**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**FIRST APPEAL No.15 of 2015**

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The State Of Bihar Through Land Acquisition Officer

... ... Appellant

Versus

Sudha Devi Wife of Bibhishan Mandal, Resident of Village - Garniya, Police Station - Banka, District - Banka.

... ... Respondent

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**Appearance :**

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| For the Appellant | : | Mr. Virendra Kuar, G.P. – 10 |
| For the Respondent | : | Mr. Raghib Ahsan, Sr. Advocate |
| | : | Mr. Brij Nandad Prasad, Advocate |
| | : | Mr. Wasi Akhtar, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE KHATIM REZA**
**ORAL JUDGMENT**

**Date : 26-09-2023**

Heard Mr. Virendra Kuar learned counsel for the appellant and Mr. Raghib Ahsan learned senior counsel for the respondent.

**2.** The State of Bihar has filed this First Appeal against the judgment and award dated 04.07.2014 passed by the learned Land Acquisition Judge, Banka in Land Acquisition Case No. 10 of 2013 arising out of Land Acquisition Reference Case No. 10 of 2012.

**3.** The respondent's land was acquired by the State Government by Declaration No. 1753 dated 27.09.2011, which was published in the official District Gazette at page 1 - 7.12.2011, District-Banka. The details of land was mentioned in the Gazette at Mauza – Norihari, Tola Pathra, Ward No. 4/9 under Nagar Panchayat, Banka, Ward/Thana No. 09, Sheet Nos. 1, 2 and 8.

**4.** Description of the land which has been acquired by the State of Bihar is as follows:-

| S.No. | Khata No. | Khesra No. | Area (in Acre) |
|---|---|---|---|
| **1.** | 404 | 22 | 0.5975 |
| **2.** | 405 | 11 | 0.3775 |
| **3.** | 405 | 11,12 | 0.2150 |
| **4.** | 415 | 32 | 0.4370 |
| **5.** | 415 | 33 | 0.8728 |
| **6.** | 415 | 35 | 0.2500 |
| **Total** | | | **2.7498** |

**5.** The lands of claimants-respondent was acquired by the State of Bihar for the purpose of construction of Police Line Building.

**6.** The Land Acquisition Officer fixed the rate of the said acquired land and prepared Award under the Land Acquisition Act, amounting to Rs. 92,63,759/- and the Department has paid Rs. 74,11,007/- out of the said amount and 20% is still to be paid. The land owner filed application for making reference of the case under Section 18 of the Land Acquisition Act 1894, before the Land Acquisition Officer claiming that on the date of notification under Section 4 of the Land Acquisition Act, 1894 the value of the lands acquired was

Rs. 91,000/- per decimals as the lands are being residential. The claimant-respondent in her reference case has stated that her land is situated at Mouza Nonihari Tola Pathra bearing *Khata* Nos. 415, 404 and 405 and Plot Nos. 32, 33, 35, 22, 11 and 12 which she had purchased through Ext. 1(a) and 1(b) having area of 2.7498 *acres* were acquired by the State of Bihar through Land Acquisition Officer, Banka for construction of Police Line Building, but the valuation of the land has been assessed at Rs. 92,63,759/- only and the authority has paid Rs. 74,11,007/- out of the said amount and the rest 20% of the said amount is still to be paid.

**7.** The case of the respondent is that the lands are residential one and the respondent is entitled to receive compensation at the rate of Rs. 91,000/- per decimal and the acquired land is under Nagar Panchayat Ward No. 4/9. Therefore, the claimant-respondent is entitled to receive compensation at the enhanced rate. The nature of the land purchased through two sale deeds Ext.-1(a) and 1(b) have been mentioned as *Do fasla* and *Ek fasla.* The Nazri map attached with the Sale Deed (Ext. - 1), shows that the land acquired of Plot No. 11 and 12 is by the side of branch road and is not on the main road. The boundary of Sale Deed [Ext. - 1(a)] of Plot No.

22 and 11 of *Khata* Nos. 404 and 405 shows that there is village road in the southern side. In the Sale Deed Ext. – 1(b) of the claimant, in the eastern side, there is a road near Plot No. 32 and 33 of *Khata* No. 415 and all the lands acquired at the time of acquisition were treated as residential land. Hence, the claimant-respondent is entitled to receive compensation at the residential rate. The claimant has claimed for Rs. 2,49,50,000/- along with 50% bonus and interest at the rate of 12% per annum, total amounting to Rs. 3,74,00,000/-.

**8.** The opposite party-State of Bihar had appeared but neither filed any written statement nor adduced any evidence or examined any witnesses. On the basis of pleading, the Land Acquisition Judge has framed issue which is as follows:-

> *"Whether the land acquired/purchased by the petitioner-respondent through Ext. -1(a), 1(b) was residential, it has changed its nature and the petitioner is entitled for compensation at the enhanced rate as claimed."*

**9.** The claimant produced five sale deeds Ext.-1 dated 31.03.2011, Ext.-1(a) dated 17.07.2009, Ext.-1(b) dated 10.12.2005, Ext.-1(c) dated 15.09.2011 and Ext.-J dated 10.10.2011 showing the title and possession of the claimant-respondent over the land acquired. The sale deed dated 31.03.2011 shows that the nature of land is residential and consideration money paid was of Rs. 3,22,500/-.

**10.** Learned lower Court has noticed about the government value of the land as per the MVR. The circle rate of Mouza Garniya Tola Pathra inside as residential has been fixed at the rate of Rs. 52,325/- per decimals.

**11.** The evidence of P.Ws. 1, 2 and 3 has proved the case of the claimant-respondent. Exhibit-1 shows that the land acquired of Plot Nos. 11 and 12 is nearby the side of branch road and not on the main road. In the boundary shown in the sale deed Exhibit-1(a) of Plot Nos. 22 and 11 of *Khata* Nos. 404 and 405, in the Southern side, there is a village road. It has clearly been stated that the village road is existing just by the side of the above plots. Exhibit-1(b) shows the land purchased by the claimant-respondent is in the eastern side. There is a road nearby Plot Nos. 32 and 33 and the *Khata* No. 415. The sale deed dated 31.03.2011, is prior to the acquisition of the land acquired by the Government through declaration No. 1753 dated 27.09.2011 published at page 1- 07.12.2011 Part II of the Zila Gazette of Banka.

**12.** The learned Trial Court has considered the valuation of land and also noticed the rate fixed by the

Government of Bihar at the rate of Rs. 52,325/- per decimal of Mauza Pathra Ward No. 4/9, with regard to the lands which are residential inside.

**13.** In view of the above contention of the parties, the points arises for consideration in this appeal is that *“Whether the market value of the land as residential fixed by the learned Sub- Judge is proper and just”* and *“Whether the impugned judgment and decree are sustainable in the eye of law”*.

**14.** In the present case, the claimant-respondent has adduced evidences that the land involved in the Refernce Case is purchased by the claim-respondent through two sale deeds Ext. 1(a) and 1(b) situated near village road. The claim-respondent has filed two certified copy of the sale deeds Ext. 1(c) and 1(d). Ext. 1(c) clearly shows that the land of Mouja Pathra under Municipal Nagar Panchayat, area 3.9 decimal, was sold at Rs. 2,00,000/- on 15.09.2011, which comes to Rs. 51,282.05 per decimal. The nature of the land sold through Ext. 1(c) is residential. Through Ext. 1(d) 2 decimal of residential land was sold at the rate of Rs. 1,05,000/- i.e. at the rate of 52,500/- per decimal. The sale deed is dated 10.10.2011. The Land Acquisition Sub-Judge has wrongly noted that these sale deeds are after the date of acquisition of the land acquired by the department on 01.07.2011. From the record of the case, it transpires that *vide* Declaration No. 1753 dated 27.09.2011, published at page 01-07.12.2011, part -II of the Zila Gazatte of Banka, the land was acquired. Apparently, these sale deeds are much before acquisition of the land acquired by the department. Moreover, the Government of Bihar has also fixed the rate of residential land at the rate of Rs. 52,325/- per decimal of Mouza Pathra Ward No. 4/9. The learned Land Acquisition Judge has fixed the rate as residential land and Ext. 1 to 1(b) are held as residential inside and fixed the market value at the rate of 50,000/- per decimal. The State of Bihar did not file any objection and no witness was examined on behalf of the State of Bihar.

**15.** Considering the evidences and material on record, the Court is of the view that the lands acquired in the present case are in the nature of residential inside. The learned Court below therefore, rightly relied upon the Exts. 1 to 1(b) as residential inside.

**16.** Learned counsel the appellant has not raised any objection with regard to the rate fixed by the Government at the rate of Rs. 52,352/- as the circle rate of the locality in question.

**17.** Considering the evidence adduced by the applicant and after perusing the impugned judgment, I am of the view that the learned lower Court has rightly allowed the application under reference and I do not find any irregularity in the judgment and Award dated 04.07.2014 passed by the learned Acquisition Judge, Banka, in Land Acquisition Case No. 10 of 2013 arising out of Land Acquisition Reference Case No. 10 of 2012.

**18.** In the result, I find no merit in this appeal and, accordingly, this appeal is dismissed.

**19.** In the facts and circumstances, the parties shall bear their own costs.

**(Khatim Reza, J)**

***Shanu,Prabhat/-***

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | N/A |
| **Uploading Date** | 12.10.2023 |
| **Transmission Date** | N/A |