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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 9-8-2017

Judgment delivered on 19-9-2017

FA No. 148 of 1995

- Cement Corporation of India Limited, Akaltara, through the General Manager, Akaltara Cement Factory, Akaltara, District Bilaspur (CG).

---Appellant.

Vs.

1. Shri Pramod Kumar Tiwari, s/o. Late Shri Chandrashekhar Prasad Tiwari, aged about 28 years.
2. Shri Prafulla Kumar Tiwari, s/o. Late Shri Chandrashekhar Prasad Tiwari aged about 23 years.
3. Shri Binod Kumar Tiwari, s/o. Late Shri Chandrashekhar Prasad Tiwari aged about 21 years.
4. Smt. Seema Sharma, w/o. Late Shri Subhashchandra Sharma, d/o. Late Shri Chandrashekhar Prasad Tiwari, aged about 25 years.
5. Smt. Veena Gauraha, w/o. Shri Ramakant Gauraha.
6. Smt. Vindhya Vasini Devi Tiwari, wd/o. Late Late Shri Chandrashekhar Prasad Tiwari, aged about 51 years.

All residents of village Tarond, Tehsil Janjgir, Dist. Bilaspur (CG).

– Respondents

For appellant	:	Mr. Vinod Deshmukh, Advocate.
For respondents	:	None though served

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 25-11-1994 passed by the 6th Additional District Judge, Bilaspur(CG) in

Civil Suit No.7-A/93 wherein the said court awarded compensation of Rs. 14,555/- in favour of the respondents for acquisition of their land for establishing of appellant's cement factory. Respondents filed a suit claiming compensation @ Rs.40,000/- per acre for their land and they further claimed 30% as additional compensation on the amount of compensation with interest @12% per annum from the month of February, 1992 till date of payment. It is alleged that the land was acquired for establishment of appellants' cement factory in the year 1977. There is no legal and valid acquisition of the land and there is violation of provisions as contained in Section 247 of the Madhya Pradesh Land Revenue Code 1959 (for short, “the Code 1959”).

2. It is a case of the appellant that the land was taken under the provisions of Section 247 of the Code, 1959, therefore, question of complying with the provision as contained in Sections 4 & 5 of the Land Acquisition Act, 1894 was not necessary. As the land owners accepted the amount of compensation as determined by the Revenue Authorities and they did not file any appeal against the order determining compensation, therefore, principle of estoppal will apply. It is further case of the appellant that market value of the land is properly determined by the Revenue Authorities, but the trial Court determined the market value of

land @ Rs.7,000/- per acre in the year 1976. The Corporation has already paid the amount of Rs.15,676/- to the respondents in respect of the suit land measuring 4.93 acres which is erroneous. The suit of the respondent is clearly barred by Section 247 of the Code 1959 and therefore, valuation of the property as per Section 23 sub-clause (1) of the Act, 1894 is not proper which is liable to be set aside.

3. I have heard learned counsel for the appellant and perused the record of the court below in which judgment/decree is passed by the trial Court.

4. The first question for consideration of this court is whether the provisions of Section 247 of the Code, 1959 are complied with in its letter and spirit or whether the civil Court can determine the compensation as per provisions of the Land Acquisition Act, 1894.

5. As per Section 247 (3) of the Code, 1959, all the powers specified in sub-Section (i)(ii) should be exercised by the Collector but he may delegate the powers to the person to whom the right has been assigned. As per proviso to this Section, no such delegation shall be made until notice is duly served on all persons having right in the land affected and their objection has been heard and considered. In the present case, there is no record that any notice was served to the respondent having

rights in the land and there is no record that any objection has been heard and considered. Therefore, the trial Court is right in holding that the provisions of Section 247 of the Code, 1959 have not been followed in letter and spirit. When legal provisions have not been followed, the award passed by the Sub Divisional Officer was not acceptable and it is not legally accepted, therefore, the Civil Court has all the rights as per sub-clause (iv) of Section 247 of the Code, 1959 to determine the compensation.

6. The trial Court has assessed the value of land in question comparing with the value of adjoining land and market value of the land and after assessing valuation of irrigated and unirrigated land assessed value of irrigated acquired land to be Rs.7,500/- per acre and assessed Rs.4,500/- per acre for unirrigated land. The trial Court has elaborately discussed the issue for valuation and this Court has no reason to substitute another valuation, therefore, valuation of the trial Court is liable to be sustained.

7. On overall assessment of the evidence, this court has no reason to disturb the finding recorded by the trial Court. All the grounds raised in this appeal are not sufficient to reverse the finding of the trial Court.

8. Accordingly, the decree is passed against the appellant and in favour of respondents as under:

(I) The appeal is dismissed with cost.

(ii) Appellants to bear the cost of respondents through out.

(iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.

(iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju