



IN THE HIGH COURT OF ORISSA, CUTTACK

L.A.A. No.91 of 2019

Deputy Chief Engineer,
Khordha Road Bolangir
New B.G. Rail Link Project,
East Coast Railway, Bhubaneswar Appellant

-Versus-

Surath Maharath & another Respondents

**For Appellant : Mr. D.K. Sahu,
CGC**

**For Respondent No.1 : Mr. M.K. Dash,
Advocate**

**For Respondent No.2 : Mr. T.K. Biswal,
AGA**

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing: 03.09.2024 Date of Judgment: 19.09.2024

S.K. Mishra, J. This Appeal has been preferred against the Judgment dated 21.08.2019 passed by the Senior Civil Judge, Khordha in L.A. Reference Case No.49 of 2015, vide which the Court below allowed the claim of the Claimant (Respondent



Nos.1 in the present Appeal) and ordered for higher compensation.

2. The factual matrix of this Appeal is that, pursuant to notification dated 22.01.2013 (wrongly indicated as 21.02.2012) made under Section 4(1) of the Land Acquisition Act, 1894, shortly, 'the Act, 1894', an area of Ac.0.390 of land relating to Plot No.914 under Khata No.503 of Kisam-Sarad-Anajalasechita-1 of Mouza- Dabardhua in the district of Khordha belonging to the Claimant, having fruit bearing trees over the said land, was acquired for the purpose of Khordha Road-Bolangir New Broad Gauge Rail Link Project, Khordha. The Land Acquisition Officer, shortly, 'LAO', assessed the compensation @ Rs.88/- per decimal for Sarada Anjalasechita-I kisam of land (Rs.88,000/- per Acre) and value of trees at Rs.4,09,054/-, in total Rs. 6,61,951/- towards the value of land and trees, which the Claimants/Respondent No.1 received under protest. Thereafter, in a reference under Section 18 of the Act, 1894, which was registered as L.A. Reference Case No.49 of 2015, the referral Court, relying on the exhibited documents and judgements of the Supreme Court reported in AIR 2010 SC 1272 **(Thakur Kuldeep Singh (D) through LR and others**



Vs. Union of India and others) and in AIR 2013 SC 3654 **(Ashrafi and others Vs. State of Haryana and others)**, vide order dated 21.08.2019, allowed the claim of the Claimant and ordered for enhanced compensation of Rs.58,500/- @ Rs.1,50,000/- per acre for acquisition of Sarada Anjalasechita-I kisam of land and Rs.6,50,000/-, instead of Rs.4,09,054/-, for loss of trees and ordered for interest, solatium and other benefits as per the statute. Hence, this Appeal.

3. The Appeal has been preferred basically on the grounds that the Court below passed the order of enhancement of compensation in absence of any oral evidence so also relying on Ext. 5 & 5/a which is the bench mark valuation fixed for the sale of the land obtained from Sub-Registrar, Bolagarh, brushing aside the sale statistics from the year 2005-2012 as well as the report of the DFO and Assistant Director Horticulture. Further, the Court below enhanced the value of land and trees only on the basis of guess work.

4. Learned Counsel for the Appellant, reiterating the grounds agitated in the memorandum of appeal, submitted that the notification under section 4(1) of the Act, 1894 was



issued on 22.01.2013 (wrongly indicated as 21.02.2012) and the bench mark valuation was obtained on 13.07.2013 and thereafter, physical possession of the land of the Respondent No.1 was taken on 31.10.2013. However, the referral Court, while enhancing the compensation, took note of bench mark valuation report of Sub-Registrar, Bolagarh supplied to the Respondent No.1 in the year 2017 marked as Ext.5 & 5/a so also Sale Deed of the year 2005, marked as Ext.6 and applying the guess estimate, not only the price of the Sarada Anjalasechita-I land was enhanced to Rs.1,50,000/- per acre as against Rs.88,000/- per acre, but also, the value of the trees were enhanced from Rs.4,09,054/- to Rs.6,50,000/- on guess work. Hence, the impugned award passed by the referral Court deserves interference, being so done solely on guess estimate.

5. Though no such ground has been agitated in the memorandum of appeal, learned Counsel for the Appellant further submitted that the sale transaction under Ext.6 is a small piece of land and should not have been taken into consideration by the referral Court to enhance the compensation to Rs.1,50,000/- per acre, instead of Rs.88,000/-.



6. Learned Counsel for the Appellant further submitted that though the guess work is permissible, as per the settled position of law, such guess work should be reasonable to balance the equities and fix just and fair market value in terms of the parameters specified under Section 23 of the Act, 1894. But, in the present case, the referral Court ignored the said aspect while enhancing the compensation for the land so also for the acquired trees.

7. Per contra, learned Counsel for the private Respondent, drawing attention of this Court to RSD of the year 2005, marked as Ext.6, submitted that one Sudhanu Sekhar Pattnaik purchased a part of the suit land i.e. Plot No.1208, khata No.165 of Mouza-Dabardhua @ Rs.100/- per decimal (Rs.1,00,000/- per acre) whereas, the LAO, relying on the alleged bench mark valuation, erroneously valued the said land @ Rs.88/- per decimal. Hence, the referral Court, applying the guess estimate, so also relying on RSD of the year 2005, which was marked as Ext.6 on admission and the Bench Mark Valuation supplied to the Petitioner/ private Respondent in the year 2017, which was marked as Ext.5 & 5/a, rightly enhanced the compensation to Rs.1,50,000/-,



instead of Rs.88,000/- per acre for Sarada Anjalasechita-I
kisam of land.

8. That apart, the evidence led before the referral Court regarding the potentiality of the said land at the time of acquisition to be high valued land and was being used for gharabari purpose remained unchallenged. So far as fruit bearing trees standing over the said plot, P.W.1 specifically stated before the referral Court that in the report submitted by the Department Amin and Horticulture Department, the actual number of trees and their ages were suppressed. It was also deposed by the P.W.1 that the villagers of Belapadar and Rolasingh, whose lands are situated at a distance of about 100 meters from the land of the Respondent were awarded Rs.10,000/- per tree for the same type and same age of trees whereas, the Respondent No.1 was discriminated by paying less than Rs.1700/- per tree for the same type and same age of coconut trees. Thus, it was claimed that the Respondent No.1 is entitled to enhanced compensation of Rs.388/-per decimal for the acquired land so also Rs.10,000/- per tree, considering the actual number of coconut trees and other trees and the said evidence of the P.W.1 remained unchallenged during his cross-examination. Learned Counsel



for the Respondent No.1 further submitted that the referral Court should have enhanced the compensation more than what has been enhanced vide the impugned judgment. However, applying the principle of guess estimate, the referral Court has enhanced the compensation for acquisition of land so also the fruit bearing trees balancing the claim made by the present Respondent No.1 vis-à-vis the objection raised by the Appellant.

9. Learned Counsel for the private Respondents, relying on a recent judgment of this Court dated 28.08.2024 passed in L.A.A No.5 of 2011 (**Bholanath Sahay and others Vs. State of Orissa**), which was passed relying on the judgment of the Supreme Court reported in AIR 2011 SC 54 {**Radha Mudaliyar and others Vs. Special Tahsildar (Land Acq.), T.N.H Board and ors**}, further submitted that the basis to enhance the compensation was both Exts.5, 5/a & 6 and not only the bench mark valuation marked as Ext.5 & 5/a, which was communicated to the private Respondent in the year 2017.

10. Learned Counsel for the private Respondent further submitted that so far as Sarada Anajalasechita-1 kism of land, even if the RSD marked as Ext.6 is taken into



consideration alone, applying the rule of enhancement of compensation for the interregnum period i.e. from 15.01.2005 till the date of notification dated 22.01.2013, if minimum 10% is enhanced for the said period of 8 years, it would have been around Rs.1,80,000/- per acre. However, the referral Court, instead of doing so, applying the rule of guess estimate, has reasonably enhanced the price of the acquired land from Rs.88,000/- to Rs.1,50,000/- per acre and the differential value, by virtue of such enhancement of compensation, would be only Rs.58,500/-, as detailed in the concluding para of the impugned judgment. Similarly, the compensation for fruit bearing trees standing on the suit land was also enhanced reasonably instead of what had been claimed by the Respondent No.1-Claimant. Hence, there being no infirmity in the impugned judgment passed in L.A. Reference Case No. 49 of 2015, the appeal be dismissed directing the Appellant to implement the order passed by the referral Court within a stipulated period.

11. Admittedly, no rebuttal evidence was led by the Appellant before the referral Court (both oral as well as documentary) opposing to the prayer made for enhancement of compensation.



12. In **Radha Mudaliar (supra)** the Supreme Court held as follows:

*“12. Now, let us examine whether Exhibits A1, A4 and A5 satisfy the above-stated tests. They were admitted in evidence in accordance with law as they are genuine transactions and are the closest sale instances to the date of the notification as available on record and the land, subject-matter of the transaction, is quite similar to the acquired land and, in fact, it is from the same village. Of course, the area, stated in these sale instances, is comparatively much smaller in size than the acquired land. **The sale deed is dated 12.03.1984 while the notification under Section 4 was issued on 23.01.1985. Thus, there is a difference of nearly ten months between these two dates. The claimants would be entitled to the benefit of increase for this intervening period. Annual increase of 10% to 15% is normally allowed by the court where the record reflects increasing trend in the sale price of the land. This principle is often applied by this Court while determining compensation. Reference can be made to the judgments of this Court in ONGC Ltd. v. Rameshbhai Jivanbhai Patel [(2008) 14 SCC 745] : (AIR 2008 SC (Supp) 465) and Sardar Jogendra Singh (dead) by L.Rs. v. State of Uttar Pradesh [(2008) 17 SCC 133]. We have opted to apply the minimum increase possible because of the short intervening period between the execution of the sale deed and issuance of notification under Section 4. Consequence of the above addition would be that the value of the***



land in terms of Exhibit A4 as on the date of the notification under Section 4 would be Rs. 3,699/- per cent rounded off to Rs. 3,700/- per cent which, when reasonable deduction is applied, would give more or less the same rate of compensation as computed by us on the basis of Exhibit A1.”

(Emphasis Supplied)

13. On perusal of L.C.R, it is ascertained that vide Ext.6, which is the original RSD dated 15.01.2005, Sudhansu Sekhar Pattanaik purchased the land measuring Ac.0.055 decimal of land for a consideration amount of Rs.5,500/- @ Rs.100/- per decimal (Rs.1,00,000/- per acre) on 15.01.2005. Admittedly, the notification under Section 4(1) of the L.A. Act, 1894 for acquisition of land of the Respondent No.1 was made on 22.01.2013, which was notified in the Gazette on 06.02.2013, which is about eight years after such sale transaction made vide RSD marked as Ext-6. Had the rule of enhanced compensation for the interregnum period i.e. from the date of notification till 15.01.2005, been applied, the compensation would have been Rs.1,80,000/- per acre, as against Rs.1,50,000/- per acre, as has been held by the referral Court vide the impugned judgment.

14. That apart, so far as evidence with regard to number of fruit bearing trees, their species and age, which



was specifically stated by P.W.1 in his affidavit evidence, remained unchallenged during his cross-examination. Still the referral Court, instead of relying on the said admitted evidence on record with regard to valuation of the trees, applying the rule of guess estimate, enhanced the compensation from Rs.4,09,054/- to Rs.6,50,000/- only for loss of 250 number of coconut trees, 12 mango trees, 1 guava tree, 2 teak trees and 10 banana trees.

15. In **Special Land Acquisition Officer Vs. Karigowda and others** reported in AIR 2010 SC 2322, the Supreme Court held that the Court is entitled to apply some kind of reasonable guess work to balance the equities and fix just and fair market value in terms of the parameters specified under Section 23 of the Act, 1894.

16. On analysis of the impugned judgment, it is found that the referral Court, while applying the rule of guess estimate, has acted reasonably to enhance the compensation, as has been detailed above.

17. In view of the discussions made above, this Court is of the view that there is no infirmity or perversity in the



impugned judgment dated 21.08.2019 and the present Appeal deserves to be dismissed.

18. Accordingly, the Appeal stands dismissed, thereby confirming the judgment passed in L.A. Reference Case No.49 of 2015.

19. In view of the dismissal of the Appeal, the Appellant is directed to implement the Judgment dated 21.08.2019 passed in L.A. Reference Case No.49 of 2015 at the earliest, preferably within a period of four months from the date of production of the certified copy of this judgment.

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S.K. MISHRA, J.

High Court of Orissa, Cuttack
The 19th September, 2024 /Kanhua

Signature Not Verified
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