

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No.102 of 2015

1. State Of Chhattisgarh Through The District Magistrate, Tahsil And District Bilaspur, Chhattisgarh Defendant No. 1 , Chhattisgarh
2. Sub Divisional Officer Revenue - Cum- Land Acquisition Officer, Bilha, Tahsil And District Bilaspur, Chhattisgarh Defendant No. 2

----Appellants

Versus

Ayodhya Prasad Dubey Occupation Advocate, Aged About 76 Years
S/o Late Shri Jageshwar Prasad Dubey, R/o Dayalband, Madhuwan
Road, Near Government Higher Secondary School, Bilaspur, Tahsil And
District Bilaspur, Chhattisgarh Plaintiff , Chhattisgarh --- **Respondent**

For Appellants	:	Mrs. Fouzia Mirza, Additional A.G. with Mr. Sanjay Kumar Agrawal, G.A.
For Respondent	:	Mr. Ram Kumar Tiwari, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board by Manindra Mohan Shrivastava, J.

20/08/2019

Heard.

1. Though the State acquired the land of the respondent in land acquisition proceeding, it feels aggrieved by the higher compensation determined by the learned Court below in the matter of reference made under Section 18 of the Land Acquisition Act, 1894 (fort short 'the Act of 1894') by the Collector.

2. Brief facts necessary for decision of the appeal are that the State issued notification under Section 4(1) of the Act of 1894 on 09.05.2008 initiating process of acquisition of land in Village-Mohabhatta for stated public purposes. The area proposed to be acquired included 1.15 acres of land of the

respondent-owner. The land acquisition proceeding eventually culminated in passing an award on 17.08.2009, under which, the Land Acquisition Officer assessed compensation in respect of the land situated in Khasra No.252 & 253 situated in Patwari Halka No.5, Tahsil Bilha District Bilaspur belonging to the respondent. In respect of 1.15 acres of land, compensation at the rate of Rs.6,41,000/- per hectare was assessed. Feeling aggrieved by the award, the respondent sought reference of the dispute under Section 18 of the Act of 1894. Reference made by the Collector to the District Judge was adjudicated after affording the parties an opportunity to lead oral and documentary evidence. By impugned order, learned Court below held that compensation was not properly assessed. According to the impugned order while assessing compensation, the Land Acquisition Officer did not take into consideration the proximity of the land with the main road and that the land is situated very near to other developed land which are valuable for residential and commercial purposes. Taking into consideration the rates of sale and purchase of land situated in adjacent Village-Rahangi in the year 2012, learned Court below held that the respondent was entitled to compensation at a higher rate and after adding solatium at the rate of 30% and also 12% on the market value in respect of the relevant period as specified in Section 23(1A) of the Act of 1894, awarded Rs.12,59,626/- to the respondent. It is this award which is under challenge.

3. Brief and pointed submission of learned Additional Advocate General appearing for the State in this appeal is that while assessing compensation payable to the respondent, learned Court below has committed patent illegality and has awarded compensation dehors the scheme of computation as embodied in Section 23 and 24 of the Act of 1894. It is contended that the compensation having been awarded by the Land Acquisition Officer, if the respondent had a higher claim, it was his burden to lead clinching, oral and documentary evidence to prove that on the relevant date, the market value of the land was more than what was awarded. The only evidence led by the respondent-claimant was that in the nearby villages, sale and purchase of plots in the year 2012 was on a higher rates which was wholly irrelevant because according to mandate of Section 23 of the Act of 1894, the market value of the land, as on the date of issuance of notification under Section 4(1) of the Act of 1894 is required to be seen and not the rates of sale and

purchase on any subsequent date, much less 4 years after the date of issuance of notification. It is next contended that the learned Court below has assessed higher value of the land on the basis that looking to the development of adjacent area in near future, it will gain commercial and industrial value which is also prohibited area of consideration in view of provision contained in Section 24 of the Act of 1894. Therefore, the entire basis for enhancing compensation is illegal and impermissible under the law. The respondent could not place any evidence of sale and purchase of land of similar nature in the nearby area during the period 2008-2009, therefore, assessment of compensation on the basis of Government guidelines cannot be said to be improper. In order to support her submission, learned Additional Advocate General relied upon the judgment of the Supreme Court in the cases of **Chimanlal Hargovinddas vs Special Land Acquisition Officer, AIR 1988 SC 1652, State of Punjab Vs. Amarjit Singh and anr., 2011(4) SCC 734, Loveleen Kumar and others Vs. State of Haryana and others, 2018(7) SCC 492.**

4. Per contra, learned counsel for the respondent would argue that land admeasuring 1.15 acres of land of the respondent has been acquired and the respondent, in order to make out a case of higher compensation payable to him, has led evidence both oral and documentary that the land of the respondent is not only situated on main road but there are roads on other side of the land also which make its location very very prime vicinity. It is further argued that clinching evidence has been led and even the officers of the Revenue Department, who have been examined as witnesses, have admitted that the area in the near vicinity is fast developing as a residential area so much so that various residential colonies including those constructed for the employees of the High Court have also come up therefore, the respondent/claimant ought to have been granted proper compensation. The Land Acquisition Officer did not take into consideration the potential for fast development of the area on account of it being in the vicinity of the urban conglomerate which has rightly been appreciated by the learned Court below. Even though, the sale deeds Ex.P/6 to Ex.P/10 are of the year 2012, it is definitely indicative of what rate it would have fetched four years before it which, by any standard, would be far more than the rate at which compensation has been awarded to the respondent by the Land Acquisition

Officer which has been duly appreciated and corrected by the Court below.

5. We have heard learned counsel for the parties and perused the records.

6. Compensation under the Act of 1894 is required to be made in accordance with the provision contained in Sections 23 and 24 of the Act of 1894. While Section 23 of the Act of 1894 provides for the matters which may be taken into consideration in determining compensation, Section 24 of the Act of 1894 carves out matters which have to be ignored and kept out of relevance in determining compensation. Clause one of Section 23(1) of the Act of 1894, clearly provides that in determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration the market value of the land at the time of publication of notification under Section 4, sub-section (1) of the Act of 1894. The other clauses contain some more relevant considerations in the nature of damages and consequences. In the present case, admittedly, the notification under Section 4(1) of the Act of 1894 was issued on 09.05.2008, therefore, as per mandate of Section 23 of the Act of 1894, the market value of the land which is required to be taken into consideration would be as on the date of publication of notification under Section 4 sub-Section (1) of the Act of 1894. The compensation was required to be assessed on the basis of the Government guidelines in respect of the land of the respondent according to which, the approved and declared rate under the Government guidelines was Rs.6,41,000/- per hectare. Thus, on the date of issuance of notification under Section 4(1) of the Act of 1894 that was the market value of the land of the respondent. If the respondent asserted that the value of the land was more than what has been assessed or what has been prescribed under the Government guidelines, the burden was on him to prove this fact as has been held by the Supreme Court in the case of **Special Land Acquisition Officer V. Karigowda and others, 2010 (5) SCC 708** as below :

“29. It is a settled principle of law that the onus to prove entitlement to receive higher compensation is upon the claimants. In the case of [Basant Kumar v. Union of India](#) [(1996) 11 SCC 542], this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimants, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem

proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in the case of [Gafar v. Moradabad Development Authority](#) [(2007) 7 SCC 614] and the Court held as under:

"12. As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award."

Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The Court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the Courts are expected to scrutinize the evidence led by the parties in such proceedings."

7. It was, therefore, the burden of the respondent to bring on record appropriate oral and documentary evidence to prove that the land owned by the respondent was carrying higher market value than what has been awarded. To discharge this burden, the respondent examined himself and one Hoshiyari Lal Agrawal as witness and has placed on record various documents, particularly, the sale deeds Ex.P-6 to Ex.P-10 in support of his case. From the evidence of the respondent, all that has been proved is that his land is situated on the main road of Village-Mohabhata and there are two other roads running parallel to his land on either side. However, from his evidence as well as the evidence of two Patwaris, examined as two witnesses of the State, it continued to be recorded as agricultural land and is not only un-irrigated but a barren land which was not being used for agricultural purposes. More over, the respondent did not file any sale purchase document of any land situated in Village-Mohabhata near his land during the period 2008-2009 so as to find out the market value of the land as on the date of issuance of notification under Section 4(1) of the Act of 1894. The respondent has relied upon various sale deeds Ex.P-6 to Ex.P-10 which relate to certain lands situated in another village-Rahangi and all those sale deeds have been

executed in the month of September, 2012, which is 4 years after the date on which Section 4(1) of the Act of 1894 notification was issued. That apart, the lands are situated in some other village. True it is that the evidence has come that in village Rahangi, some residential activities have also started taking place but that by itself, without anything more, would not entitle the respondent to any higher rate of compensation because there is no evidence that because of such development in the nearby villages, the rates of sale and purchase of the land situated in village-Mohabhatta had also increased and were fetching price more than what has been prescribed in the Government guidelines. Not a single sale deed has been filed by the respondent-claimant to prove that on the date of issuance of notification under Section 4(1) of the Act of 1894, the rates of sale and purchase of land in village-Mohabhatta were higher than the rates declared under the Government guidelines. We also find that the learned Court below, in order to hold that the land of the respondent was valuable, has taken into consideration that in near future, there is likelihood of development of the area as residential as well as commercial. This consideration is prohibited in view of provision contained in Section 24 of the Act of 1894. Amongst various matters which the Court is prohibited from taking into consideration, fifth clause clearly provides that the Court shall not take into consideration any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired and sixthly any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put. The compensation has been awarded by the Land Acquisition Officer at a rate which is the highest rate applicable in Village-Mohabhatta. The guidelines prescribed rate as Rs.6,41,000/- per hectare and this rate has been applied in respect of the land of the respondent because in village-Mohabhatta, it is situated in a prime area. Therefore, the claim based on the land situated in prime area of village-Mohabhatta is taken care of by providing the highest rate for village-Mohabhatta.

8. The assessment of compensation has been made by the learned Court below on considerations which are either irrelevant or prohibited under the law. The rates of sale and purchase of land of the adjacent village that too, in the year 2012, which is four years after the date of issuance of notification under Section 4(1) of the Act of 1894 is not only irrelevant but prohibited also.

9. Therefore, in our opinion, the impugned order passed by the Court below is unsustainable in law. Having gone through the material on record, we find that compensation has been assessed on the basis of approved Government guidelines applicable in respect of agricultural land of the nature and locality to which the land of the respondent belonged at the time of acquisition.

10. In the result, the appeal is allowed. Impugned order passed by the Court below is set aside and it is held that the respondent-claimant is entitled to compensation as has been awarded by the Land Acquisition Officer in its award dated 17.08.2009.

11. We find that during the pendency of this appeal, the respondent was permitted to withdraw an amount of Rs.5,00,000/- out of total amount of Rs.13,03,713/- deposited by the State. The balance amount shall be refunded to the State. The Land Acquisition Officer shall work out the amount payable to respondent under the award dated 17.08.2009. This will also include all other amount payable to the respondent-claimant as per Section 23 read with 34 of the Act of 1894. If after such computation, it is found that the respondent has withdrawn an amount higher than the amount payable to him under the award, the balance amount will have to be deposited by the respondent before the concerned Court.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge