

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 201 of 2015**

1. Rajkumar Sharma S/o Onkar Prasad, Aged About 46 Years,
 2. Shiv Kumar Sharma S/o Onkar Prasad, Aged About 42 Years,
 3. Vinod Kumar Sharma S/o Onkar Prasad, Aged About 33 Years,
 4. Dadhich Kumar Sharma S/o Onkar Prasad, Aged About 39 Years,
- All Resident of Akaltara, Tehsil Akaltara, District Janjgir-Champa, Chhattisgarh. **---- Appellants**

Versus

1. State of Chhattisgarh, Through Collector, District Janjgir-Champa, Chhattisgarh.
2. The Executive Engineer, Water Resources Department, Karra Nala Jalashaya Project, Janjgir, District Janjgir-Champa, Chhattisgarh.

---- Respondents

For Appellants	: Shri Rupesh Shrivastava, Advocate
For Respondent No. 1/State	: Shri Alok Buxi, Additional AG.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****05/11/2019**

Heard.

2. This Miscellaneous appeal arises out of order dated 28.10.2015 passed by the First Additional District Judge, Janjgir Champa in Misc. Civil Case No. 03/09 in the matter of appellants' claim for enhancement of compensation pursuant to the acquisition of their land under the provision of the Land Acquisition Act, 1894.
3. For the purpose of irrigation, proceedings for acquisition of land situated in various villages including Village Podi Dalha, were initiated by issuing a notification under Section 4 (1) r/w Section 17 (1) of the Land Acquisition Act on 03.08.2007. The Land Acquisition Authority

having invoked emergency clause, proceeded and issued notification under Section 6 on 10.08.2007 followed by award prepared by the Land Acquisition Officer on 29.03.2008 and approved by the Collector on 04.04.2008. As the amount of compensation offered by way of award was not fully acceptable to the appellants, a reference under Section 18 of the Land Acquisition Act was made. On a reference made, initially an award was passed on 5.12.2011 by the Additional District Judge, Janjgir Champa. Upon review being sought, the order was recalled and hearing was resumed from the stage of recording of evidence. The proceedings culminated in impugned order /award dated 28.10.2015. Though, learned Additional District Judge partly accepted the claim of the appellants insofar as nature of land being irrigated and taking two crops is concerned, the appellants' claims to the extent that they were entitled to compensation by classifying the land as 'Kanhaar' land, was not accepted. Furthermore, the appellants' claims that as their land had already come under submergence on account of the irrigation project since 2006, due to which they could not carry out agriculture operation and sustained losses, was also not accepted. The appellants are also aggrieved as the Court below in the impugned award dated 28.10.2015 has not specifically awarded any additional amount payable as solatium and interest on the enhanced amount of compensation payable under the award.

4. Learned counsel for the appellants argued that in application under Section 18, in the affidavit under Order 18 Rule 4 CPC, the appellants and their witnesses have clearly stated that their land had already come under submergence in the irrigation project in the year

2006 but this was neither treated to be an act of taking possession nor a case of loss. According to him, this amounted to taking possession and, therefore, the appellants were entitled to interest at the rate of 15% as envisaged in the proviso of Section 34 of the Land Acquisition Act because even before passing of the award, possession was already taken in the year 2006. In the alternative, his submission is that even if it is not treated to be a case of taking possession, it has been emphatically deposed in the evidence that the land had come under submergence in the year 2006 itself, meaning thereby that the appellants were deprived of taking crops since 2006 and, therefore, for a period two years prior to the passing of the award in the year 2008, the appellants were entitled to be paid proper compensation. Learned counsel for the appellants would further argue that even though, the learned Court below has accepted that the land of the appellants is an irrigated one and also taking double crop, ignoring clear and un-controverted evidence that it is capable of yielding crops throughout the year, it has been classified as 'Matashi' land whereas it ought to be classified as 'Kanhaar' land. Lastly it is submitted that learned Court below though, enhanced compensation, it has not awarded consequential relief of the enhancement in the form of solatium and the interest both on the enhanced compensation amount.

5. On the other hand learned State counsel would argue that the compensation awarded to the appellants is just, proper and in accordance with the provision of the Land Acquisition Act. He would argue that the appellants' claims that possession had already been taken over prior to the passing of the award is not based on any

evidence whatsoever. He would further submit that the appellants' case that the land had come under submergence in 2006 is a self serving statement which is not supported by any clinching evidence, and on the contrary, the documentary evidence which has been placed on record by the appellants themselves shows that they had paid land revenue towards crop which they had taken in the year 2006-07. Next submission of the State counsel is that as far as classification of land is concerned, the Court below has already held that the land is irrigated one and was also capable of giving double crop. The appellants' claim that the land should be classified as 'Kanhaar' and not 'Mathasi' is also not based on any clinching evidence and is mere self serving statement in the evidence which could not be made a basis to classify land as 'Kanhaar', meaning thereby that it was capable of yielding crops throughout the year. As far as increased amount of solatium and interest upon enhancement of compensation by the Court below is concerned, learned State counsel would submit that even though it is not very specifically stated in the order, it is a consequential relief as in the award solatium at the rate of 13% of the compensation has been given and interest at the rate of 12% has also been awarded.

6. We have learned counsel for the parties and perused the record.

7. The learned court below, after going through the evidence of the parties has recorded a finding that the appellants' land was wrongly classified as un-irrigated and single crop land. It has recorded a categorical finding that the appellants' land deserves to be classified as irrigated and double crop yielding land. However, the

land has been classified as 'Mathasi' land. In his application under Section 18 and also in the evidence of Rajkumar Sharma - appellants' witness has clearly stated in Paragraph 4 of his affidavit under Order 18 rule 4 CPC dated 31.03.2015 that the land of the appellants is an irrigated land and they are getting irrigation facilities from Government canal since long. He has also categorically stated that he is taking both Rabi and Kharif crop and the land is capable of yielding double crop and a 'Kanhaar' land. On this aspect, nothing has been controverted in his cross-examination.

8. The other witness Shri Chhedilal (AW-2) has also stated in his affidavit under Order 18 rule 4 CPC dated 31.03.2005 that the land of the appellants is a 'Kanhaar' land which is yielding both Rabi and Kharif crop throughout the year and its an irrigated land. This also has gone un-controverted. Therefore, from this evidence, which is not controverted it has to be held that the appellants' land was required to be classified as 'Kanhaar' land and not as 'Mathasi' land. As per the guidelines of 2007-08 (which has been kept in the records), the rate of compensation per hectare applicable in respect of irrigated land is Rs.5,34,800/- in village Podi Dalha whereas the appellants have been awarded compensation at the rate of Rs. 5,06,400/- per hectare. Thus the appellants are entitled to be paid compensation at the rate of Rs.5,34,800/- per hectare treating it to be irrigated 'Kanhaar' land in village Podi Dalha as per guidelines of 2007-08.

9. However, as far as appellants' claims that they are entitled to interest at the rate of 15% as provided under Section 34 of the Act is concerned, the same is not based on any categorical and specific evidence. In order to succeed on this count, it was for the appellants

to clearly plead and prove that the possession of the land was taken prior to acquisition of land. Under Section 34 of the Act interest is payable. It provides thus:-

“(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:

[Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.]”

Proviso to the aforesaid provision clearly envisages that if compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of 15% per annum shall be payable from the date of expiry of the said period of one year or the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. Such rate of interest would be payable in case possession is taken but compensation is not paid. Therefore, it was required to be proved by leading clinching evidence that the respondent had taken possession on a particular date but the compensation was not paid for one year from the date of such possession so as to claim interest at the rate of 15% from the date of expiry of aforesaid period of one year. There is no specific evidence led to this effect by the appellants. Therefore, the claim of interest at the rate of 15% is not sustainable in law.

10. As regards the claim for compensation on the basis that the land had already come under submergence, that ground is also not made out. It has been stated in the affidavit, without giving specific details by simply saying that the land has come under submergence in the year 2006. However, this particular oral evidence is contradictory to the documentary evidence adduced by the appellant himself. The documents relating to irrigation, payment of various dues and in particular certificate Ex. P-4 clearly spell out that land revenue in respect Kharif and Rabi crop was paid up to the year 2006-07 by the appellants. This document having been relied upon by the appellants itself, demolishes their own case that its land had submerged in water in the year 2006 itself. Therefore, the claim of compensation on that ground is also not made out.

11. From the perusal of the award it is clear that while granting compensation to the appellants, solatium at the rate of 30% and interest at the rate of 12% have been awarded. Obviously once the compensation amount is enhanced, the appellants would be entitled to 30 % of the enhanced amount as also interest at the rate of 12% on the enhanced amount. Since we have also held hereinabove that the appellants are entitled to compensation at the rate of Rs. 5,34,800/- per acre, the Land Acquisition Authority shall recalculate and compute the amount which is additionally payable to the appellants by computing compensation at the rate of Rs. 5,34,800/- per acre. The total amount of compensation so computed would carry solatium at the rate of 30% and interest at the rate of 12%. The balance additional amount which is now required to be paid to the appellants towards additional compensation, solatium and interest will have to be paid to

them. The compensation amount which has already been paid along with interest and solatium will have to be adjusted in the additional amount of compensation with solatium and interest payable under the order of this Court.

12. In the result, appeal is accordingly allowed in the manner and to the extent indicated above. The respondent /State shall bear the cost of appeal.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge