

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 53 of 2007

1. State of Chhattisgarh through the Collector, District- Koriya (Chhattisgarh)
2. The Executive Engineer, Public Works Deptt (Building And Road), Manendragarh, Distt. Koriya (CG)

---- Appellants

Versus

1. Ram Singh S/o Late Ram Kishore Singh, aged 70 years.
Occupation- Advocate, R/o -Manendragarh, Tehsil -Manendragarh, District-Koriya (CG)
2. Arun Kumar, aged 8 years, through Guardian Father Ramnarayan S/o Jodho Prasad Soni R/o Purani Basti Manendragarh, Tehsil-Manendragarh, District-Koriya (CG)
3. (i) Ramlal S/o Parasnath Soni, aged 30 years
(ii) Rajendra S/o Parasnath Soni, aged 25 years
(SI No. 3 (i) & 3 (ii) Purani Basti, Manendragarh, Tehsil- Manendragarh, District-Koriya (Chhattisgarh)

---- Respondents

For Appellants/State	:	Shri Sanjay Kumar Agrawal, Govt. Advocate
For Respondent No.1	:	Shri B.D.Guru, Advocate.

**D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Judgment On Board

01/07/2019

Per Manindra Mohan Shrivastava, J.

1. This miscellaneous appeal arises out of Award dated 12.4.2005 passed by learned Additional District Judge, Manendragarh, District- Koriya in MJC No.3 of 1994 whereby the learned Additional District Judge has passed an Award in favour of the Claimant, resulting in enhancement of the compensation as ordered under the award dated 12.1.1994.

2. For the public purpose of providing access road to railway over-bridge, land belonging to respondent-claimants were acquired under the Land Acquisition Act, 1894 (hereinafter referred to as "*the Act* ") initiated vide notification under Section 4 of the Act published on 30.3.1990, which eventually culminated in passing of an award dated 12.1.1994. Under the Award, the Land Acquisition Officer/Additional Collector, Baikunthpur held that the claimants are entitled to compensation at the rate of Rs.1,50,000/- per hectare as far as agricultural land is concerned and Rs.7 lakh per hectare in respect of diverted land. In addition, other payable amount under the Act was also ordered. Aggrieved by the said award of compensation, the respondents sought reference under Section 18 of the Act. The aforesaid reference was decided by the impugned Award by learned Additional District Judge. The learned Addl. District Judge, taking into consideration the oral and documentary evidence, particularly the rates prevalent on or before the date of issuance of notification under Section 4 of the Act, as reflected in various sale deeds and particularly taking into consideration the rates fixed by the Najul Officer-Manendragarh as contained in Ex. A-7, held the respondent- claimants entitled to compensation treating the entire land as diverted at the rate of Rs.50/- per square feet. Aggrieved by the aforesaid, the State has filed this appeal.
3. Learned counsel for the State, assailing correctness and validity of the Award, argues that the learned Addl. District Judge has awarded compensation on a very higher side, by assuming the rate as Rs.50/- per square feet without any clinching evidence led by the claimants. His argument is that the claimant relied upon certain sale deed of the year 1988 which related to small plots, which could not be made a basis to fix the rate of compensation when the entire chunk of land admeasuring 0.437 hectare of claimant- Ram Singh was being acquired. According to him, if the claimant would have sold the entire land in one transaction, he would not have fetched the same rate at which small plots were sold under various sale deeds filed along with the claim petition. The next submission of learned counsel for the State-appellant is that the learned District Judge also failed to take into consideration that even according to claimant's case, only 0.405 was diverted in the year 1988 out of which, 0.004 hectare was sold to Arun Kumar and 0.004 hectare was sold to Ramlal and others in the

year 1988. Thus, the only diverted land remaining in the hand of claimant was 0.397 hectare. Therefore, the learned Addl. District Judge committed perversity in awarding compensation in respect of the entire land in the hands of respondent No. 1 Ram Singh accepting those lands as diverted. Next submission of learned counsel for the State is that while awarding compensation, learned Court below has taken into consideration those factors, which are specifically prohibited from being taken into consideration as provided under Section 24 of the Act. Further submission of learned State counsel is that the compensation as has been awarded, is on higher side because the learned District Judge has taken into consideration the location of the land to hold that it is lying in the commercial area whereas there is no specific averment in this regard.

4. On the other hand, learned counsel for the respondent, supporting the Award passed by the Addl. District Judge would argue that the claim of the claimants for enhancement of compensation was based on clinching, uncontroverted documentary evidence. He would argue that the claimant adduced in evidence, the copy of the sale deed executed in the year 1988 in respect of the land comprised in same khasra number, the rates fixed by the Najul Department itself in the year 1890 as also the location of the land and that the claimant No.1 had already proceeded to develop and construct a hotel as the land was centrally located in a prime commercial area of the township of Manendragarh. His next submission is that even if it is accepted that the entire land in respect of which, compensation has been awarded to respondent -Claimant Ram Singh was not diverted, even then the evidence that the undiverted part was also located in the commercial area and was carrying almost same market value as other diverted land, would be a relevant factor. He would further argue that the consideration which have weighed in enhancing compensation are location of the land and also whether it was diverted or not diverted as also the rates fixed by the nazul department. None of these considerations are prohibited under Section 24 of the Act. Therefore, the impugned award does not require any interference.
5. We have heard learned counsel for the parties and perused the record.
6. The land acquisition officer vide its award dated 12.1.1994 has recorded a finding that Survey No.341/1, 0.154 hectare was an agricultural land.

Remaining land was diverted land. It has fixed the compensation at the rate of Rs.1,50,000/- per hectare for agricultural land and Rs.7,00,000/-/- per hectare in respect of diverted land.

7. The claimants came out with the documentary evidence of sale deed executed in the year 1988 and also the order of diversion. Importantly, the respondent claimants placed before the Court below "गणना -पत्रक" (calculation sheet) prepared by Nazul Officer and Revenue Inspector Nazul, Manendragarh (Ex.A-7) in which the average rate per square feet was mentioned as Rs.42.65/-. The claimant also led the evidence that land was situated in prime area of the city and the respondent claimant No.1, after getting land diverted had also submitted application before the Corporation Authority of its plan to construct a hotel. Taking into consideration the aforesaid material, learned District Judge enhanced the compensation treating the entire land as diverted and fixed the rate at Rs.50/- per square feet.
8. As far as the dispute with regard to total extent of land as diverted is concerned, from perusal of the Award, we find that learned Addl. District Judge, in para-9 of the Award, has treated the entire land under the acquisition as diverted land. In order to establish its case, the claimant relied upon a diversion order Ex.A-6. However, a perusal of the same would show that the order was passed for diversion of 0.405 hectare of land comprised in khasra No.341/1 in the hands of respondent -claimant No.1. This order was passed on 24.3.1988. Further, we find that out of khasra No. 341/1, respondent- claimant No.1 sold 0.004 hectare to Ramlal vide sale deed dated 4.7.1988. On the same day, respondent claimant No.1 sold another piece of 0.004 hectare of land comprised in kh.no. 341/1 in favour of another claimant- Arun Kumar. Thus, if total diverted land of 0.405 hectare is reduced by the area of land sold to Arun and Ramlal, it comes to 0.397 hectare. There is no material on record led by the respondent claimant No.1 to prove that in course of time, prior to issuance of notification under Section 4 of the Act, some other parcel of the land remaining un-diverted in kh.no. 341/1 was also diverted so as to say that entire area of diverted land was 0.437 hectare as on the date of issuance of notification. We thus find that the entire area of land of his ownership is acquired only to the extent of 0.397 hectare as diverted piece of land. The

remaining land held by him cannot be said to be diverted and, therefore, it has to be treated only as agricultural land and not diverted land.

9. As far as other two claimants- Ram Singh and Arun Kumar are concerned, indisputably, the land purchased by them from claimant No.1 under two separate registered sale deeds dated 4.7.1988 was diverted land.
10. The next question which arises for consideration is that whether the learned Addl. District Judge has committed any error of law or fact in arriving at the rate on which respondents were entitled to compensation.
11. Though the claimants claim that they are entitled to compensation @70/- per square feet, the Addl. learned District Judge partly allowed their claim. The learned Addl. District Judge arrived at finding that the respondent-claimants are entitled to payment of compensation at the rate of Rs.50/- per square feet. In order to come to this conclusion, learned Addl. District Judge has taken into consideration the rate of sale and purchase of land not only in the same khasra number but also of the land situated near the land under acquisition. This has been taken into consideration by the learned District Judge in para-8,9,10 of the Award. Finding has been recorded based on the rates at which land in k.no. 341 were sold to different persons which according to the learned Addl. District Judge comes to approximately Rs.45/- per square feet. The learned District Judge has taken into consideration the sale deed in Ex.A-3 in respect of a plot No.289 admeasuring 975 sq.ft. for a consideration of Rs.50,000/- which had location near Fhavara chowk on Manendragarh station road @ Rs.51/- per square feet. In addition, the claimant also led evidence regarding diversion and also with regard to location of the land. It has also been led in evidence that respondent No.1 intended to construct a hotel and an application was also submitted before the Corporation. The location of the land has also been described in the evidence which shows that land was situated in prime market area and township of Manendragarh. Importantly, while fixing the rate of land, learned Court below has taken into consideration the rate of the Najul Department in its "गणना -पत्रक" (calculation sheet) of 1989-90 filed as Ex.A-7 which shows the rate of the land as Rs.42.6/- per square feet. It has taken into consideration number of plots subjected to sale and purchase comprised in kh. No.204/1, 206/1, 304/1, 239/1, 289 &136/2.

12. Taking into consideration the aforesaid material on record, most of which are documentary in nature, learned Addl. District Judge assessed fair compensation @50/- per sq.ft. This does not, by any standards, appeared to be so unreasonable which would warrant any interference.
13. The submission of learned State counsel that the consideration which weighed in the mind of learned Addl. District Judge to ascertain the rates of land are legally impermissible under the provision contained in Section 24 of the Act, does not merit acceptance. We do not find that for the purpose of assessing fair compensation, learned Addl. District Judge has entered into any of the prohibited provision specifically enumerated in Section 24 of the Act.
14. Therefore, we hold that as far as respondent No.1 is concerned, while the rate fixed by the Addl. District Judge does not warrant any interference, the claimant No. 1 would be entitled to compensation at the rate of Rs.50/- per square feet only in respect of 0.397 hectare of land and not 0.437 hectare. In respect of remaining area, it shall be treated as agricultural land i.e. for which the rates of compensation as fixed for agricultural land will be applicable.
15. As far as compensation awarded to other two respondents -claimants Arun and Ramlal are concerned, they are with respect to clearly diverted land and therefore no interference is called for.
16. In the result, appeal of the State is partly allowed. The Land Acquisition Authority shall pay compensation @ 50/- per square feet to respondent claimant No.1 only to the extent of 0.397 hectare of land. In respect of balance 0.040 hectare, the respondent-claimant No.1 shall be entitled to rate of agricultural land as fixed by the land acquisition officer in the area. All other amount directed to be paid under the award with appropriate modification will also be payable to the claimant as per our order.
17. It goes without saying that while making payment of balance amount whatever amount has already been paid under interim direction issued by this Court, shall be adjusted.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge