

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 07/08/2018****Judgment delivered on 08/10/2018****First Appeal (M) No. 87 OF 2010**

State of Chhattisgarh through:

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

---- Appellants/Non-applicants**Versus**

Shiv Prasad, S/o Dinanath Chandra, aged about 51 years, R/o Village Gobra, Tahsil Dabhra, District Janjgir-Champa (C.G.)

---- Respondent/Applicant

For Appellants/State	:	Mr. Dilmanrati Minj, Deputy Govt. Advocate
For Respondent	:	Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**C A V JUDGMENT**

1. Appellants/State have filed this instant appeal challenging legality, validity and propriety of impugned award dated 12/02/2009 passed by Additional District Judge, Sakti, District Janjgir-Champa (C.G.) in Miscellaneous Civil Suit No. 08/2009 whereby the learned Court below has enhanced the award passed by Land Acquisition Officer under reference forwarded to him under Section 18(2) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act of 1894').
2. Brief facts of the case, are that, respondent/applicant is owner of land bearing Khasra No. 387, situated at Village Gobra, Tahsil Dabhara, District Janjgir-Champa, admeasuring 0.129 hectare. The part of land owned by respondent/applicant was acquired by appellants/State for the purpose of construction of Chhuhipali Minor Canal. The Land Acquisition Officer has assessed the amount of compensation considering the land to be unirrigated land.

3. Being dissatisfied of the award of compensation, respondent/applicant filed an application under Section 18(2) of the Act of 1894 vide Ex. D-2 claiming that the compensation should have been awarded to him on the rate fixed for residential purpose. The Collector after considering the pleadings in application under Section 18(2) of the Act of 1894 referred the case for consideration and assessment of compensation to the Court.
4. After receiving the application under reference from Collector, learned Court below issued notice and after appearance of the respective parties, framed as many as five issues for consideration. After considering the material and evidence available on record, learned Court below arrived at a conclusion that the Land Acquisition Officer has wrongly assessed the amount of compensation by holding the land of respondent/applicant to be unirrigated land and enhanced the amount of compensation by holding the land to be suitable for residential purpose as it is situated by the side of main road between Dabhara to Kharsiya.
5. Learned counsel appearing for the appellants/State submitted that learned Court below has not considered that the land has been shown as unirrigated land and there was no residential accommodation situated near the land of respondent/applicant and thereby learned Court below committed an error in holding that the land is suitable for residential purpose and assessing the amount of compensation accordingly.
6. Per contra, learned counsel appearing for the respondent/applicant submitted that the land of respondent/applicant was situated by the side of main road between Dabhara to Kharsiya, which is evident from map (Ex. A-4). He further submitted that his land is situated near the human inhabitants of village Gobra, therefore, the learned Court below after considering entire uncontroverted material available on record has rightly passed the impugned award.

7. I have heard learned counsel appearing for the parties and perused the records carefully.
8. Respondent/applicant examined himself as AW-1 in support of his claim before the Court below and specifically stated that his land is situated by the side of main road between Dabhara to Kharsiya. He further stated that near his land, there is a residential colony of village Gobra and bus stand is also situated near it. He lastly submitted that as per rules for fixing rate of lands, the land situated by the road side is having the value of Rs.110/- per square meter. R. D. Bharadwaj (AW-3), Patwari stated that residential area is about 300 meter away from the land of Shiv Prasad. He also admitted that the land on west side of land *Pacca* road is situated.
9. Respondent/applicant examined one Hetram as AW-2 on his behalf, who in his evidence stated that the land of respondent/applicant is about 50-100 meters from Nayapara and further stated that the residential accommodation situated at a distance of 15-20 meters from the land of respondent/applicant.
10. The appellants/State examined Shri N. K. Gupta as NAW-1, Sub-Divisional-Officer at Minimata Bango Canal, Sub-Division Dabhara, who produced the sale transactions between 21/03/2002 to 21/03/2003 of village Gobra as Ex. D-5 to show the rates of land sold in nearby period of the land acquisition. He admitted in his evidence that the land of respondent/applicant is situated on the side of main road between Dabhara to Kharsiya and residential accommodation can be constructed on the land situated by the side of road.
11. Learned Court below only on the basis of document Ex. P-3, which is guidelines issued by the Office of Deputy Registrar, Dabhara, District Janjgir Champa has passed the impugned award. Learned Court below has not considered document Ex. P-3 in its entirety. Document (Ex. P-3) specifically bears three columns assessing lands of different nature. First column is irrigated lands of different

nature. Second column is rate of lands of unirrigated lands of different nature and third column is small pieces of lands upto 500 square meters situated at rural areas. Learned Court below passed the impugned award taking into consideration rate prescribed for lands situated at rural areas upto 500 square meters, taking the rate as Rs.110/- square meter, which is provided for lands situated by the side of the road/on the road upto 50 meters.

12. From perusal of records, there is no material to show that lands acquired was within 50 meters, the burden of which was on respondent. The respondent has only produced one map prepared by Patwari, R.D. Bharadwaj (AW-3), which shows that land which was acquired was back side of Khasra No.387 owned by respondent. It nowhere mentioned that what was the distance between road and land acquired. The map also shows that still respondent is possessing much bigger size of land from same khasra number then what was acquired.
13. Document (Ex. P-3) shows that rates of Rs.110/- and Rs.85/- as mentioned are with respect to the small piece of lands upto 500 square meters only. In the case in hand, respondent was possessing much bigger size of land than provided in the document (Ex. P-3) i.e. 500 square meters, therefore, respondent will not get any benefit from the contents of document (Ex. P-3).
14. The learned Court below has committed illegality in holding that the respondent is entitled for an award at the rate of Rs.110/- per square meter for acquisition of his land. The Land Acquisition Officer has assessed the value of land to Rs.2,26,473.62 Paise per hectare on average basis, which cannot be faulted with in view of document (Ex. P-3) wherein the rate of irrigated *Matasi* land has been shown as Rs. 2,24,000/- per hectare.
15. In view of the above discussions, the impugned award dated 12/02/2009 passed by learned Additional District Judge, Sakti, District Janjgir-Champa (C.G.) in

Miscellaneous Civil Suit No. 08/2009 is liable to be set aside being not sustainable.

16. In the result, the appeal is allowed. Impugned award dated 12/02/2009 passed by the learned Additional District Judge Sakti, District Janjgir-Champa (C.G.) is hereby set aside. The respondent will be entitled for compensation as calculated and awarded by Land Acquisition Officer vide its award dated 21/06/2003.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh