

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 95 of 2010

State Of Chhattisgarh through

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

---- Appellants

• Versus

- Ganeshram, S/o Kartikram, aged about 65 years, R/o village, Sarhar, Tahsil Sakti District Janjgir-Champa (CG)

---- Respondent

For appellants/State	: Shri Adhiraj Suraja, Panel Lawyer
For respondent	: Shri Chandradeep Prasad, Advocate onbehalf of Shri Rupesh Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

06.09.2018

1. By this instant appeal, the appellants challenged the impugned award dated 27.11.2008 passed by the learned Additional District Judge, Sakti, district Janjgir-Champa in Miscellaneous Civil Case No.60 of 2008, whereby learned Court below allowed the reference application filed by respondent and enhanced the amount of award passed by Land Acquisition Officer.

2. Brief facts of the case necessary for disposal of this appeal are that the appellants/State have initiated land acquisition proceedings for construction of minor canal from Minimata Hasdeo dam connecting different villages including the agricultural lands of village Sarhar, Tahsil-Sakti, district-Janjgir-Champa. Appellants have initiated land acquisition proceedings after publication of notification under Section 4(1) of Act of

1894 on 04.01.2007 and thereafter, common award was passed by the Land Acquisition Officer on 14.09.2007 for acquiring land of respondent bearing Khasra No.851/1 measuring 0.036 hectares situated at Sarhar, Tahsil- Sakti, district- Janjgir-Champa for an amount of Rs.24,205/- in favour of present respondent and other land owners of village Sarhar. The land of respondent was valued treating it to be unirrigated land.

3. Being dissatisfied of that award passed by Land Acquisition Officer treating the land of respondent as unirrigated land, respondent filed an application under Section 18 of Act of 1894 before the Collector, Janjgir-Champa seeking enhancement of the award of compensation passed in his favour. The Collector considering the grounds raised in the application, referred it to the Court of Additional District Judge, Sakti, Janjgir-Champa as provided under Act of 1894.

4. Learned Court below after considering the grounds raised in the application as well as the reply filed by the State in the proceedings before it, framed as many as five issues for consideration including the issue with respect to the utility of land, as to whether the said land of respondent was suitable for residential purpose and whether the Land Acquisition Officer committed error in calculating the award by rating the land to be non-irrigated land. Learned Court below after considering the pleadings of respective parties as well as the evidence available on record, arrived at a conclusion that respondent is entitled for compensation of his acquired land, treating it to be suitable for residential purpose.

5. The appellants/State, aggrieved by the impugned award, filed this appeal on the grounds that learned Court below committed error in considering the land of respondent acquired in land acquisition proceedings as suitable for residential purpose because the land was undiverted and there is no mention to this effect in the revenue records. Learned counsel appearing for the appellants also submits that learned Court below has not granted proper opportunity of hearing and completed the proceedings within a period of 26 days. Learned counsel further submits that application under Section 18 of Act of 1894 filed by respondent was barred by limitation.

6. I have heard learned counsel for the appellants/State. Perused the records.

7. Respondent examined himself as AW-1 and specifically stated that his land bearing Khasra No.851/1 was situated by the side of road from Sarha to Bhagodih. He also stated that other land owners Ramkeval, Devilal and Dauvarm have been awarded compensation treating their land to be residential purpose, though their land bearing Khasra Nos.849/5, 849/3 and 849/2 are similarly situated and are undiverted lands. Respondent submitted certified copy of a map issued by Tahsil-Sakti as Ex.A/4 and spot inspection Panchnama as Ex.A/5.

8. From perusal of document Ex.A/5 which is prepared by Patwari in presence of Sarpanch and other residents of that village it clearly reflects that by the side of land in question, there are lands suitable for residential purpose which belong to one Toranbai and others. There is also courtyard

and house of one Jhandi situated near land of respondent. Residential houses were also situated of different persons namely, Bhurva and Jaitu. Devilal, Ramsevak Sahu and Dauvaram are having lands suitable for residential purpose. The respondent in his support examined other independent witnesses, namely, Ramsevak Sahu as AW-2 who supported the statement and claim of respondent and stated in his evidence that he is owner of land bearing Khasra No.849/5 and on acquisition of his land measuring 0.073 hectors for minor canal, he has been awarded compensation at the rate of the land suitable for residential purpose. He also stated that the other persons Toranbai, Banshilal, Devilal Sahu etc., have also received compensation treating their land to be suitable for residential purpose by calculating the amount of award at the rate fixed for it. He further in para -4 of his evidence denied suggestion given by the appellant during cross-examination that the land of respondent is not suitable for residential purpose. Respondent in his behalf also examined Sub-Divisional Officer-cum- Land Acquisition Officer RK Shivhare. In his evidence in para- 6 he admits that Toranbai was awarded compensation on the basis of rate fixed for the land suitable for residential purpose for her land acquired in same acquisition proceedings. Further that the land of Toranbai and respondent are adjacent to each other. Further that the other persons also have been awarded compensation for their land at the rate fixed for lands suitable for residential purpose but respondent has been awarded compensation treating his land to be un-irrigated land as it was undiverted. He admits that Ramkevat, Dauvaram, Gurwari Bai and Devilal were awarded compensation for their lands at the rate fixed for the land suitable for residential purpose and their lands were also not diverted.

9. From aforementioned discussion, it is clear that Land Acquisition Officer awarded the compensation to other similarly situated land owners on the basis of rate fixed for land suitable for residential purpose, though they were not diverted but at the same time in the similar facts, respondent was denied and has been awarded less compensation by treating his land to be unirrigated land. Land Acquisition Officer when once fixed the formula for making award of compensation taking one of the grounds that whether the land acquired was suitable for residential purpose or not, and awarded amount on that basis to other similarly placed land owners then the same yardstick is to be applied for all the similarly situated land owners. Learned Court below considering the admissions made by witness RK Shivhare, Land Acquisition Officer, rightly arrived at a conclusion that respondent is also entitled for compensation treating his land suitable for residential purpose.

10. That respondent himself called Land Acquisition Officer as witness and from perusal of order sheets, it is evident that counsel appearing for the State before learned Court below himself had made statement that he wants to close his evidence. Looking to the aforementioned facts and also that learned counsel appearing for the State before the Court below himself chosen to close his evidence, further in his behalf it cannot be said that proper opportunity was not granted to the State to make its defence. Merely the period taken by learned Court below for concluding the proceedings itself cannot be considered that proper opportunity has not been given when particularly Land Acquisition Officer has been examined and learned counsel for the State declared itself that he does not want to

examine any other witness. In the instant case, the learned Court below after following due procedure of law for deciding reference case have passed the award. From perusal of records in its entirety, it do not reveal that learned Court below have by-passed any procedure in deciding the reference case.

11. So far as the grounds raised by learned counsel for appellants with respect to limitation, they have not produced any material before learned Court below with respect to the knowledge of passing of award to respondent by any means or mode and further witness RK Shivhare in his evidence in para- 7 admits that the notice sent to respondent under Section 12(2) of Act of 1894 is not available in land acquisition records.

12. For the reasons stated above, learned Court below rightly arrived at a conclusion that application filed under Section 18 of Act of 1894 by respondent is within time from the date of knowledge.

13. In view of above mentioned discussions, I do not find any good ground for interfering in the award passed by learned Court below.

14. In the result, appeal being devoid of merit, is liable to be and is hereby dismissed.

15. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE