

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 122 of 2004

Reserved on : 02.07.2019

Delivered on : 24.07.2019

State of Chhattisgarh, through Collector Jashpur, District- Jashpur (C.G.)

---- Appellant

Versus

1. Keishmat (Died) Through Lrs.
 - 1 (A) Suryadev, S/o Sukul, R/o Village- Barvadih Prakhand, Dumri, District- Gumla (Jharkhand)
 - 1 (B) Shriram, S/o Sukul, R/o Village- Barvadih Prakhand, Dumri, District- Gumla (Jharkhand)
 - 1 (C) Parvati, D/o Sukul, R/o Village- Painku, Tahsil- Jashpur, District- Jashpur (C.G.)
2. Hiramani (Dead) Through Lrs.
 - 2(A) Vinod Tidu, S/o Shri Jailal Tidu, aged about 45 years, Occupation- Agriculture, R/o Village- College Road, Telitoli, Jashpur, P.S. & Tahsil- Jashpur (C.G.)

---- Respondents

For State/ Appellant	:	Mr. Aman Kesharwani, Panel Lawyer.
For Respondents	:	Mr. A.K. Prasad, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 20.03.2004 passed by Second Additional District Judge (FTC), Jashpur (C.G.) in MJC No. 07/2003, wherein the said court acting upon the reference made by the Collector, Raigarh (C.G.), revised the compensation to be paid to

the respondents to the tune of Rs. 2,28,900/- along with interest @ 12% from year 1986 per annum.

2. As per the appellant, the land bearing Survey No. 414/4 area admeasuring 0.648 Hectare and Survey No. 407/2 area admeasuring 0.061 Hectare (Total 0.709 Hectare) situated at Patwari Halka No. 54, (Revenue Circle- Jashpur) Village- Jurgum, Tahsil- Jashpur, District- Raigarh, was acquired for construction of high level water tank by Public Health Engineering Department. After complying Sections 4 & 6 of the Land Acquisition Act, 1894 (for short "the Act, 1894"), personal notice was given to the persons whose land was acquired as per Sections 9(1), (2) & (3) of the Act, 1894. An award was passed by the Collector Land Acquisition on 02.06.1986 by which compensation was fixed to the tune of Rs. 9124.83 Np, 12% interest was awarded as per Section 23(1)(a) and 30% additional amount was awarded as per Section 23(2) of the Act, 1894. The matter was referred to the court below as per Section 18(1) of the Act, 1894. The said court concluded that the land was of a residential nature, thus, the prevailing rate of residential area at the time in the vicinity of the land sought to be acquired was Rs. 3/- per sq.ft.
3. Learned counsel for the State/ appellant submits as under:-
 - (i) The trial court has not considered nature of the land and arbitrarily taken the lands to be a residential nature whereas in land record, the land was recorded as agricultural non-diverted land.
 - (ii) Original respondent No. 1 namely Keishmat admitted in her cross-examination that they were growing vegetables in the said land.

- (iii) One witness namely Jogiram deposed that the land acquired was being used for vegetable cultivation. The finding arrived at by the reference court is perverse and the same is liable to be set aside.
4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the reference court is just and proper and does not warrant any interference of this Court while invoking jurisdiction of the appeal.
 5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
 6. The first question for consideration before this Court is whether the land acquired in the present case is agricultural land or it is used for residential purpose. Hiramani deposed before the reference court in her cross-examination that they were growing vegetables in the said land. Jogiram deposed that the land acquired was being used for growing vegetable.
 7. As per Section 172 of the Chhattisgarh Land Revenue Code, 1959, if a bhumiswami of land wishes to divert his holding or any part thereof to any other purpose except agriculture, he shall apply for permission to the Sub-Divisional Officer who may, subject to the provisions of this section and to rules made under this Code, refuse permission or grant it on such condition as he may thinks fit. Any land can be used for other than agriculture purpose only when it is diverted as per provisions of this Section.
 8. In the present case, from the evidence, there is nothing on record that the land is diverted for residential purpose. On the contrary, the

witnesses deposed before the reference court that the land is used for growing vegetable, therefore, it is not proved before the reference court that the land in question is used for residential purpose. The finding arrived by the reference court that the land should be valued at the rate of residential land is not based on record, therefore, the same is not liable to be sustained.

9. Accordingly, the appeal is allowed. The decree is passed in favour of the State/ appellant and against the respondents on the following terms and conditions:-

- (i) The appeal is allowed.
- (ii) Order of Second Additional District Judge is set aside and the compensation granted by the Collector Land Acquisition is restored.
- (iii) Parties to bear their own costs.
- (iv) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (v) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge