
(2008) 03 OHC CK 0043

In the Orissa High Court

Case No : First Appeal No"s. 11, 12, 13 and 14 of 1993

Achuytananda Pati

APPELLANT

Vs

Land Acquisition Collector

RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1), 4(1)

Citation : (2008) CLT 864 (Suppl CrI) : (2008) 1 OLR 802 Supp : (2008) OLR 864 (Suppl CrI)

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : Kishore Jena, A.K. Mohapatra and D.P. Dash, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sanju Panda, J.—The Appellant is the claimant in all the four cases. The claimant has filed these appeals against the award passed by the learned Sub-Judge, Second Court, Cuttack in L.A. Case Nos. 4, 5, 6 and 7 of 1990 in a reference u/s 18 of the Land Acquisition Act (hereinafter referred to as "the Act"). Since the lands acquired were under same notification and the claimant is same in all the appeals are taken together for hearing.

2. The lands of the Appellant-claimant have been acquired for construction Flood Embankment in the River Chitratpola in village Manikapur, P.S. Salipur in the district of Cuttack. The areas involved-in the aforesaid cases are Ac. 0.07 dec. of Bagayat Kissam, Ac. 0.13 dec. of Patita and Gharabari Kissam, Ac. 0.13 dec. of Baunsabari and Bari and Ac. 0.60 dec. of Patita and Biali land respectively. The Land Acquisition Collector has determined the market value of the land at Rs. 6,000/- per acre for all type of land and he has after taking into consideration the standing trees including the price of the land determined the compensation at Rs. 357.85 p., Rs. 642.86 p., Rs. 889.41 P. and Rs. 291.50 p. respectively. The claimant received the said amount on protest. Being aggrieved by the valuation

determined by the Land Acquisition Collector, the claimant filed his objection for higher compensation, which was referred to the Civil Court u/s 18 of the Act. The Land Acquisition Collector filed his counter to the said objection. The claimant adduced evidences in support of his higher compensation and the referral Court after taking into consideration, the evidence available on record, determined the compensation vide award dated 22.9.1990 as follows:

L.A. Case No. 4/1990 Compensation for Ac. 0.07 dec. of Bagayat Land at the rate of Rs. 25,000/- per acre: Rs. 1,750/-For 2 coconut trees @ Rs. 500/- per tree: Rs. 1,000/-For 1 big palm tree @ Rs. 300/-: Rs. 300/-For 1 Jackfruit tree: Rs. 1,000/-

20 Plantain trees @ Rs. 10/- each being seasoned: Rs. 200/-

50 Pineapple plant @ Rs. 5/- per plant being seasoned: Rs. 250/-Solatium @ 15%: Rs. 600/-L.A. Case No. 5/1990 Compensation for Ac. 0.10 dec. of Baunsa Bari @ Rs. 600.00 per acre: Rs. 60/-For Ac. 0.30 dec. of gharabari land @ Rs. 25,000/- per acre: Rs. 750/-For 2 coconut trees @ Rs. 500/- per tree: Rs. 1,000/-For 2 mango trees? Rs. 500/- per tree: Rs. 1,000/-For 10 bamboo clumps each at the rate of Rs. 500/- per one clump as the age of clump is not disclosed: Rs. 5,000/-

40 plantain trees @ Rs. 10/- per one: Rs. 400/-

5 pineapple trees @ Rs. 5/- per one: Rs. 25/-Solatium at the rate of 15%: Rs. 1,235.25 L.A. Case No. 6/1990 Compensation of Ac. 0.20 dec. of Baunsa bari at the rate of Rs. 600/- per acre: Rs. 12/-

11 dec. of bari land @ Rs. 25,000/- per acre: Rs. 2,750/-

2 coconut trees @ Rs. 500/- per one: Rs. 1,000/-

2 jackfruit trees @ Rs. 1000/- per tree: Rs. 2,000/-

5 mango trees @ Rs. 500/- per tree: Rs. 5,000/-

10 bamboo clumps @ Rs. 500/- per one clump as age of the clump is not disclosed: Rs. 5,000/-

8 big palm trees @ Rs. 300/- per tree: Rs. 2,400/-

55 small palm trees @ Rs. 10/-: Rs. 5,500/-

50 plantain trees @ Rs. 10/- per tree: Rs. 500/-

100 pineapple trees @ Rs. 5/- per one: Rs. 500/-Solatium at the rate of 15%: Rs. 3,174.30 L.A. Case No. 7/1990 Compensation for Ac. 0.12 dec. of Patita land @ Rs. 600/- per acre: Rs. 72/-For 48 dec. of Biali Dofasali land @ Rs. 20,000/- per acre: Rs. 9,600/-

8 big palm trees @ Rs. 300/- per tree: Rs. 2,400/-

55 small palm trees @ Rs. 100/- per tree: Rs. 5,500/- Solatium @ 15%: Rs. 2,635.80

L.A. Case No. 4/1990 Compensation for Ac. 0.07 dec. of Bagayat Land at the rate of Rs. 25,000/- per acre : Rs. 1,750/- For 2 coconut trees @ Rs. 500/- per tree : Rs. 1,000/- For 1 big palm tree @ Rs. 300/- : Rs. 300/- For 1 Jackfruit tree : Rs. 1,000/- 20 Plantain trees @ Rs. 10/- each being seasoned : Rs. 200/- 50 Pineapple plant @ Rs. 5/- per plant being seasoned : Rs. 250/- Solatium @ 15% : Rs. 600/- L.A. Case No. 5/1990 Compensation for Ac. 0.10 dec. of Baunsa Bari @ Rs. 600.00 per acre : Rs. 60/- For Ac. 0.30 dec. of gharabari land @ Rs. 25,000/- per acre : Rs. 750/- For 2 coconut trees @ Rs. 500/- per tree : Rs. 1,000/- For 2 mango trees? Rs. 500/- per tree : Rs. 1,000/- For 10 bamboo clumps each at the rate of Rs. 500/- per one clump as the age of clump is not disclosed : Rs. 5,000/- 40 plantain trees @ Rs. 10/- per one : Rs. 400/- 5 pineapple trees @ Rs. 5/- per one : Rs. 25/- Solatium at the rate of 15% : Rs. 1,235.25 L.A. Case No. 6/1990 Compensation of Ac. 0.20 dec. of Baunsa bari at the rate of Rs. 600/- per acre : Rs. 120/- 11 dec. of bari land @ Rs. 25,000/- per acre : Rs. 2,750/- 2 coconut trees @ Rs. 500/- per one : Rs. 1,000/- 2 jackfruit trees @ Rs. 1000/- per tree : Rs. 2,000/- 5 mango trees @ Rs. 500/- per tree : Rs. 5,000/- 10 bamboo clumps @ Rs. 500/- per one clump as age of the clump is not disclosed : Rs. 5,000/- 8 big palm trees @ Rs. 300/- per tree : Rs. 2,400/- 55 small palm trees @ Rs. 10/- : Rs. 5,500/- 50 plantain trees @ Rs. 10/- per tree : Rs. 500/- 100 pineapple trees @ Rs. 5/- per one : Rs. 500/- Solatium at the rate of 15% : Rs. 3,174.30 L.A. Case No. 7/1990 Compensation for Ac. 0.12 dec. of Patita land @ Rs. 600/- per acre : Rs. 72/- For 48 dec. of Biali Dofasali land @ Rs. 20,000/- per acre : Rs. 9,600/- 8 big palm trees @ Rs. 300/- per tree : Rs. 2,400/- 55 small palm trees @ Rs. 100/- per tree : Rs. 5,500/- Solatium @ 15% : Rs. 2,635.80

3. The claimant filed First Appeal against the four awards before this Court which were registered as F.A. Nos. 411, 412, 413 and 414 of 1990. The Land Acquisition Collector has also filed appeals against the said award which were registered as F.A. Nos. 28/91, 32/90, 31/90 and 38/91. This Court heard all the appeals and disposed of those appeals in a common Order dated 26.9.1991 and remanded all the cases to the Court below on the following findings that:

- (a) the valuation assessed by the Land Acquisition Collector is low,
- (b) in the document of any contemporaneous transaction of similar land has been produced before the Court to determine the market value of the land,
- (c) fixation of market value of bamboo clumps based on no reason,
- (d) there is no clear evidence as to the number and age of Bamboos in the clumps.

The referral Court has not taken into consideration the fact that u/s 23(1) of the Act provided that the market value of land has to be determined on the date of

publication of notification u/s 4(1) of the Act. The referral Court has also not considered the preconditions for determination of the statutory benefits under the Act as amended by Act 68 of 1984. On the aforesaid points, this Court remanded all the matters to the referral Court given opportunity to the parties to adduce further evidence in support of their respective claims. After the demand, the claimant adduced oral as well as documentary evidences. The Land Acquisition Collector neither adduced oral evidence nor filed any documentary evidences after remand. The referral Court without assessing the evidence adduced by the parties confirmed the award of the Collector and dismissed the objections of the claimant for enhancement of the compensation amount. The claimant has filed the present appeal being aggrieved by the said award passed by the referral Court on 30.9.1992. These appeals were registered as F.A. Nos. 11,12,13 and 14 of 1993 respectively.

4. The learned Counsel appearing for the claimant has submitted that after the remand the claimant has adduced evidence in respect of the Bamboo clumps to determine the age and number of Bamboo as earlier no materials available on record in that regard. He also adduced documentary evidence as no contemporaneous documents are available to determine the valuation of the land. He has also argued to grant the benefits to the claimant as per the Amendment Act, 1884. The claimant adduced evidence explaining the age of the Bamboo clumps and its number and also filed certified copy of the judgment passed in L.A. Case No. 1/1986 where the referral Court has passed the award on the basis of the sale deed, i.e. contemporaneous document for the land acquired in the vicinity of the land acquired in the present case. The State has not preferred any appeal against that award. Since the land acquired in the present case the notification made was within one year, the award passed in L.A. Case No. 1/1986 has some basis to determine the valuation of the land in the present case. The learned Court below had not considered the said fact and the Land Acquisition Collector has not adduced any rebuttal evidence to discard the evidence adduced by the claimant.

5. The learned Addl. Standing Counsel has submitted that, the award passed by the referral Court is just and adequate and same need not be interfered with.

6. This Court after going through the records and after verifying the evidence adduced by the parties, which reveals that the referral Court has discarded the evidence adduced by the claimant to determine the valuation of the land on the basis of the award passed in L.A. Case No. 1/1986 on the ground that the award passed in L.A. Case No. 5/1986 has been set aside by this Court in F.A. No. 316/1990, but no documents have been filed or marked as Ext. in that respect. The type of land acquired in this appeals are Bagayat, Patita, Gharabari and some cultivable lands and those lands are situated near the township and directly connected with the town for business, education and industries etc. The lands have the potency of a homestead and largeness of land cannot be determined by clubbing together or area. Law is well settled that previous awards have also

evidentiary value to consider the question of market value of the acquired land (See 2003 (11-12) SBR 412 Bhim singh and Ors. v. State of Haryana and Anr.). Thus, considering the fact and circumstances of these case, this Court determines the market value of the land at Rs. 28,000/- (Rupees Twenty-eight thousand only) per acre on a rational guess-work taking into consideration the year of notification and situation of the land. So far as the Bamboo clumps are concerned in L.A. Case No. 5/1990, this determines Rs. 4,000/-. The claimant is entitled to all statutory benefits as earlier it was awarded by the referral Court.

7. With the above modification, these appeals are disposed of accordingly.

No costs.