IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.237 of 2013

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Surya Narayan Poddar, S/o late Dhaneshwar Poddar at Barinagar (Karhagola) Police Station Barari, Dist. Katihar, Presently residing at 303, Shyam Kishori Homes,Frazer Road, Police Station Kotwali, Patna-1.

... ... Claimant- Appellant

Versus

1.The State Of Bihar
2. The Chief Engineer, Flood Control Division, Govt. of Bihar, Purnea.
3. The Superintending Engineer, Mahananda Circle P.O. B.M.P. Katihar, Dist. Katihar.
4. The Executive Engineer, Flood Control division, Karha Gola (Barari) PO Guru Bazar Dist. Katihar
5. The District Magistrate, Katihar.
6. The District Land Acquisition Officer, Katihar, P.O. & Dist. Katihar.

... ... Defendants- Respondent/s

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with

FIRST APPEAL No. 106 of 2014

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1. The State Of Bihar Through Collector, Katihar
2. The Collector of Katihar, District - Katihar.
3. The Executive Engineer, Flood Control Division Karhagola Barari, P.O. - Guree Bazar, Katihar.
4. The Superintending Engineer, Mahananda Circle, P.O. - B.M.P. Katihar, District - Katihar.

... ... Appellant/s

Versus

Surya Narayan Poddar son of Dhaneshwar Poddar resident of Village - Barinagar, P.O. - Guru Bazar, Police Station - Barari, District - Katihar at present residing at Mohalla - Babhantoli, P.O. - Mahendru, Town and District - Patna.

... ... Respondent/s

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Appearance :
(In FIRST APPEAL No. 237 of 2013)
For the Appellant/s : Mr. J. K.Verma , Advocate
Mr. Anjani Kumar, Advocate
Mr. Surya Nararyan Poddar (In person)
For the Respondent/s : Mr. K.P. Gupta, GP-10 with
Mr. Virendra Kuar, AC to GP-10
(In FIRST APPEAL No. 106 of 2014)
For the Appellant/s : Mr. K.P. Gupta, GP-10 with
Mr. Virendra Kuar, AC to GP-10

For the Respondent/s : Mr. J. K.Verma, Advocate
Mr. Anjani Kumar, Adv.
Mr. Surya Nararyan Poddar (In person)

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date :05-04-2024

Heard learned counsel for the appellants and learned counsel for the respondents in both the appeals.

2. The present two appeals arise out of the judgment passed in a Reference Case bearing L. A. Case No. 02 of 2006, decided on 31.05.2013 by the learned Sub Judge-1st- cum- Land Acquisition Judge, Katihar (hereinafter referred to as the 'Land Acquisition Judge'), filed under Section 18 of the Land Acquisition Act 1894 (hereinafter referred to as 'the Act'). First Appeal No. 237 of 2013 has been filed by the claimant-appellant for enhancement of compensation amount whereas, the State of Bihar has filed First Appeal No. 106 of 2014 against the said judgment dated 31-05-2013 for excessive value of compensation amount whereby the learned Land Acquisition Judge has awarded compensation for 137 decimals of land and the same shall be multiplied with 2000 per decimals and this calculated amount shall be added by 50% of the entire amount and on this net amount 50% solatium shall be added as per *Bihar Bhu Arjan Punha Sthapana Ebam Punarwas Niti, 2007* and on this calculated amount 12% rate of interest shall be

payable since the date of acquisition i.e.,15-06-2000 till 14-06-2003. Thereafter, OP shall also be liable to pay the interest on excess compensation as per Section 28 of the Act at the rate of 15% for one year i.e., from the date of award dated 14-06-2003 and for subsequent period he shall pay interest on such excess compensation at the rate of 9% till the date of realization. It is further held that the applicant is also entitled for damages as per Section 5 of the Act for wheat crop standing over the suit land. Both the aforesaid appeals are heard together and are being disposed of by common judgment.

3. The fact of the case is that the Government of Bihar acquired land for construction of a '*Bandh'* in the District of Katihar, near Ganga-Darjiling Pitch Road. The appellant owned and possessed 3 acre 96 decimals of lands of plot no. 5434 (2 acre 9 decimals) and plot no. 5439 (1 acre 87 decimals), pertaining to khata no. 780 in the village -Barinagar, P.O. Guru Bazar, Block Barari, District Katihar. It is contended that in respect of aforesaid project without any notification for acquisition or proceeding under the Act, 2 acre 20 decimals lands of plot nos. 5434 and 5439 of appellant out of his total lands of aforesaid plots pertaining to khata no. 780, were illegally taken possession by the State on 15 May, 2000 and

some time thereafter, the construction work started, which led to filing of CWJC No. 6811 of 2002 by the appellant on 24.06.2002 with the grievance that his lands have been taken over without any land acquisition proceeding and payment of compensation. After filing of aforesaid writ petition, a notification under Section 4 of the Act was published on 28.06.2002 for acquisition of aforesaid lands to justify the illegal taking of possession of the land before the Hon'ble court. This Court thereupon intervened in the matter and took a serious view and by order dated 11.09.2002 (Ext. 5) held that the respondent authorities have illegally taken over possession of appellant's land and completed construction work without following the procedure prescribed under the Act. This Court had found it as a fact that the acquisition is made in ordinary process and special/emergency procedure of Section 17 has not been resorted to and while expressing strong displeasure about such arbitrary action, this Court directed the Collector of the District to complete the land acquisition proceeding and determine the compensation having due regard to Section 23 of the Act and ensure full payment to the appellant within a period of 03 (three) months and further since the possession was taken without following procedure of law which deprived the appellant of his right to file objection in terms of Section 5A of the Act and possession has been illegally taken, it was further directed to pay special damages to the appellant in terms of Section 5 of the Act and directed the respondent to report compliance of order dated 11.09.2002 by filing supplementary affidavit. Thereafter, by order dated 29.07.2003 (Ext. 5/A) this Court did not approve the compliance of its earlier order dated 11.09.2002 as tried to be contended by the respondent State authorities and further observed that the special damage to be awarded under Section 5 of the Act was granted because the appellant's land was taken over without following procedure as envisaged under Sections 4 to 16 of the Act, which has been misunderstood by the authorities by granting mere Rs. 2000/- for standing crops. Thus, this Court directed to pay special damage under Section 5 of the Act for such unauthorized action and taking of possession depriving appellant of his right of hearing and objection and further directed to measure the lands in presence of appellant as the authorities took a stand that they have taken possession and are seeking to acquire only 1 acre 36 decimals of lands of plot no. 5434 (83 decimals) and plot no. 5439 (53 decimals) as against the claim of appellant that 2 acre 20 decimals lands are sought to be acquired and directed to reassess the compensation payable to the appellant and make payment thereof with interest promptly within 03(three) months from the date of submission of the application in accordance with law. It is further case of the applicant-appellant that during course of measurement, it transpired to the appellant that actually 1.76 acres of lands of plot no. 5434 (1 acre 26 decimals) and plot no. 5439 (53 decimals) was sought to be acquired although the authorities somehow kept the appellant in dark and actually got him to sign the map which showed acquisition of 1.36 acres of land. Ultimately, notification under Section 6 of the Act was made on 08.01.2003, and the award was made on 14.06.2003 in L. A. Case no. 01 of 2002-03. The writ petition was finally disposed of by order dated 16.02.2006 (Ext. 5/D) giving liberty to the appellant to file an application for reference under Section 18 of the Act before the Collector within 01 month against the order dated 28.01.2006 rejecting the objection of the appellant and the award dated 14.06.2003, who shall refer the matter to the Civil Court without delay for adjudication. On reference under Section 18 of the Act, L.A. Case No. 02 of 2006 was started on 06.03.2006. The evidences were adduced by both the parties and upon hearing the said case was decided on 31.05.2013. Against the aforesaid judgment, the appellant preferred First Appeal No. 237 of 2013 for enhancement of compensation and First Appeal No. 106 of 2014 was filed by the State for reducing the compensation amount.

4. After hearing the parties and scrutinizing the materials on record as well as evidence adduced by the parties, the Land Acquisition Judge has set aside the compensation at the rate of 56,600/- per acre (Rs. 566/- per decimal) and consequently the award of Rs. 76,976/- for the entire acquired lands measuring 1.36 acres. The reference court has although taken into consideration the MVR of Rs. 8,000/- per decimals of the vicinity lands and the said valuation list is marked as Ext. 3, but the learned Court below without considering the aforesaid valuation of the Government, fixed the rate at Rs. 2,000/- per decimal and calculated the compensation on that basis whereas, the appellant claimed the compensation at the rate of Rs. 11,000/- per decimal regarding the land situated in the same vicinity and the sale deeds in support thereof are marked as Exts. 9, 9/A, 9/B, 9/C, 9/D and 9/E. The learned Court below has observed that those lands of vicinity through Ext. 9 series have been sold for residential purposes and in that view of the matter, it is quite apparent that the lands of appellant being also in the same vicinity, undisputedly, has potential value of being

residential land. The learned Court below overlooked the maps of the concerned area marked as Exts. 1 and 2. The Ext. 2 shows the nature of uses of lands in the vicinity of the present lands in question. Ext. 2 proves that a pitch road, namely, Ganga-Darjiling Road is situated in the vicinity of the plots. There are residential houses, shops, Panchayat Bhawan, Office of Agriculture Department etc., situated in the vicinity of the plots which clearly establishes that the lands are situated near Bazar and residential accommodations, and as such, the rate list of MVR (Ext. 3) is fully applicable and the learned court below has failed to consider and apply Exts. 1 and 2. Ext. 9 series is the sale deeds by which the lands in vicinity are being sold in small portions for residential purposes etc. upon which learned court below also held, the nature of lands becomes residential-cum-commercial and Ext. 3 providing rate of Rs. 8,000/- per decimals was fully attracted and even the court below did not discard it, but arbitrarily without any basis, has given a valuation of Rs. 2,000/- per decimals on its assumptions. It is further contended that this Court has approved the application of the rate fixed by the government i.e. MVR for calculating compensation in the case of ***Acquisition Officer vs. Sudha Devi*** reported in ***2024(1) BLJ 272***. It is further contended that the government having fixed the rate in form of MVR cannot give compensation at a lesser rate and as such in any event the compensation could not have been paid at a rate lesser than Rs. 8,000/- per decimals and the learned court below has erred in granting Rs. 2,000/- per decimal.

5. Learned counsel for the appellant submitted that in the present case the court below should have granted compensation by relying upon the various sale deeds *vide* Ext. 9 series, especially, when learned court below itself found that the lands of those sale deeds are situated in the vicinity of the lands in question. Reliance has been placed in the case of ***Mehrawal Khewajitrust (Regd.) Faridkot & Ors. v. State of Punjab & Others*** reported in ***AIR 2012 SC 2721***. The Hon'ble Apex Court has held that the highest should be considered and accepted having regard to compulsory nature of acquisition and the claimant should get the highest compensation because he is being deprived of his property. Thus, Ext. 9 series which contains 6 sale deeds out of which rate in Ext. 9/A and 9/D is Rs. 12,000/- per decimals whereas, in Ext. 9/C it is Rs. 11,728/- per decimals and in Exts. 9 and 9/E the rates are Rs. 9,382/- and Rs. 9,500/- respectively, and as such, the highest exemplar being Rs. 12,000/-, the claim of appellant of Rs. 11,000/- per decimals

should have been granted by the learned court below. Reliance has been placed in the case of ***R. Saragapani (Dead) through L.Rs. v. Special Tahsildar Karur- Dindigul Broadguage Line*** reported in ***2011 AIR SCW 6100*** wherein the Hon’ble Apex Court has held that in absence of other exemplars the sale of small portions of lands can be relied to determine compensation. For determining the value, on the basis of sale deed of vicinity executed one or two years prior to Section 4 notification, the Hon'ble Apex Court has held that rule of escalation of the land price evolved by the Hon'ble Supreme Court is to be applied so as to there should be minimum increase of 10% to be added to the price of the exemplar, in case the sale is prior to notification of Section 4 of the Act. Date of Ext. 9 series is hereunder:-

(i) Ext. 9/D is sale deed dated 02.11.2001

(ii) Ext. 9/C is sale deed dated 24.11.2000

(iii) Ext.9/E is sale deed dated 26.04.2002

(iv)Ext. 9/A is sale deed dated 05.11.1998

6. The notification under Section 4 of the Act was issued in June, 2002 whereas, the possession of the appellant’s land was taken much prior to notification under Section 4 of the Act in May, 2000.

7. Learned counsel for the appellant further submitted that the appellant is entitled for grant of additional compensation of 50% on market value. It is submitted that the present policy of 2007 was, in fact, made under Land Acquisition Act, 1894 and its benefit should be made available to all the awards which has not attained finality on 19.02.2007. 50% additional amount has to be added in the market value in view of Bihar Land Acquisition (Restoration and Rehabilitation) Policy, 2007, which is envisaged in Clause 1 of aforesaid policy with illustration (II) (Ka) and the aforesaid provision of policy being a beneficial policy intended to benefit those whose lands are sought to be acquired compulsorily, the same has to be construed in favour of the appellant/claimant for whose benefit policy has been made and if two views are possible, the policy must be given retrospective effect / operation to benefit not only the persons in whose case award has not been prepared in view of clause 5 but to all those claims whose award has not attained finality on 19.02.2007 when policy came into effect. It is submitted that the validity of award is still sub judice before the statutory forum. The beneficial nature of policy was made for providing adequate compensation to persons whose lands are acquired compulsorily and they should be given liberal

construction and be interpreted for the benefit of the claimants also whose lands are acquired but the award has not attained finality keeping in view, the ultimate object of the policy. Reliance has been placed in case of ***Bangalore Turf Club Limited vs. Regional Director, Employees' State Insurance Corporation and its analogous cases*** reported in **2014 (9) SCC 657** at paragraph nos. 16, 19, 20, 26, 28, 29, 30 and 31. Learned counsel for the appellant further submitted that learned court below has rightly applied the 2013 policy in the present case.

8. Learned counsel for the appellant further submits that it is not open for the State Government to contend that the policy was not applicable and thus the main attention of F.A. No. 106 of 2014 is not substantive. The provision of Clause 5 read with the object of the policy has to be applied for the benefit of every such claimant whose award has not attained finality and still sub judice before statutory forum on 19.02.2007 by giving the provision retrospective effect in true sense rather than confining its benefits only to one class whose awards has not been passed and deny it to others whose awards are passed but they have been unable to receive the fruits of the award and proper compensation due to pendency of litigation before statutory forum and the award and its validity is still sub judice on

19.02.2007 and has not attained finality. It is submitted that the possession has been taken without any proceeding even though urgency provision was not invoked and it was an ordinary acquisition proceeding, due to intervention of this court, award was prepared hurriedly. Considering the facts and circumstances of the present case, this court has permitted reference case to be filed for deciding the correctness and legality of award pursuant thereto. The reference case was filed and adjudicated during which this beneficial policy of 2007 came into operation and as such this was a special case where from stage to stage, the intervention of the Hon'ble High Court was required for payment of proper compensation and even this court considered earlier award to be not acceptable and directed to prepare fresh award. In such circumstances, when issue of proper determination of compensation through award is still sub judice, the benefit of the policy should be extended to the appellant also and has rightly been extended by the learned court below to the appellant by the judgment impugned which requires no interference on this point. The benefit of 2007 policy i.e., by adding 50% to the market value so as to determine present market value is fully applicable and has been rightly applied.

9. Learned counsel for the appellant submits that benefit

of Section 23 (2) of the Act has rightly been applied before the lower appellate court. He further submits that the claimants would be entitled to interest on solatium as well as on additional market value also and not only on market value and as such the compensation has to be computed in accordance with such principle. Reliance has been placed on **AIR 2001 SC 3516** (Constitution Bench) followed by **2007 (2) SCC 341** paragraph 17 and **AIR 2012 SC 2721** para 18. The learned lower court has wrongly granted interest at the rate of 15% for the first year and at the rate of 9% for all subsequent years till realization. Section 28 is otherwise which provides grant of interest at the rate of 9% for the first year and at the rate of 15% for all subsequent years till final payment is made. For obtaining stay order from the High Court on 25.06.2019 the appellant withdrew the amount under the order of the High Court on 07.10.2022, although the correct amount of calculation is yet to be determined and the interest as per Section 28 of the Act is to be paid when this Court finally determines the proper compensation in accordance with law.

10. In the present case, this court *vide* order dated 29.07.2003 passed in CWJC No. 6811 of 2002 (Ext. 5a) has expressly directed for reassessment of compensation after

disapproving earlier award and directed to make prompt payment thereof with interest.

11. Learned counsel for the appellant further submits that damages for taking out earth/soil from the rest lands of the appellant and rendering the rest lands useless and also for severance of lands of appellant, compensation should be paid and the interest should be granted under Section 28 of the such award amount of compensation under this head. A special damage under Section 5 of the Act was granted to the appellants by this court in CWJC No. 6811 of 2022. It is submitted that despite order of this court (Ext. 5 and 5A) which has attained finality no special damage for taking possession without initiating land acquisition proceeding and depriving right to file objection under Section 5A as held by order dated 29.07.2003 (Ext. 5A) read with order dated 11.09.2002 (Ext. 5) has been awarded till date which the appellant claim to be Rs. 50,00,000/- in reference cases but in any case eventually the said special damage for withholding compulsory right to property granted to appellant should be any reasonable amount which may be determined by this Court in the facts of the case.

12. By notification only 1 acre 36 decimals lands were acquired out of total 3 acre 96 decimals land of the appellant in

the middle of the aforesaid block to the lands of the appellant and the rest portion of the lands measuring 2 acres 60 decimals has been rendered practically useless as in the process of construction of *Bandh* all along 3 feet to 11 feet deep ditch has been dug by taking out soil from the rest lands of the appellant on either side of the "*Bandh*" and the same has been used in construction of the *Bandh*. The learned Trial Court has accepted the grievances of the appellant but surprisingly no compensation has been awarded for the same. Number of witnesses have supported the case of the appellant. The appellant claimed Rs. 24,20,000/- as compensation in respect of the aforesaid claim which has not at all been granted even though the learned Reference Court found that the soil has been dug out from the remaining lands of the appellants.

13. Per contra, learned counsel appearing on behalf of the respondent in F.A. No. 237 of 2013 and appellant in F.A. No. 104 of 2014 submits that the learned Trial Court has wrongly fixed the price of the land as Rs. 2000/- per decimal while the court below has disbelieved the evidence produced by the applicant for enhancing the rate of compensation amount and fixed the rate of Rs.2000/- per decimals without any basis. It is further submitted that learned court below has wrongly applied

the provision of *Bihar Bhu Arjan Punha Sthapana Ebam Punarwas Niti, 2007* in the present case because the provision has come into effect from 19.02.2007 while the present case related to the acquisition of the land and payment of award money as per award prepared by the learned land acquisition officer to the land holder was made much before 19.02.2007, therefore, the aforesaid provision is not applicable. The compensation awarded by the learned Collector was fully justified, adequate and proper requiring no modification.

14. Learned counsel for the State submitted that the allegations regarding measurement of the acquired land also stand falsified, measurement was made by the *Amin* of both parties in presence of land owner and other several persons including officials of Flood Control Division (F.C.D.) on 15.12.2003 and on 17.12.2003, the area of acquired land was found to be 1.36 acres only and measurement report was prepared which was duly signed by all the persons including the land owners. It is submitted that the learned Collector after verifying the said statements and quality and location of the acquired land, price was assessed by the land acquisition authority and thereafter compensation amount with all admissible interest, solatium as provided under the Land

Acquisition Act,1894 was all just, proper and adequate.

15. In view of the above rival contentions of the parties in both the aforesaid appeals, following points arise for consideration in these appeals:-

(i). Whether the land acquisition authority acquired land of the land holder (appellant) of F.A. No. 237 of 2013 admeasuring 1.36 acres or 1.76 acres?

(ii). Whether valuation of acquired land fixed by the Reference Court is just and proper?

(iii). Whether land owner is entitled to get compensation under Sections 5 and 23 of the Act as well as in view of the order passed in CWJC No. 6811 of 2002 ?

(iv). Whether the appellant is entitled for payment of extra amount of compensation as per the order of this court dated 29.07.2003 passed in CWJC No. 6811 of 2002 (Ext. 5/A) ?

(v). Whether damages over and above of Section 23 of the Act in the light of High Court's order is admissible to the appellant ?

(vi). Whether the policy of *Bihar Bhu Arjan Punha Sthapana Ebam Punarwas Niti, 2007* is applicable to the present case ?

16. These First Appeals relates to Plot bearing Plot No. 5434 appertaining to Khata No. 780, covering an area of 2 acres 9 decimals and Plot No. 5439 appertaining to Khata No. 780 covering an area of 1 acre 87 decimals i.e. total area of 3 acres 96 decimals situated at Mauza Barinagar (Karhagola), District-Katihar.

17. In terms of Section 4 of the Land Acquisition Act, 1894, a notification has been published in the daily newspaper on 30.06.2002 which has also been published in the District Gazette dated 01.07.2002 for an area covering 0.83 decimals and 0.53 decimals of Plot Nos. 5434 and 5439 respectively totalling an area of 1.36 acres. It is admitted fact that the said land of the applicant/appellant was taken over on 15.05.2000 without notification under Section 4 of the said Act.

18. After taking possession of the said land (15.05.2000), the appellant-land holder had challenged the taking over possession without initiating the proceeding under the Land Acquisition Act by filing CWJC No. 6811 of 2002 and this Court observed that "the respondent authorities have taken over the possession of the land of the petitioner and have completed the construction without following the procedure prescribed by the Act. This has precluded the petitioner from raising his

objection in terms of Section 5(A) of the Act which, *inter alia*, takes within its sweep the objection not to initiate the proceeding to acquire the land." *Vide* order dated 09.11.2022, this Court had directed the Collector to complete land acquisition proceeding and determine the amount of compensation after taking into account the circumstances mentioned in Section 23 of the Act and in accordance with law and ensure full payment to the petitioner within a period of three months from the date of production and or receipt of a copy of this order and the petitioner was also permitted to file an appropriate application under Section 5 of the Act before the Collector of the District, who shall complete the process within three months from the date of submission of the application. *Vide* order dated 29.07.2003 passed in CWJC No. 6811 of 2002 several directions were given to the respondent authorities with regard to gross damage to the property apart from the crops.

19. On the basis of the direction given by this Court in the aforesaid case land acquisition proceeding was initiated and award was prepared determining the compensation for the appellants' land at slightly over Rs. 1 lakh. The Hon'ble Court *vide* order dated 16.02.2006 has observed that if appellant has still left with any grievance, such as, non-consideration of his

objection under Section 5 of the Act and fixation of very low valuation of the land in question it is open for him to make an application for reference to Civil Court. In view of the objection expressed on behalf of the petitioner, this Court *vide* order dated 11.03.2005 passed in said writ case, directed the Collector, Katihar to re-consider the matter and to prepare Award afresh and thereafter following the aforesaid order, the Collector has re-considered the matter and finally passed an order dated 28.01.2006 by which he has rejected the objection raised by the petitioner/appellant with regard to valuation of the land. On the basis of afresh valuation *khatiyan,* he came to find and hold that the compensation amount fixed in the previous Award was in fact on the higher side.

20. In view of the aforesaid order dated 28.01.2006, this Court disposed of the said writ application with the observation that in case the petitioner files an application for reference under Section 18 of the Land Acquisition Act within one month from today, the Collector shall refer the matter to the Civil Court without any delay.

21. The appellant filed an application under Section 18 of the Land Acquisition Act before the Collector, who referred the matter to the Civil Court. The said reference case bearing L.A.

No. 02 of 2006 was started on 06.03.2006 and evidences were adduced by both the parties and upon hearing the arguments, the said case was decided on 31.05.2013.

22. **Point No (i):-** On analyzing the materials on record and submission of the parties, it is apparent from the Gazette notification dated 01.07.2002 and trace map Exhibit-B(1) that in Plot No. 5434, 0.83 decimals out of 2.09 acres and in Plot No. 5439, 0.53 decimals out of 1.87 acres land were acquired.

23. The grievance of the appellant, is that, the State authority took possession of 3.96 acres from both the plots and notified only 1.36 acres. This aspect of the matter could not be decided in the present case as there is no any document or measurement book to show that the excess land was in possession of the State authority. Remedies are available to the appellant with regard to the said grievance. The State authority is entitled for 1.36 acres only. The appellant has right to carve out his remaining land from acquired land i.e. 1.36 acres land. This point goes against the appellant and in favour of respondent in First Appeal No. 237 of 2013.

24. **Point No. (ii):-** The materials placed before the Land Acquisition Judge, which have been marked as Exhibit. 9 series

contains six sale deeds out of which, rate in Exhibits 9/A and 9/D is Rs. 12,000/- per decimals whereas, in Exhibit 9/C it is Rs. 11,728/- per decimals and in Exhibits 9 and 9/E the rates are Rs. 9,382/- and Rs. 9,500/- respectively whereas, the Reference court has although taken into consideration the MVR Exhibit- 3 of Rs 8,000/- per decimals of the vicinity which has been fixed by the Registrar for the purposes of registration of the land, while by Exhibit C- sale report submitted on behalf of the Land Acquisition Officer, it shows that in none of the sale deeds the rate of the land of the locality exceed Rs. 1,50,000/- per Acre. The learned Land Acquisition Judge has held that *vide* Exhibit 9 series, it appears that some of the vicinity land have been sold at higher price, but for a small fraction of the suit land bearing area 10 dhurs, 1 katha, 4.5 decimals, 1 kari, 2 decimals etc. These lands of the Mouza- Bari Nagar have been sold for the purposes of residential and not for agriculture purpose and so these price cannot be compared with the price of the land for cultivation purposes. In that view of the matter, it is apparent that the lands of the appellant being undisputedly situated in the same vicinity have potential value of being residential lands. Exhibit 2 shows that the land in question is situated adjacent to Ganga-Darjeeling Road and also the residential houses, shops, Panchayat Bhavan, Office of the Agriculture Department etc., are situated in the vicinity of the plots.

25. The core question to be decided in the present appeals is as to what would be the fair and just compensation so as to do justice between the parties i.e., to say that the land holders may get a fair and reasonable amount of compensation for losing their land and at the same time balancing the state exchequer by not holding an amount which may be in excess of market value so as not to put an additional burden on the State.

26. This aspect of the matter has been considered in the case of ***Central Warehousing Corporation vs Thakur Dwara Kalan Ul- Maruf Baraglan Wala (dead) & Ors.*** reported in ***2023 SCC OnLine SC 1361*** with respect to determination of just compensation. Reliance has been placed upon a judgment passed by the Hon'ble Apex Court in the case of ***Karnataka Urban Water Supply and Drainage Board and others v K.S. Gangadharappa and another*** reported in ***(2009)11 SCC 164.*** Relevant paragraph Nos. 8 and 9 of the said judgment are quoted herein below:

> "*8. "16. '6. Where [a] large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion. Reference in this context may*

be made to three decisions of this Court in Collector of Lakhimpur v. Bhuban Chandra Dutta, Prithvi Raj Taneja v. State of M.P. and Kausalya Devi Bogra v. Land Acquisition Officer.

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate……….

8. In Suresh Kumar v. Town Improvement Trust, in a case under the Madhya Pradesh Town Improvement Trusts Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in Vyricherla Narayana Gajapatiraju v. Revenue Divl. Officer that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value disinclination of the vendor to part with his land and the urgent necessity of the *purchaser to buy it must alike be disregarded; neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification under section 4(1). Similarly, section 24 of the Act enumerates the matters which the Court shall not take into consideration in determining the compensation. A safeguard is provided in section 25 of the Act that the amount of compensation to be awarded by the Court shall not be less than the amount awarded by the Collector under section 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There* *is bound to be some amount of guesswork involved while determining the potentiality.*

9. It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under section 4(1);

(ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages."

27. This aspect of the matter has also been considered by the Hon'ble Supreme Court in the case of ***Viluben Jhalejar Contractor (dead) by L.RS. v. State of Gujarat*** reported in (2005) 4 SCC 789. Relevant paragraph Nos. 20 and 21 of the said judgment is quoted herein below:

"2*0. 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-a-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:*

Positive factors	*Negative factors*
(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-a-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	

21. "Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price."

28. The appellant has relied upon a decision in the case of

Mehrawal Khewaji Trust (Registered), Faridkot & Others v. State of Punjab & Others reported in ***AIR 2012 SC 2721*** wherein, the Hon'ble Supreme Court has held that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the Authority/ Court for fixing fair compensation. Reliance has been placed in the case of ***State of Bihar through Land Acquisition Officer v. Sudha Devi*** reported in ***2024(1) BLJ 272*** wherein, this court has approved the application of rate fixed by the Government i.e., MVR for calculating compensation. The Government having fixed the rate in form of MVR cannot give compensation at a lesser rate, and as such, in any event, the compensation could not have been paid at the rate of lesser than Rs. 8000/- per decimal.

29. Considering the aforesaid decisions of the Hon'ble Supreme Court as well as decision of this Court, the Government Valuation Report (Exhibit- 3) of the same locality by which the Government has fixed valuation at the rate of Rs. 8,000/- per decimal is just and proper in the present case. The

learned Land Acquisition Judge has failed to consider the Government Valuation Report i.e. MVR, which is available on record as Exhibit 3. Accordingly, Point No. (ii) is decided in favour of the claimant-appellant and against the State-respondent.

30. **Point Nos. (iii), (iv) & (v)** :- It is admitted fact that the land in question was taken over without following the procedure contemplated under Sections 4 to 16 of the Act and depriving the claimant-appellant of the opportunity of objection. The possession of the land in question was taken over by the State on 15-05-2000 and construction of the '*Bandh'* was made prior to the notification under Section 4 (1) of the Act which was published in the newspaper on 28-06-2002 and also has been published in the District Gazette on 01-07-2002. These acts were outrageous acts, grossly violative of the rule of law. In view of the direction given in Exhibits 5 and 5/A, (orders passed in CWJC No. 6811 of 2002), the claimant- appellant is entitled to extra amount of compensation under Section 5 of the Act and the special damage for violating statutory right to property. The State authority took over the possession on 15-05-2000 without any authority.

31. The appellant suffered mental harassment and

monetary loss due to illegal act of the State authority and the appellant was dispossessed from the property in question for about two years. Not only the aforesaid arbitrariness of the authority, 1 acres 36 decimals land were acquired out of total 3 acres 96 decimals lands in the middle of the aforesaid block of the lands and rest portion of the lands measuring 2 acres 60 decimals has become infertile as in the process of construction of *Bandh,* all along 3 feet to 11 feet deep ditch has been dug out by taking out earth/soil from the rest lands of the appellant-claimant on either side of *Bandh* and the same has been used in construction of *Bandh.*

32. This aspect of the matter has been proved by the witnesses of the plaintiffs. Moreover, learned Reference Court found that the earth has been taken out from the remaining lands of the appellant. Section 23 of the Act expressly deals with this aspect while determining the compensation. Section 23, 'thirdly' and 'fourthly' (under different Clauses of the Act) prescribes for grant of compensation due to damage sustained by the person interested.

33. Reliance has been placed in the case of ***Smt. Triveni Devi Vs. Collector of Ranchi*** reported in ***1972 PLJR 509 SC,*** wherein the Hon'ble Apex Court has held that when a portion of

the land is acquired and a large portion left out there would be a diminution in the value of the land that is left out for which some compensation has to be allowed.

34. Considering the aforesaid facts and circumstances as discussed above, as also in view of the decision rendered by the Hon'ble Supreme Court, I am of the view that the appellant is entitled to just compensation under Section 5 of the Act. The respondent Authorities have taken possession of the land of the appellant and have completed the construction without following the procedure prescribed by the Act and depriving the appellant from the possession for about two years without any legal authority. Therefore, the appellant-claimant will be entitled to Rs. 5 lakhs cost of damages for two years unauthorized occupation by the State authorities and Rs. 10,000/- damages for taking out earth/soil from the rest of the lands of the appellant in addition to compensation given by the learned Land Acquisition Judge, Katihar under Section 5 of the Act in view of the loss and damage to the standing crops etc.

35. **Point no. (vi):-** The proceeding under the Land Acquisition Act has not been conducted in accordance with law which has been found by this Court in CWJC No. 6811 of 2002 (Ext. 5 series) and, in fact, possession of the land was taken

before two years of the notification under Section 4 of the Act. In fact, the possession has been taken without initiation of any proceeding even though urgency provision was not invoked and it was an ordinary acquisition proceedings. The writ petition was filed by the appellant before this Court on 24-06-2002. Thereafter, the concerned authority published the gazette notification on 01-07-2002 and due to intervention of the Hon'ble Court award was prepared hurriedly as an eyewash which was not accepted and fresh award was directed to be prepared and compensation was reassessed. This Court permitted reference case to be filed for deciding the correctness and legality of the award and pursuant thereto, the reference case was filed for adjudication during which this beneficial policy, namely, the policy of Bhu Arjan Punar Asthapan Ewam Punarwas Niti, 2007 came into operation, and as such, in special circumstances time to time this Court intervened and directed the authorities to pay proper compensation and payment of damages and also directed extra amount of compensation to be assessed and paid to the appellant because his lands were taken over without following the procedure contemplated under Sections 4 to 16 of the Act in view of Clause 1 of Bihar Land Acquisition Restoration and Rehabilitation Policy, 2007 read with illustration (ii)(ka) and the present policy being a beneficial policy intended to benefit those whose lands are sought to be acquired compulsorily, the same has to be construed in favour of the claimants for whose benefit the policy has been made and if two views are possible, the policy must be given retrospective effect to benefit not only the persons in whose case award has not been prepared in view of Clause 5 of the aforesaid Policy, but to all those claimants whose award has not attained finality on 19.02.2007 when the policy came into effect and the validity of award is still *sub judice* before statutory forum.

36. Reliance has been placed in the case of ***Bangalore Turf Club Limited (Supra)*** reported in ***(2014) 9 SCC 657.*** The policy being beneficial provision, its benefit should not be restricted to one class of person only whose award is not prepared on 19.02.2007, but its benefit should also be made available where the award has not attained finality and is still *sub judice* before statutory forum and the provision/policy has to be given retrospective effect and has been rightly applied by the learned Trial Court to the present case for the benefit of the appellant while deciding th*e* reference in the year 2013 when the policy was very much applicable. Accordingly, Point No. (vi) is also decided in favour of the appellant and against the

respondent- State authority.

37. Benefit of Section 23(2) of the Act while calculating the compensation, the market value has to be determined by adding 50% to the market value and thereafter the solatium of 30% has to be added to the said amount of market value plus solatium taken together as per Section 23(2) of the Act, which has been rightly decided by the learned Trial Court.

38. In view of the decision in the case of ***Sunder Vs. Union of India*** reported in ***AIR 2001 SC 3516*** **(Constitution Bench Decision)** followed by ***(2007)2 SCC 341*** and ***AIR 2012 SC 2721,*** the claimants would be entitled to interest on solatium as well as additional market value also and not only on market value and as such the compensation has to be computed in accordance with such principle.

39. The Learned Trial Court has wrongly granted interest under Section 28 of the Act by misreading the provision as the Court has granted interest at the rate of 15% for the first year and at the rate 9% for all subsequent years till realization while Section 28 is otherwise which provides grant of interest at the rate of 9% for the first year and at the rate of 15% for all subsequent years till final payment.

40. In view of the discussions made above, I find that the

learned Trial Court has failed to apply the Government valuation for the same vicinity of lands for providing appropriate compensation. Therefore, the judgment and Decree (award) dated 31-05-2013 passed by Sub-Judge-1st-cum Land Acquisition Judge, Katihar, in L.A. Case No. 02 of 2006, is modified to the extent mentioned above with regard to valuation of the land and claim as per Section 5 and 23 of the Act as well as direction given earlier by the Hon'ble High Court (Ext. 5 and 5A).

41. Accordingly, the F.A. No. 237 of 2013 is allowed and F.A. No. 106 of 2014 is hereby dismissed.

42. Office is directed to prepare decree in accordance with the findings recorded above.

(Khatim Reza, J)

Shyambihari,
Sankalp,
Prabhat/-

AFR/NAFR	NAFR
CAV DATE	06-02-2024
Uploading Date	19.04.2024
Transmission Date	N/A