

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 07.08.2018****Judgment Delivered on 30.08.2018****FAM. No. 94 of 2010**

State of Chhattisgarh through:

1. The Collector, Janjgir- Champa, (C.G).
2. The Land Acquisition Officer, Sakti District, Janjgir- Champa, C.G.

---- Appellants**Versus**

Motibai D/o Deonath, Aged about 45 years, R/o. Village- Sarhar, Tahsil
Sakti, Distt.-Janjgir-Champa, C.G.

---- Respondent

For Appellants/State	:	Shri Dilman Rati Minj, Dy. G.A.
For Respondent	:	Shri Vinod Deshmukh, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**CAV Judgment**

1. By this instant appeal, the appellants are challenging the award dated 27.11.2008 passed by the learned Additional District Judge, Sakti, District- Janjgir- Champa, C.G. in Misc. Civil Case No. 61/2008 arising out of the land acquisition proceedings.

2. Brief facts of the case, are that the respondent/applicant was owner of land bearing Khasra No.1070/1 situated at Village – Sarhar, Tahsil-Sakti, District – Janjgir-Champa measuring 0.037 acres. The land owned by the respondent/applicant was acquired by the State Government for the purpose of construction of minor canal. The Land Acquisition Officer after following procedure assessed and awarded amount of Rs. 2,00,238 /- as compensation treating the land to be un-irrigated land (Ex. A-2).
3. Being aggrieved and dissatisfied with the amount of compensation awarded by the Land Acquisition Officer, respondent filed a reference application as provided under Section 18 of Land Acquisition Act, 1894 for referring the matter to the Court for redetermination of the amount of compensation by the Court. The Collector after considering the grounds raised in application referred the matter to the Court of Additional District Judge, Sakti. After receiving the reference from the Collector, learned Court of Additional District Judge, Sakti below framed as many as five issues for consideration on which both the parties led their evidence and placed their submissions. Learned Court below after considering the documentary and oral evidence available on records held that the land owned by the respondent/applicant which was acquired by the State Government was suitable for residential purpose and awarded compensation accordingly and enhanced the award passed by Land Acquisition Officer.
4. Learned counsel appearing on behalf of the appellants/State would submit that the learned Court below have not considered the report

submitted by Nayab Tahsildar, wherein type of land has been shown to be matasi and, therefore, the Land Acquisition Officer has rightly assessed the amount of compensation of the land acquired owned by the respondent. He also submits that land of the respondent was undiverted land on which, agricultural activities were going at the time of acquisition proceedings of the land in question, therefore, the learned Court below committed error in not considering the present position of the land and arrived at conclusion on the basis of that the other persons whose lands were similarly situated and undiverted lands were granted compensation considering that their lands are suitable for residential purpose.

5. Per contra learned counsel appearing for the respondent would submit that witness examined on behalf of the appellants have specifically stated that land of the respondent is situated by side of Sarhar to Bhagodih, Road and near the acquired land of respondent, residential accommodation of other persons are also situated. He further submits that the learned Court below considering the sale transaction which was registered before the Registrar Office, Janjgir- Champa in which the land suitable for residential purpose sold before acquisition proceedings was valued at Rs. 39, 99,066 /-. He further submits that learned Court below has not committed any error in awarding compensation treating the land to be suitable for residential purpose and awarded compensation to other villagers having their lands similarly situated.
6. I have heard learned respective counsels appearing for the parties and perused the records.

7. From a bare perusal of statement of R. K. Shivhare (N.A. W.1), who is the Land Acquisition Officer- Cum - Sub-Divisional Officer, Hasdeo Sub-minor, Sub-Division No.3, Sakti, District Janjgir-Champa has admitted in cross-examination that land bearing Khasra No. 1070/1 is situated beside the road from Sarhar to Bhagodih and lands of other beneficiaries namely Nonibai and Nanki Noni were situated at Northern side of the road whereas, the land of respondent is situated at Southern side of the road. He has further admitted that other owner of the undiverted lands in Ex. D-5 were granted compensation treating their lands as suitable for residential purpose. Ex. A-3 Map mentioning details of the agriculturist holding land of different Khasra number would also show that the Kh. No. 1070/1 of respondent is situated beside the road.
8. Respondent examined herself as AW-1 and specifically stated that her land situated beside the road from Sarhar to Bhagodih and is near the place of human inhabitation and is suitable for residential purpose. Another witness examined on her behalf was AW-2 (Bhawani Chandra) who also stated in his statement that by the side of the land of the respondent, houses of Itwari and Chedi are situated.
9. In view of the aforementioned evidence, it clearly appears that land of the respondent is situated on road and beside of her land residential accommodation are also situated, which remained uncontroverted. The appellants/State have not brought any material and evidence before the Court below that land of the respondent which was acquired by the State Government was not suitable for residential purpose nor disputed that the land of respondent was not situated beside of the

road. The appellant failed to produce any material that the case of respondent is on different footing from those persons who were awarded compensation on their undiverted lands treating it to be suitable for residential purpose. Once the land acquisition officer adopted formula for calculation of compensation considering the suitability of land for residential purpose for some of the agriculturist then that yardstick have to be applied for all the similarly situated land owners.

10. After going through the entire material on record, I am of the view that the learned Court below has not committed any error in enhancing the amount of compensation treating the land to be suitable for residential purpose considering the compensation awarded by the State Government to other persons whose land were similarly situated. So far as the ground of limitation in filing reference application is concerned, learned counsel for the appellants/State failed to show that the respondent was having prior knowledge or the Land Acquisition Officer has issued the notice or intimation to him, provided under Section 12 of Land Acquisition Act, 1894, therefore, the learned Court below while considering the issues framed with regard to the limitation has rightly arrived at a conclusion that the application for reference has been filed within time i.e. after getting knowledge of the award passed by the Land Acquisition Officer.

11. For the reasons mentioned above, there is no merit in this appeal.

12. Accordingly, the appeal, being devoid of merit and substances, is liable to be dismissed and is hereby dismissed.

13. No order as to costs.

Sd /-

(Parth Prateem Sahu)

Judge

Jamal