

## IN THE HIGH COURT OF JUDICATURE AT PATNA

**First Appeal No.230 of 2003**

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The State of Bihar, through Collector, Nawadah.

.....(Opp. Party).... .... Appellant.

Versus

1. Md.Nizamuddin S/O Bashi Ahmad
2. Noor Mohamad S/O Khuda Bakash, both residents of Village- Bhitia, P.S. Rajauli, District- Nawadah.

.....(Applicant).... .... Respondents

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**Appearance :**

For the Appellant : Mr. Randhir Kumar, AC to SC- 18  
Mr. Binod Kumar Yadav, SC-18

For the Respondents : Mr. RAVINDRA NATH DUBEY  
Mrs. Punam Kumari

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA**

**ORAL JUDGMENT**

**Date: 18-04-2018**

Heard Sri Randhir Kumar, A.C. to SC-18 for the appellant and Sri Ravindra Nath Dubey, the learned counsel for the respondents.

2. The instant appeal has been preferred against the judgment and award dated 18.06.2003 passed by Shri Shiva Shankar Sharma, the then 1<sup>st</sup> Additional District Judge- Cum- Land Acquisition Judge, Nawadah in L.A. Case No. 06 of 1991/ 60 of 1986 in the matter of Md. Nizamuddin & Ors-applicants Vs. The State of Bihar-Opposite party, whereby and whereunder, the reference was allowed partly and the applicants were held entitled to get compensation @ of Rs. 300/- per decimal, further to get 30% by way of additional statutory compensation because of compulsory nature of



the acquisition, also for interest @ 9% per annum on the excess amount and the additional compensation @ 12% per annum from the date of issue of notice under section 4 (1) of the Act up to the date of Collector's award or the date on which possession of the acquired land was taken by the State whichever is earlier and accordingly directed to prepare the award. The opposite party is the appellant and the applicants are the respondents.

**3.** For construction of Phulwariya Reservior Scheme the State Government of Bihar acquired 22 acres of land under C.S. Khata No. 62, plot no. 28 of Village- Bhitia, P.S. Rajauli and for that declaration No. 730 dated 31.12.1981 was made and the award was accordingly prepared and the compensation amount was ordered to be deposited in the treasury in the name of the State of Bihar as the revisional survey khatian was prepared in the name of the State of Bihar. The respondents Md. Nizamuddin and Noor Mohamad filed objection before the Special Land Acquisition Officer claiming the said land as absolute owners and in peaceful possession at the time of the acquisition on the basis of the settlement by the ex-landlord in the year 1939 for which Hukumnama was also granted with respect to 30 acres of land of plot no. 28 of khata no. 62 (Ext.1) and since then in continuous cultivation possession. The ex-landlord realized rent and granted rent receipts (Ext.2). At the time of vesting



of Zamindari return was also filed in their names only for 22 acres of the said plots and State rent receipts were also granted vide Exts. 5 and 5/I. They also claimed that the market value fixed by the Land Acquisition Officer was abnormally low and it was Rs. 500/- per decimal at the time of acquisition.

4. The opposite party-appellant claimed the aforesaid land of the State of Bihar and that the amount of award fixed by the Land Acquisition Officer was just and proper.

5. The learned Additional District Judge framed the following issues:-

- (I) Whether the claimants are entitled to get the compensation as per owners and possessors of the land so acquired ?
- (II) Whether the market value fixed by the Land Acquisition Officer of the land so acquired is adequate or it requires enhancement ?

6. On the basis of the evidences available on the record the learned Additional District Judge came to the conclusion that the applicants are entitled to get compensation on the basis of their continuous possession over the land in question as they have acquired possessary title over the same and further fixed the market value of the land so acquired @ of Rs. 300/- per decimal.



7. The learned counsel for the appellant arguing in this appeal has submitted that in the revisional survey khatian the aforesaid land was recorded in the name of the State of Bihar and accordingly at the time of acquisition, land acquisition khatian (Ext.A) was prepared and on the basis of market value of the land at the time of acquisition award was prepared vide Ext. B. The learned Additional District Judge without considering the evidences of the appellant has decided the two issues otherwise and as such the judgment and the award is fit to be set aside.

8. On the other hand, the learned counsel for the respondents submits that the respondents/applicants have succeeded in proving their continuing cultivating possession since the time of settlement till the date of acquisition. They have adduced two witnesses, A.W.1 and A.W.2 and further have adduced documentary evidences also vide Exts. 1, 2, 3, 4 and 5 series, whereas, the appellant- State of Bihar has adduced O.W. 1 and Exts. A and B. O.W. 1 in his cross-examination has admitted that the claimants had claimed compensation in the office of the Land Acquisition because they were found in possession over the land at the time of acquisition and as such the learned Additional Judge after finding the possessary title of the applicants/respondents has rightly decided issue no.1. Further, on the basis of Ext.6 which is the Photostat copy of the



certified copy of judgment passed in L.A. Case No. 149 of 1985 and other connecting L.A. cases wherein under the same scheme for adjoining land valuation of the land at the time of acquisition was fixed Rs. 300/- per decimal and it is settled principle of law that past judgment is good piece of evidence for fixation of quantum of compensation and as such issue no.2 was rightly decided by the learned Additional District Judge and there is no need for any interference in this appeal.

9. On the basis of the rival contentions of the parties the only point for consideration in this appeal is as to whether the impugned judgment and the award is fit to be maintained.

### **FINDINGS.**

10. The applicants to prove their claims have adduced two witnesses. A.W.1 Md. Nizamuddin is one of the claimants himself. He has stated that out of 22 acres of land so acquired for Phulwariya Reservior Scheme, 16 ½ acres belongs to him while 5 ½ acres belonging to applicant no.2 Noor Mohamad. He has stated that the land in question was settled by the ex-landlord through Hukumnama which is written in the pen of Anant Lal Patwari and he has proved the same as Ext. 1. He has also stated that the ex-landlord received rent and issued Zamindari receipt which is also written in the pen of Anant Lal Patwari which has been marked as



Ext.2. He further states that after settlement they were cultivating the land, enjoying the usufruct thereof and at the time of vesting the Zamindari the ex-landlord filed return in their names. He further states that the chirkut was filed for obtaining the certified copy of the return but as by the order of the Additional Collector the certified copy of the return was not being provided and as such he could not get the certified copy of the return but he has filed certified copy of the Chirkut (Ext.3) which shows the names of these claimants as the tenants in the said return. He also states that in case no. 09 of 1980 the circle officer issued order for realizing the rent of the land of these claimants from the date of abolition of Zamindari up-to-date and the order of the circle officer in case no. 09 of 1980 has been marked as Ext. 4. He has also stated that after realizing the rent the official of the State Government also granted rent receipt which has been marked as Exts. 5 and 5/1. He further states that the State of Bihar never tilled the land and the same was all along under the cultivation of the applicants. During cross-examination he states that in the land acquisition office he came to know that the award was deposited in the name of the State of Bihar. He states that he has not filed case under section 106 of the B.T. Act against the revisional survey entry.

**11.** A.W.2 Md. Anwarul Haque has stated that he has seen the applicants cultivating the land of Village-Bhitiya which



has been acquired for Phulwariya Reservior Scheme. This witness has also proved possession of the claimants.

**12.** On behalf of the appellant/opposite party, O.W.1 is Arbind Kumar Pandey. He appears to be a formal witness and has proved the land acquisition khatiyā and the award as Exts. A and B respectively. He states that the land was rightly evaluated. Regarding ownership and possession of the State of Bihar over the land so acquired, he has not stated anything. In his cross-examination he has admitted that these claimants claimed possession in the office of the land acquisition because they were found in possession over the land at the time of acquisition. The appellant/opposite party had not filed any documents in support of his contention. Exts. A and B were prepared at the time of acquisition and these documents have nothing to do with the claim of the State of Bihar.

**13.** On the basis of the evidences available on the record, the learned Additional District Judge has rightly held that the claimants were in possession of the lands so acquired for Phulwariya Reservior Scheme. The claimants were in continuous, open possession and without any hindrance. The learned Additional District Judge rightly held that the applicants are entitled to get compensation on the basis of their possessory title. Issue no. 1 was rightly decided by the learned Additional District Judge.



**14.** So far market value of the acquired land at the time of acquisition, the claimants have claimed Rs. 500/- per decimal, whereas, the opposite party has stated that the valuation was properly fixed.

**15.** On behalf of the claimants Ext. 6 has been filed which is Photostat copy of certified copy of the judgment passed by the District Judge on 14.12.1985 in Land Acquisition Case No. 156 of 1985 and other connecting cases. The learned District Judge under Ext.6 has fixed the valuation of the land acquired for the same scheme @ of Rs. 300/- per decimal. The learned Additional District Judge relying on the decision reported in 1986 PLJR page-723 has held that past judgment is a good piece of evidence for fixation of quantum of compensation. The valuation fixed in Ext. 6 is for the same scheme and as such I am also of the opinion that the learned Additional District Judge has rightly fixed the market value of the land acquired in the present case to the tune of Rs. 300/- per decimal. Thus, there is no need for any interference by this Court in this regard also.

**16.** From perusal of the lower court record it reveals that the award was corrected on 07.04.2004 and the amount of award has been fixed at Rs. 28,86,198=40 Paisa and further the Government of Bihar was directed to pay the awarded amount with interest @ 6% per annum over the awarded amount from the date of award till the



date of final payment.

17. In the result, the judgment and award dated 18.06.2003 passed by the learned 1<sup>st</sup> Additional District Judge- Cum- Land Acquisition Judge, Nawadah stands confirmed and finding no merit in this appeal, the same is hereby dismissed but under the circumstances without costs.

(Jitendra Mohan Sharma, J)

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