NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 9-8-2018

Judgment delivered on 19-9-2018

FA No. 297 of 1996

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

---Appellant.

Vs.

1. (a) Ashok Singh s/o. Shri Raghunandansingh, aged approximately 42 years, Electrkiciaian, Akaltara Cement Factory, Akaltara.

   1(b) Smt. Kumodini Bai, w/o. Gulal Singh, aged about 55 years, resident of village Dagaha, Tahsil Janjgir, district Bilaspur.
2. Shri Rajeshwarsingh s/o. Shri Raghunandansingh, aged about 47 years, r/o. Village Tarod, Tehsil Janjgir, District. Bilaspur.
3. Jawaharsingh s/o. Shri Raghunandansingh, aged 42 years, Agriculturist, r/o. Village Tarod, Tahsil Janjgir, District Bilaspur.

– Respondents

For appellant	:	Mr. Vinod Deshmukh, Advocate.
For respondents	:	Mr. Sudhir Bajpai, Advocate.

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 18-3-1996 passed by the 6th Additional District Judge, Bilaspur(CG) in Civil Suit No.4-A/93 wherein the said court awarded compensation of Rs. 1,28,280/-/- 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. 67,172/- to the respondents

in respect of the suit land as further compensation 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. On the other hand, learned counsel for the respondents would submit that the finding arrived at by the trial Court is based on proper marshalling of the evidence and the same is not liable to be set aside.

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

5. 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.

6. 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.

7. The trial Court has assessed the value of land in question after comparing the value of adjoining land and market value of the land and after assessing valuation of more fertile land and average fertile land assessed value of land which is acquired to be Rs. 7,000/- per acre. 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.

8. 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.

9. 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