

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.235 of 2005

=====

Devendra Kumar, son of late Ramanand Singh, resident of village - Kon, Post Office & P.S.-Nokha, District- Rohtas.

... .. Appellant

Versus

1. The State of Bihar through Collector, Rohtas, Sasaram.
2. District Land Acquisition Officer, Sasaram, District- Rohtas.
3. Deputy Chief Engineer (Construction)/E.C. Railway No.5, Moghalsarai.

... .. Respondents

=====

Appearance :

For the Appellant	:	Mr. Jai Prakash Singh, Advocate Mr. Biswajeet Kumar, Advocate
For the Respondents	:	Mr. Nishi Nath Ojha Mr. R.K. Sharma (CGC)

=====

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 10-05-2023

Heard learned counsel for the parties.

2. The appellant has challenged the judgment dated 24.03.2005 and decree dated 06.04.2005 passed by learned Sub Judge-III, Rohtas at Sasaram, in Land Acquisition Case No.28 of 2002, by which the prayer of the appellant for enhancement of compensation amount has been rejected.

3. About 2.675 acres of land in Mauza-Kon, Thana No.443, P.S.- Nokha, District- Rohtas was acquired by the State Government for which compensation was fixed at the rate of Rs.2,72,000/- per acre. The land was acquired for the



construction of Ara-Sasaram Broad Gauge Railway Line. The appellant was initially offered an award of Rs.3,88,410/- by way of compensation. On 18.02.2002 the appellant received another notice under Section 12(2) of the Land Acquisition Act, 1894 (hereinafter to be referred as “old Land Acquisition Act”). Thereafter, the compensation amount was revised to Rs.10,66,946.85/- which included the earlier award of Rs.3,88,410/-. On 25.02.2022, the appellant received Rs.6,78,538.85/- as the balance amount of compensation under protest. The appellant was not satisfied with the quantum of compensation awarded to him as in his opinion his land was under valued by the State authorities. For enhancement of the compensation, the appellant had raised the following grounds:-

- (a) The land in question comes under the Notified Area Committee (Nokha Municipality) and is situated at a distance of 50 meters from Patna-Sasaram main road. The land is situated in a commercial area and falls in the category of commercial -cum- residential land.
- (b) In the vicinity of land in question Nokha Bazar is situated, a number of high power



rice mills, office of the Inspector of Police, several schools, hospitals and branches of nationalized banks are situated which point out that the land in question is a commercial land.

- (c) The land in question falls in green belt area and is a highly fertile land producing three crops in a year and is secured with canal and independent witnesses have deposed that the nature of land being commercial. The report submitted by the Pleader Commissioner has confirmed the land to be a commercial one and the report of the Pleader Commissioner has not been disbelieved by the Court below.
- (d) The authorities while awarding compensation have not considered the relevant facts and have calculated the compensation and granted compensation of the minimum amount. They themselves had enhanced the compensation from Rs.3,88,410/- to



Rs.10,66,945.85/-.

(e) The appellant has relied upon Exhibit-1/B, which is the valuation of the land in the village-Kon and appellant's land which is in the Notified Area Committee (Nokha Municipality). The price of the land as per Column-1 of Exhibit- 1/B is Rs.43,722/- per decimal. This list has been prepared by the Government of Bihar for the year 1998-99, which is a public document and therefore, the same has to be relied upon for calculating the fair compensation to the appellant.

4. The Court below while rejecting the claim of the appellant has held that Exhibit-1/B cannot be said to a conclusive proof and there is no other sale deed on record for enhancement of the compensation. The Court below has dismissed the claim of the appellant only on the ground that the appellant has failed to produce any registered document of the nearby land to show the value of the land to be commercial. It has further held that MVR of the registration office is only there for the purposes of registration and not for payment of



compensation and the document of the Registration Department is not a conclusive proof for calculating the compensation for the land in question.

5. Learned counsel for the State has supported the order passed by the learned Court below and has submitted that the compensation awarded is just and fair and he has reiterated the grounds which have been mentioned in the impugned judgment and order.

6. After hearing learned counsel for the appellant and learned counsel for the State, the questions which are to be decided are whether the land of the appellant, which has been acquired, is commercial in nature and whether the compensation awarded to the appellant is just and proper or not?

7. From the records, it appears that on behalf of the State only one witness has been examined, who has proved the documents of the State.

8. Altogether, five witnesses have been examined on behalf of the appellant and the Survey Knowing Advocate Commissioner was examined as witness no.6. Exhibit-2 is the report of the Survey Knowing Advocate Commissioner. The witnesses which includes the claimant also have supported their case in their oral evidence. In their



deposition, they have stated that the land falls in the Notified Area Committee (Nokha Municipality) and the rice mills, Police Station, a number of nationalized banks, schools are there and therefore, the land is commercial in nature. They have also proved the Exhibits-1/A & 1/B. The Survey Knowing Advocate Commissioner in paragraph no.3 of his deposition has stated that he has found the land in question is located at a distance of 150 meters from the Ara- Sasaram main road and on the west side of the land, at a distance of about 10 meters, high power rice mill is situated and within 100-200 meters of the land in question there are many other high power rice mills are situated.

9. In paragraph no.4 of the report, the Survey Knowing Advocate Commissioner has found that opposite the land in question, the office of the inspector of police, cinema hall and two high power rice mills are situated. In paragraph no.5 of the report, the Survey Knowing Advocate Commissioner has reported that at a distance of about 200 meters north-west of the land in question, Notified Area Committee (Nokha Municipality) is situated and a number of educational establishments, hospitals, telephone exchange and other business market complex and shops are situated.

10. In cross-examination, the Survey Knowing



Advocate Commissioner has stated that he had found out the land in question after comparing the same from the map. He also stated that the rice mills are at a distance of about 10-15 meters from the land in question. Exhibit-1/B is the MVR of 1998-99 of the district in question. As per which, the commercial value of the land should have been Rs.43,722/- per decimal as the land in question falls in commercial category.

11. The Hon’ble Supreme Court in the case of *Viluben Jhalejar Contractor vs. State of Gujarat* reported in *(2005) 4 SCC 789* has laid down the procedure for assessing the market value of the land. Paragraph no.20 of the aforesaid decision reads as follows:-

“20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

<u>Positive factors</u>	<u>Negative factors</u>
(i) smallness of size	(i) largeness of area
(ii) proximity to a road	(ii) situation in the interior at a distance from the road
(iii) frontage on a road	(iii) narrow strip of land with very small frontage compared to depth
(iv) nearness to developed area	(iv) lower level requiring the depressed portion to be filled up
(v) regular shape	(v) remoteness from developed locality
(vi) level vis-à-vis land under acquisition	(vi) some special disadvantageous factors which would deter a purchaser



*(vii) special value for an owner
of an adjoining property to
whom it may have some very
special advantage.*

12. In the case of *Manimegalai vs. The Special Tahsildar (Land Acquisition Officer) Adi Dravidar Welfare* reported in *(2018) 13 SCC 491* the Hon'ble Supreme Court has held that an assessment of the compensation payable for the land acquired must take into account several factors including the nature of the land, its present use and its capacity for a higher potential, its precise location in relation to adjoining land, the use to which neighbouring land has been put to use, the impact of such use on the land acquired and so on.

13. In view of the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, the rate of the adjacent land is not only relevant factor for finding out the compensation of the land which is acquired but other factors are also required to be considered.

14. Considering the fact that the land in question is situated in the vicinity of a number of high power rice mills, office of the Inspector of Police, several schools, hospitals and Branches of Nationalized banks etc. and the land in question is on the main national highway of Ara-Sasaram, I am of the opinion that the land in question falls under commercial



category and moreover, the same is valued in the office of the Registrar for registration purposes. Once the land is valued by the Government authorities at Rs.43,722/- per decimal then the appellant is also entitled to compensation treating the land to be commercial in nature. Further considering the Exhibit-1/B and the report of the Survey Knowing Advocate Commissioner which has been accepted by the Court below, this Court holds that the land in question falls under commercial category. Even if no evidence of any registered document of nearby land has been produced but from the other factors, as discussed above, the land seems to be commercial in nature.

15. Accordingly, this appeal stands allowed and the judgment dated 24.03.2005 and decree dated 06.04.2005 passed by learned Sub Judge-III, Rohtas at Sasaram, in Land Acquisition Case No.28 of 2002 is hereby set aside. The appellant is held entitled to be compensated for his acquired land treating the land in question to be commercial in nature. The authorities are directed to prepare the award as per the Land Acquisition Act, 1894 treating the land in question to be commercial in nature and make payment of difference of amount within one month from the date of receipt/production of a copy of this judgment and order. The appellant shall also be



entitled for other statutory benefits admissible under the Land Acquisition Act, 1894.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	27.06.2023
Transmission Date	

