitled to receive solatium interest according to Land Acquisition Act on the remaining land valuation.

(4) The learned senior counsel, Mr. T.N.Maitin secondly submitted that this Court corrected the valuation of

class I land accepting the submission that one acre is equal to 22 ½ katha but so far class II lands are concerned, no such correction was made which is an error apparent on the face of the record.

(5) The learned senior counsel further submitted that the amount of Rs.1,080 which was awarded for tube well was not added in the total compensation by the Land Acquisition Judge. Had it been added, the total compensation would have been Rs.4,02,780. This is also apparent on the face of the record. While allowing in part the First Appeal, this Court did not consider these points raised by the petitioner which is error apparent on the face of the record. Further, the learned senior counsel submitted that the Land Acquisition Judge wrongly made calculation of value of class II land on the basis of one acre is equal to 20 kathas which was mistake on the face of the record and this Court while correcting the valuation with regard to class I land it was accepted by this Court but this correction was not made with respect to class II land.

(6) On the other hand, the learned counsel for the State submitted that the compensation has been awarded by this Court considering the fact that huge area of landed properties were acquired, therefore, on katha basis the valuation could not

have been fixed, as such, no case for review is made out. The learned counsel further submitted that since the petitioners had received the compensation awarded by the Land Acquisition Officer, the same is to be deducted from the compensation i.e. market value of the land fixed by the Land Acquisition Judge and that has rightly been deducted, therefore, there is no error apparent on the face of the record.

(7) Perused the judgment and award passed by the Land Acquisition Judge and the judgment passed by this Court in the First Appeal. From perusal of the judgment of this Court, it is clear that this Court while allowing the appeal in part confirmed the deduction made by the Land Acquisition Judge without considering that it is a mistake of fact. The market price of the land and trees etc. were fixed by the Land Acquisition Officer was Rs.1,87,062.98/- whereas the Land Acquisition Judge has enhanced the valuation for Rs.4,01,700/-. At paragraph 47 of the judgment, the Land Acquisition Judge held that the appellants are entitled for Rs.1,080 on account of tube well but this amount has not been added as total value of land, tree etc. and if it is added, the total market value comes to Rs.4,02,780.

(8) From perusal of the judgment of this Court, it appears that this Court accepted that 1 acre is equal to 22 ½ katha

but while calculating the market value of class II land, the value fixed by the Land Acquisition Judge assuming that 1 acre is equal to 20 katha has been confirmed. In my opinion, this is error apparent on the face of the record. Since for class I land, 1 acre is equal to 22 ½ katha is accepted, it is also accepted for class II land and accordingly, the valuation of class II land shall be determined.

(9) From perusal of the judgment and award of the Land Acquisition Judge, it appears that mistake has been committed by deducting the entire compensation received by the petitioners from the value of the land, trees, tube well etc. This error, which is apparent, has not been corrected by this Court and even not noticed, as such, impliedly it has been approved. In my opinion, this is also error apparent on the face of the record.

(10) In view of the above discussion, I find that above description of facts all are error apparent on the face of the record and for detecting the facts long drawn arguments are not required. Therefore, the judgment and decree of this Court sought to be reviewed is hereby reviewed and is modified to the extent that the value of the tube well be added on the total value that may be calculated for the land class I and class II on the scale that 1 acre is equal to 22 ½ katha as the Court below has

calculated on the basis of katha. Likewise, the valuation of trees be also added in it as calculated by the Land Acquisition Judge and after total amount, the valuation of the lands, trees, tube well etc. fixed by the Land Acquisition Officer i.e. 187,063.04 be deducted from the said total amount and thereafter on the said amount, the statutory benefits admissible to the petitioners i.e. solatium, interest, under Section 34, 28 be added which will be the total compensation payable to the petitioners.

(11) So far the other part claimed by the petitioners as well as mentioned in review application are concerned, those are not the error apparent on the face of the record because those relate to merit of the judgment and as such, those are rejected.

(12) In the result, this review application is allowed in part and the judgment and decree passed by this Court dated 09.03.2016 in First Appeal No.35 of 1973 is hereby modified as indicated above.

(Mungeshwar Sahoo, J)

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