

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 38 of 2008

State Of Chhattisgarh through

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

---- Appellants

Versus

- Khilawan Prasad S/o Shri Chhabilal, R/o Village - Masania Khurd, Patwari Halka No. 6, Tehsil - Sakti, District - Janjgir Champa C.G.

---- Respondent

For appellants/State	: Shri Adhiraj Surana, Panel Lawyer
For respondent	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

04.09.2018

1. None appears for the respondent even when the case is called out thrice.

2. By this instant appeal, the appellants assailed the impugned award dated 28.12.2006 passed by the learned Additional District Judge, Sakti, district Janjgir-Champa in Miscellaneous Civil Suit No.43 of 2006, whereby learned Court below has allowed the reference application filed by respondent and enhanced the award passed by Land Acquisition Officer under Land Acquisition Act, 1894 (for short, 'Act of 1894') from Rs.3,43,607/- to Rs.4,64,250/-.

3. Brief facts of the case necessary for disposal of this appeal are that the appellants /State acquired land at village Masaniya, Sakti, district Janjgir-Champa and other nearby villages for the purpose of construction of Canal.

4. Notification under Section 4 (1) of Act of 1894 was published on 29.03.2002. Thereafter, notification under Section 6 of Act of 1894 was published on 05.07.2002 and further notification under Section 9(2) was also published for fixing a date of hearing on 29.10.2002. The Land Acquisition Officer after considering the guidelines of Deputy Registrar (Revenue) for assessment of value of the lands including irrigated and non-irrigated lands, passed an award considering the land of respondent to be non-irrigated land and calculated compensation of Rs.3,09,500/- per acre and awarded total compensation of Rs.3,43,607/- against the acquired land of respondent bearing Khasra No.53/2 admeasuring 0.793 hectors, situated at village Masaniya, Sakti, district Janjgir-Champa.

5. Being dissatisfied with the above assessment of compensation against acquisition of his land, respondent filed an application under Section 18 (2) of Act of 1894 before the Collector to refer his case to the competent Civil Court for re-assessment of award of compensation on the ground that though his land was irrigated by means of private pond but Land Acquisition Officer calculated compensation considering it as non-irrigated land. The Collector considering the grounds mentioned in application under Section 18(2) referred the application through the Court of Additional District Judge, Sakti, district Janjgir-Champa.

6. Learned Reference Court after receiving the case have issued notices to the parties and thereafter, framed five issues for consideration including specific issue 'Whether the land bearing Khasra No.53/2 is an irrigated land by means of private pond?'

7. Respective parties have produced documentary as well as oral evidence looking to the issues framed by the Court below and after considering all the material available on record, learned Court below held that Land Acquisition Officer wrongly considered the land acquired from respondent to be non-irrigated land and after considering the evidence, enhanced the award from Rs.3,43,607/- to Rs.4,78,595/- and also awarded interest @ 12% from the date of publication of notice under Section 4 of Act of 1894, till passing of award.

8. Learned counsel appearing for the State submits that the Land Acquisition Officer rightly assessed compensation. Learned Court below only on the basis of oral averments that compensation for irrigated land is 50% more than that of the amount assessed for non-irrigated land, enhanced the amount of compensation whereas, there is no documentary evidence placed on record by respondent. He further submits that learned Court below wrongly awarded interest @ 12% from the date of notification under Section 4 of Act of 1894 ie 29.03.2002 till payment of enhanced compensation. He further submits that there is no material evidence available on record to show that land of respondent was irrigated land.

9. I have heard learned counsel for the appellant and perused the record. Before the learned Reference Court, respondent specifically

pleaded that his land is an irrigated land and the means of irrigation is private pond under the bed of which land bearing Khasra No.53/2 is situated. In support of his pleadings, he also submitted revenue document Ex.A/3, which is Khasra Panch-sala of 2005-06. Certified copy of aforementioned document was issued from the office of Tahsildar- Sakti. Other document which respondent produced is a certificate issued by the Patwari, who mentioned that land bearing Khasra No.53/2 is situated under the bed of a private pond, therefore, the land acquired by the appellant from respondent is an irrigated land.

10. Respondent himself appeared as witness to prove the documents and also examined one Hemlal as AW-2, who is a resident of same village. Respondent proved his document and statement made in support of pleadings in fact remain un-controverted. AW-2 also made statement that the land of respondent was irrigated land.

11. Appellant has examined only one witness who is Land Acquisition Officer-cum-SDO as NAW-1. He proved the award and also stated about the difference of the rate between irrigated land or non-irrigated land.

12. Considering the grounds raised by appellant with respect to that there is no material available on record to show the land acquired from respondent was not an irrigated land is not sustainable in view of the evidence of respondent and his witnesses, who were examined as witnesses AW-1 and AW-2. Respondent also produced Ex.A/3, Khasra Panch-sala before the Court below. In Ex.A/3, it has been clearly mentioned that land bearing Khasra No.53/2 was an irrigated land and the

means of irrigation is specifically mentioned as private pond. The said document Ex.A/3 was issued from Office of Tahsildar based on Revenue records, maintained by the State Government. Document Ex.A/3 is a public document and therefore, if the appellant wants to controvert it for any of the reasons, then he could have produced any of the witnesses from the Revenue department in support of his case but the same has not been done. Therefore, learned Court below rightly considered and relied the document Ex.A/3, Khasra Panch-sala, issued from the office of Tahsildar for arriving at a conclusion and holding that the land acquired from the respondent was an irrigated land. The learned Court below had not committed any infirmity.

13. The submissions made by learned counsel for the appellant that learned Reference Court wrongly assessed the value of respondent as irrigated land by calculating more than 50% of market value of non-irrigated land and arrived at a conclusion in assessing the value of that land to be Rs.4,64,250/- per hector is concerned, from perusal of records it reveals that no clinching evidence and material was placed on record by respondent to prove the value of irrigated land at the time of initiation of land acquisition proceedings and it is somewhat more than the value as assessed by the Land Acquisition Officer. The respondent had not produced any recent sale deeds or any guidelines issued by the competent authority to controvert value of assessment made by the Land Acquisition Officer. Learned Court below only on the basis of oral statement made by Hemlal AW-1, presumed value of irrigated land as Rs.4,64,250/- which is not permissible in eyes of law. Therefore, the said

finding arrived at by learned Reference Court is illegal and not sustainable. Value of land of respondent is to be taken as irrigated land and to be assessed at Rs.3,86,875/- per acre as assessed by Land Acquisition Officer based on the earlier sale deed and also guidelines issued by the Office of Registrar, Revenue Department for irrigated land and applied for other similar land acquired in the same acquisition proceedings of the very village Masaniya Khurd. The rate of irrigated land is mentioned in Ex.D/3.

14. So far as the award of interest @ 12% per annum from 29.03.2002 till date of passing of award is concerned, the provisions of Section 23 of Act of 1894 provides for "Matters to be considered in determining compensation", wherein (1A) provides for award of additional amount from date of publication of notification under Section 4 till compensation of award which reads as under:

"23(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

15. The provisions of interest is provided under Section 34 of Act of 1894 which is for delayed payments of amounts of compensation to the beneficiary. The provisions under Section 34 of Act of 1894 reads as under:

"34.Payment of interest—When the amount of such compensation is not paid or deposited on or before taking

possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited."

16. In the case in hand, the provisions of Section 23 (1) A of Act of 1894 is relevant. Notification under Section 4 has been issued on 29.03.2002 and award has been passed by the Land Acquisition Officer on 29.01.2003. Therefore, under provisions of Section 23(1)A, respondent will be entitled for additional amount of 12% on market value of land ie Rs.3,86,875/- for a period of ten months from 29.03.2002 to 29.01.2003 which comes to Rs. 30,678/-.

17. Considering aforementioned provisions, learned Court below committed gross illegality in awarding interest @12% per annum from the date of notification under Section 4 till the date of payment of amount of compensation as assessed by the Land Acquisition Officer. In fact, for awarding interest under the provisions of Section 34 of Act of 1894 would arise only after passing of the award by Land Acquisition Officer.

18. From perusal of impugned award it reveals that learned Court below while awarding interest, considered facts as mentioned in para- 9 (2) of the award and have considered the provisions of Section 23(1)A of Act of 1894. Therefore, awarded interest from date of publication of notification under Section 4 ie 29.03.2002. Provisions of Section 23(1)A do not provide for payment of interest on the amount, but it only provides for an additional value of land from the date of notification till passing of award by

Land Acquisition Officer and increase the total value of land by 12% during the period taken in passing of the award.

19. In view of aforementioned discussions, learned Court below committed illegality and error of law in awarding interest @ 12% from 29.03.2002 till the deposit of amount of compensation is not sustainable.

20. For the reasons stated above, the amount of compensation as assessed by the learned Court below requires re-determination.

21. Value of irrigated land as assessed by Land Acquisition Officer based on the previous sale deeds and the guidelines issued by the Office of Deputy Registrar for irrigated land is Rs.3,86,875/- and the same is to be taken for the purpose of calculation of award which comes to Rs.3,06,791/- (3,86,875 x 0.793 hectares). Respondent will be entitled for an additional amount under the provisions of Section 23(1)A of Act of 1894 which comes to Rs.30,678/- and further an amount under Section 23(2) ie solatium amount @ 30% of market value which comes to Rs.92,037/-. Respondent is entitled for total compensation of Rs.4,29,506/- (Rupees four lakhs twenty-nine thousand five hundred six) (Rs. 3,06,791/- + 30,678/- + 92,037/-) for acquisition of his land, instead of Rs.4,78,595/-.

22. Respondent will also entitled for interest on the delayed payment as per the provision of Section 34 of Act of 1894 if the appellants have not deposited the amount of compensation within the period as provided under Section 34 of Act of 1894.

23. In view of above, the impugned award passed by learned Court below is set aside.

24. Appeal is partly allowed in above terms.

25. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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